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DEPUTY COMMISSIONER OF INCOME TAX vs. MAJOR SHIV DAYAL SINGH CHIKITSA TRUST

IN THE ITAT DELHI BENCH 'E'

KUL BHARAT, JM & O. P. KANT, AM.

ITA No. 5849/Del/2017

Jul 29, 2021

(2021) 62 CCH 0368 DelTrib

Legislation Referred to

Section 11, 12AA

Case pertains to

Asst. Year 2014-15

Decision in favour of:

Assessee

Charitable trusts— Fee charged in excess of prescribed by fee fixation committee — Assessee is a society registered with Register of Society, Uttar Pradesh — Society was granted registration under section 12AA by competent authority — During scrutiny proceedings, Assessing Officer observed that various fees charged to students by medical colleges are fixed by state level fixation committees, whereas assessee has charged fees in excess, which was calculated by Assessing Officer — In view of Assessing Officer fee charged in excess of prescribed by fee fixation committee, was in nature of capitation fee and it is charged with motive of business and not charity and thus surplus generated is taxable as business income of assessee — CIT(A) deleted addition — Held, there should not be capitation fee or profiteering, but reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amounted to profiteering — Each institute must have freedom to fix its own fee structure taking into consideration needs to generate funds to run institution and to provide facilities necessary for benefit of students, however, there can be no profiteering and charging of capitation fees — It is clear that only extra fee of Rs.1,500/- was charged and that too was for examination fee — In such circumstances, it cannot be said that any capitation fee has been charged from students — Moreover, there is no surplus has been generated in year under consideration and assessee cannot be alleged for engaged in profiteering also — Assessee has contested that no fee was

fixed by state level fee fixation committee for year under consideration and, therefore, computation of excess fee by Assessing Officer, is based on presumption and without any documentary evidence in support — CIT(A) has correctly held that once assessee is registered under section 12AA, Assessing Officer has to examine applicability of section 11, 12 and 13 — No such violation has been pointed out by Assessing Officer of section 11, 12 and 13 — Section 11 prescribe application of income toward charitable purposes, which in case of assessee is for education and assessee has duly applied its income for said purposes as per rules specified in Act — There is no error in order of CIT(A) on issue in dispute — Revenue's appeal dismissed.

Held

In the case of T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors. Supreme Court answered the Question that there should not be capitation fee or profiteering, but reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amounted to profiteering.

(para 6.1)

Each institute must have the freedom to fix its own fee structure taking into consideration the needs to generate funds to run the institution and to provide facilities necessary for the benefit of the students, however, there can be no profiteering and charging of capitation fees.

(para 6.1.2)

It is clear that only extra fee of Rs.1,500/- was charged and that too was for examination fee. In such circumstances, it cannot be said that any capitation fee has been charged from the students. Moreover, there is no surplus has been generated in the year under consideration and the assessee cannot be alleged for engaged in profiteering also.

(para 6.3)

Assessee has contested that no fee was fixed by the state level fee fixation committee for the year under consideration and, therefore, computation of the excess fee by the Assessing Officer, is based on presumption and without any documentary evidence in support. The decisions relied upon by the Assessing Officer are in respect of the capitation fee and in absence of any such evidence of collection of capitation fee, the decisions relied upon are not applicable over the facts of the assessee. The CIT(A) has correctly held that once the assessee is registered under section 12AA, the Assessing Officer has to examine applicability of section 11, 12 and 13. No such violation has been pointed out by the Assessing Officer of section 11, 12 and 13. The Section 11 prescribe application of the income toward charitable purposes, which in the case of the assessee is for education and the assessee has duly applied its income for said purposes as per the rules specified in the Act. In view of the above facts and circumstances, there is no error in the order of the CIT(A) on the issue in dispute. The ground of the appeal of the Revenue is accordingly dismissed. In the result, the appeal of the Revenue is dismissed.

(para 6.4)

T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors. Referred.

Conclusion

Each institute must have the freedom to fix its own fee structure taking into consideration the needs to generate funds to run the institution and to provide facilities necessary for the benefit of the students, however, there can be no profiteering and charging of capitation fees.

In favour of

Assessee

Counsel appeared:

Pramita M. Biswas for the Appellant.: Abhinav Malhotra, Adv. for the Respondent

O. P. KANT, AM.

1. This appeal by the Revenue is directed against order dated 19/06/2017 passed by the learned Commissioner of Income Tax (Appeals)-Aligarh [in short 'the Ld. CIT(A)'] for assessment year 2014-15, raising following grounds:

> *1. The Ld.. C1T(A) has erred in law and facts in deleting addition of Rs. 10,32,13,500/ made by the AO on the plea that Income Tax Department concerns only with the application of income and it is not significant how that income was earned.*
>
> *2. The order of Ld. CIT(A) be cancelled and the order of the AO be restored.*
>
> *3. Appellant craves leave to modify/amend or add any one or more grounds of appeal.*

2. Briefly stated facts of the case are that the assessee is a society registered with Register of Society, Uttar Pradesh. The society was granted registration under section 12AA of the Income-tax Act, 1961 (in short 'the Act') by the competent authority vide order dated 16/12/2005. During the scrutiny proceedings, the Assessing Officer observed that various fees charged to students by the medical colleges are fixed by the state level fixation committees, whereas the assessee has charged fees in excess, which was calculated by the Assessing Officer as under:

Course	*Fees*	*No of*	*Total Fees*	*Fees to be*	*Total Fees to be*	*Excess fees*
Name	*collected*	*students*	*(a*b)*	*collected per*	*collected*	*collected*
	per	*(b)*		*student*	*(c*b)*	*(a-c)*b*
	student			*(c)*		

	(a)					
MBBS						
1 year	*600000*	*99*	*59400000*	*407000*	*40293000*	*19107000*
11 year	*650000*	*100*	*65000000*	*407000*	*40700000*	*24300000*
III year	*715000*	*100*	*71500000*	*407000*	*40700000*	*30800000*
BAMS						
1 year	*75000*	*50*	*3750000*	*15000*	*750000*	*3000000*
II year	*75000*	*50*	*3750000*	*15000*	*750000 '*	*3000000*
111 year	*150000*	*50*	*7500000*	*15000*	*750000*	*6750000*
IV year	*150000*	*50*	*7500000*	*15000*	*750000*	*6750000*
V year	*200000*	*50*	*10000000*	*15000*	*750000*	*9250000*
Peramedical	*37500*	*27*	*1012500*	*28000*	*756000*	*256500*
Total						*103213500*

2.1 In view of the Assessing Officer the fee charged in excess of the prescribed by fee fixation committee, was in the nature of the capitation fee and it is charged with the motive of the business and not charity and thus surplus generated is taxable as business income of the assessee. The relevant finding of the Assessing Officer is reproduced as under:

> *"10. Hence it is clear that the any educational institution cannot charge fees in excess of the amount fixed by the authorities and if it charges then the motive is business and not charity and the surplus thus generated is taxable as business income in sec 164(2). In the instant case the Assessee charged Rs. 10,32,13,500.00 as excess in the form of Book Bank Fees, Medical fees. Reg. Fee, Personality Grooming, Admission fee, Industrial visit fee beyond the prescribed amount of fees as decided by the Govt. Authorities which clearly indicates that the objects of the Assessee are not charitable and that the motive was entirely that of earning profit that too a*

huge one. Further incurring advertisement far beyond the prescribed limit also supports its motive. The Excess Income hence earned is to be Assessed as income from Business and Assessed accordingly."

2.2 The Assessing Officer in para-7 of the orders, relied on the following decisions of Hon'ble Supreme Court:

(i) Miss Mohini Jain vs Stale Of Karnataka And Ors on 30 July, 1992

(ii) T.M.A. Pai Foundation & Ors vs State Of Karnataka & Ors on 31 October, 2002

(iii) Unni Krishnan J.P. v. State of Andhra Pradesh, (1993) 1 SCO 645

(iv) PA Inamdar v. Slate of Maharashtra, (2005) 6 SCC 537 case in 2005

(v) Islamic Academy of Education v. State of Karnataka (2003) 6 SCC 697

2.3 The Assessing Officer computed taxable income of the assessee as under:

particulars	*computation*
Excess fees charged	*10,32,13,500.00*
PGBP u/s 164(2)	*10,32,13,500.00*
Net Taxable under PGBP	*10,32,13,500.00 (A)*
Gross Receipts Charged	*27,02,54,348.23*
Balance Receipts after deducting excess fees (B)	*16,70,40,848.23*
15% of Above (C)	*2,50,56,127.23*
To be Utilised B-C=D	*14,19,84,721.00*

Utilised	*28,59,66,154.00*
Less:	
Depreciation added back as disallowed as discussed above	*0.00*
Total Utilised (E)	*28,59,66,154.00*
Short Utilisation (1)- E)	*0.00 (F)*
Total Taxable Under MMR (no set to be allowed)=(A)+(F)	*10,32,13,500.00*

2.4 The Ld. CIT(A) after considering detailed submission of the assessee, deleted the addition mainly on the ground that there was no violation of section 11, 12 and 13 of the Act and Assessing Officer is concerned with the application of the income only. The relevant finding of the leaned CIT(A) has reproduced as under:

> *"In the assessment order, the AO has alleged that the appellant society has charged fees in excess of the fees fixed by the fixation committee. However, the appellant has explained that the order of the fee fixation committee dated 14.09.2011 is an interim order which is applicable only for the academic year 2011-12 and is irrelevant for the year under consideration. It has been contended that for the relevant year no fee fixation order was issued also it has been submitted that the fee fixation order referred by the AO for computing excess fee for BAMS course is applicable only to Government Colleges and is not relevant for the college being run by th,e appellant society. Further, it has been explained that the fee fixation committee merely prescribes tuition fees and the same never restricts or prescribes that the institution will not be entitled to charge the student for other services and articles supplied. It has been submitted that only tuition fees has been charged and no other fees like registration fees, book fees, medical fees, admission fees etc. has been charged. The appellant has also intimated that there is some mistake in the computation of the AO and the actual fees received as per the financial statement is only Rs. 20,12,22,500/- whereas the AO has taken this figure as Rs. 22,94,12,500/- Thus, it has been alleged that the AO has added the receipts of Rs. 2,82,10,000/- which were never received by the appellant society. Further, it has been explained that no surplus has been earned by the appellant as the total utilzation was Rs. 28,59,66,154/-against the total receipt of Rs. 27,02,54,348/-*
>
> *I have considered the rival arguments as summarized above. In my opinion, there is no reason to tax the excess fees allegedly received by the appellant society. It is to be noted that the society is registered u/s 12AA and its income will be exempt from taxation as long as the same is applied towards its objects in accordance with thee provisions as contained in sections 11, 12 and 13 of the IT Act. There is no finding that h appellant has violated any of such provisions. Further, its application of funds is more than the income received during the year and there is no surplus which can be brought to tax. It is also to be considered that the committee appointed by the Government has not fixed any fee structure for the relevant previous year. In any case, if there was any a violation of the regulatory provisions with regard to charging of fees from the*

students the action would lie with the Regulatory Authority which may have been empowered in this regard by the law. Under the IT Act, no adverse view can be taken with regard to the quantum of fees charged from the students. Under the IT Act, we are concerned only with the application of income and it is not significant how hat income was earned. As no violation of IT Act has been indicated by the AO, o adverse view can be taken in the assessment of the society's income."

3. Before us, the parties appeared through Video conferencing facility. The assessee filed an affidavit by the trustee declaring that no fee was fixed by the Fee fixation committee for the academic year relevant to the assessment year 2014-15.

4. Before us, the learned DR relied on the order of the Assessing Officer and submitted that in view of the capitation fee received, the assessee was engaged in the business and not charity. The learned DR also relied on the decisions cited by the Assessing Officer.

5. On the contrary, the learned counsel of the assessee relied on the order of the Ld. CIT(A) and decision of the Hon'ble Supreme Court in the case of Queens Education Society (2015) 55 taxmann.com 255.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the society is registered under section 12AA of the Act by the Competent Authority for charitable activity of "education" and said registration is in operation during the financial year relevant to the assessment year under consideration. In terms of section 2(15) of the Act, the activity of "education" has been included in charitable activity. We find that the learned Assessing Officer has alleged the assessee of collecting capitation fee, however, no order or finding of any regulatory authority dealing with medical colleges of charges of collection of capital fee has been pointed out by the Assessing Officer.

6.1 In the case of T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors. (dated 31.10.2002), the Hon'ble Supreme Court decided the issue, whether Unni Krishnan's case require reconsideration, as under:

"27. In the case of Mohini Jain (Miss) v. State of Karnataka and Ors., the challenge was to a notification of June 1989, which provided for a fee structure, whereby for government seats, the tuition fee was Rs. 2, 000 per annum, and for students from Karnataka, the fee was Rs. 25,000 per annum, while the fee for Indian students from outside Karnataka, under the payment category, was Rs. 60,000 per annum. It had been contended that charging such a discriminatory and high fee violated constitutional guarantees and rights. This attack was sustained, and it was held that there was a fundamental right to education in every citizen, and that the state was duty bound to provide the education, and that the private institutions that discharge the state's duties were equally bound not to charge a higher fee than the government institutions. The Court then held that any prescription of fee in excess of what was payable in government colleges was a capitation fee and would, therefore, be illegal. The correctness of this decision was challenged in Unni Krishnan's case, where it was contended that if Mohini Jain's ratio was applied the educational institutions would have to be closed down, as they would be wholly unviable without appropriate funds, by way of tuition fees, from their students.

28. We will now examine the decision in Unni Krishnan's case. In this case, this Court considered the conditions and regulations, if any, which the state could impose in the running of private unaided/aided recognized or affiliated educational institutions conducting professional courses such a medicine, engineering, etc. The extent to which the fee could be charged by such an institution, and the manner in which admissions could be granted was also considered. This Court held that private unaided recognized/affiliated educational institutions

running professional courses were entitled to charge a fee higher than that charged by government institutions for similar courses, but that such a fee could not exceed the maximum limit fixed by the state. It held that commercialization of eduction was not permissible, and "was opposed to public policy and Indian tradition and therefore charging capitation fee was illegal." With regard to private aided recognized/affiliated educational institutions, the Court upheld the power of the government to frame rules and regulations in matter of admission and fees, as well as in matters such a recruitment and conditions of service of teachers and staff. Though a question was raised as to whether the setting up of an educational institution could be regarded as a business, profession or vocation under Article 19(1)(g), this question was not answered. Jeevan Reddy, J., however, at page 751, para 197, observed as follows:-

> *"…… While we do not wish to express any opinion on the question whether the right to establish an educational institution can be said to be carrying on any "occupation" within the meaning of Article 19(1)(g), - perhaps, it is -- we are certainly of the opinion that such activity can neither be a trade or business nor can it be a profession within the meaning of Article 19(1)(g). Trade or business normally connotes an activity carried on with a profit motive. Education has never been commerce in this country …. "*

29. Reliance was placed on a decision of this Court in Bangalore Water Supply and Sewerage Board v. A. Rajappa and Ors., wherein it had been held that educational institutions would come within the expression "industry" in the Industrial Disputes Act, and that, therefore, education would come under Article 19(1)(g). But the applicability of this decision was distinguished by Jeevan Reddy, J., observing that "we do not think the said observation (that education as industry) in a different context has any application here". While holding, on an interpretation of Articles 21, 41, 45 and 46, that a citizen who had not completed the age of 14 years had a right to free education, it was held that such a right was not available to citizens who were beyond the age of 14 years. It was further held that private educational institutions merely supplemented the effort of the state in educating the people. No private educational institution could survive or subsist without recognition and/or affiliation granted by bodies that were the authorities of the state. In such a situation, the Court held that it was obligatory upon the authority granting recognition/affiliation to insist upon such conditions as were appropriate to ensure not only an education of requisite standard, but also fairness and equal treatment in matter of admission of students. The Court then formulated a scheme and directed every authority granting recognition/affiliation to impose that scheme upon institutions seeking recognition/affiliation, even if they were unaided institutions. The scheme that was framed, inter alia, postulated

(a) that a professional college should be established and/or administered only by a Society registered under the Societies Registration Act, 1860, or the corresponding Act of a State, or by a Public Trust registered under the Trusts Act, or under the Wakfs Act, and that no individual, firm, company or other body of individuals would be permitted to establish and/or administer a professional college (b) that 50% of the seats in every professional college should be filed by the nominees of the Government or University, selected on the basis of merit determined by a common entrance examination, which will be referred to as "free seats"; the remaining 50% seats ("payment seats") should be filled by those candidates who pay the fee prescribed therefore, and the allotment of students against payment seats should be done on the basis of inter se merit determined on the same basis as in the case of free seats (c) that there should be no quota reserved for the management or for any family, caste or community, which may have established such a college (d) that it should be open to the professional college to provide for reservation of sets for constitutionally permissible classes with the approval of the affiliating university (e) that the fee chargeable in each professional college should be subject to such a ceiling as may be prescribed by the appropriate authority or by a competent court (f) that every state government should constitute a committee to fix the ceiling on the fees chargeable by a

professional college or class of professional colleges, as the case may be. This committee should, after hearing the professional colleges, fix the fee once every three years or at such longer intervals, as it may think appropriate(g) that it would be appropriate for the University Grants Commission to frame regulators under its Act regulating the fees that the affiliated colleges operating on a no grant-in-aid basis were entitled to charge. The AICTE, the Indian Medical Council and the Central Government were also given similar advice. The manner in which the seats to be filled on the basis of the common entrance test was also indicated.

30. The counsel for the minority institutions, as well as the Solicitor General, have contended that the scheme framed by this Court in Unni Krishnan's case was not warranted. It was represented to us that the cost incurred on educating a student in an unaided professional college was more than the total fee, which is realized on the basis of the formula fixed in the scheme. This had resulted in revenue shortfalls. This Court, by interim orders subsequent to the decision in Unni Krishnan's case, had permitted, within the payment seats, some percentage of seats to be allotted to Non- Resident Indians, against payment of a higher amount as determined by the authorities. Even thereafter, sufficient funds were not available for the development of those educational institutions. Another infirmity which was pointed out was that experience has shown that most of the "free seats" were generally occupied by students from affluent families, while students from less affluent families were required to pay much more to secure admission to "payment seats". This was for the reason that students from affluent families had had better school education and the benefit of professional coaching facilities and were, therefore, able to secure higher merit positions in the common entrance test, and thereby secured the free seats. The education of these more affluent students was in a way being cross-subsidized by the financially poorer students who because of their lower position in the merit list, could secure only "payment seats". It was also submitted by the counsel for the minority institutions that Unni Krishnan's case was not applicable to the minority institutions, but that notwithstanding this, the scheme to evolved had been made applicable to them as well.

31. Counsel for the institutions, as well as the Solicitor General, submitted that the decision in Unni Krishnan's case, insofar as it had framed the scheme relating to the grant of admission and the fixing of the fee, was unreasonable and invalid. However, its conclusion that children below the age of 14 had a fundamental right to free education did not call for any interference.

32. It has been submitted by the learned counsel for the parties that the implementation of the scheme by the States, which have amended their rules and regulations, has shown a number of anomalies. As already noticed, 50% of the seats are to be given on the basis of merit determined after the conduct of a common entrance test, the rate of fee being minimal. The "payment seats" which represent the balance number, therefore, cross- subsidize the "free seats". The experience of the educational institutions has been that students who come from private schools, and who belong to more affluent families, are able to secure higher positions in the merit list of the common entrance test, and are thus able to seek admission to the "free seats". Paradoxically, it is the students who come from less affluent families, who are normally able to secure, on the basis of the merit list prepared after the common entrance test, only "payment seats".

33. It was contended by petitioned counsel that the implementation of the Unni Krishnan scheme has in fact (1) helped the privileged from richer urban families, even after they ceased to be comparatively meritorious, and (2) resulted in economic losses for the educational institutions concerned, and made them financially unviable. Data in support of this contention was placed on record in an effort to persuade this Court to hold that the scheme had failed to achieve its object.

34. Material has also been placed on the record in an effort to show that the total fee realized

from the fee fixed for "free seats" and the "payment seats" is actually less than the amount of expense that is incurred on each student admitted to the professional college. It is because there was a revenue shortfall that this Court had permitted in NRI quota to be carved out of the 50% payment seats for which charging higher fee was permitted. Directions were given to UGC, AICTE, Medical Council of India and Central and ¡State governments to regulate or fix a ceiling on fees, and to enforce the same by imposing conditions of affiliation/permission to establish and run the institutions.

35. It appears to us that the scheme framed by this Court and thereafter followed by the governments was one that cannot be called a reasonable restriction under Article 19(6) of the Constitution. Normally, the reason for establishing an educational institution is to impart education. The institution thus needs qualified and experienced teachers and proper facilities and equipment, all of which require capital investment. The teachers are required to be paid properly. As pointed out above, the restrictions imposed by the scheme, in Unni Krishnan's case, made it difficult, if not impossible, for the educational institutions to run efficiently. Thus, such restrictions cannot be said to be reasonable restrictions.

36. The private unaided educational institutions impart education, and that cannot be the reason to take away their choice in matters, inter alia, of selection of students and fixation of fees. Affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition. The private institutions are right in submitting that it is not open to the Court to insist that statutory authorities should impose the terms of the scheme as a condition for grant of affiliation or recognition; this completely destroys the institutional autonomy and the very objective of establishment of the institution.

37. The Unni Krishnan judgment has created certain problems, and raised thorny issues. In its anxiety to check the commercialization of education, a scheme of "free" and "payment" seats was evolved on the assumption that the economic capacity of first 50% of admitted students would be greater than the remaining 50%, whereas the converse has proved to be the reality. In this scheme, the "payment seat" student would not only pay for his own seat, but also finance the cost of a "free seat" classmate. When one considers the Constitution Bench's earlier statement that higher education is not a fundamental right, it seems unreasonable to compel a citizen to pay for the education of another, more so in the unrealistic world of competitive examinations which assess the merit for the purpose of admission solely on the basis of the marks obtained, where the urban students always have an edge over the rural students. In practice, it has been the case of the marginally less merited rural or poor student bearing the burden of a rich and well-exposed urban student.

38. The scheme in Unni Krishnan's case has the effect of nationalizing education in respect of important features, viz., the right of a private unaided institution to give admission and to fix the fee. By framing this scheme, which has led to the State Governments legislating in conformity with the scheme the private institutions are undistinguishable from the government institutions; curtailing all the essential features of the right of administration of a private unaided educational institution can neither be called fair or reasonable. Even in the decision in Unni Krishnan's case, it has been observed by Jeevan Reddy, J., at page 749, para 194, as follows:

> *"The hard reality that emerges is that private educational institutions are a necessity in the present day context. It is not possible to do without them because the Governments are in no position to meet the demand - particularly in the sector of medical and technical education which call for substantial outlays. While education is one of the*

most important functions of the Indian State it has no monopoly therein. Private educational institutions - including minority educational institutions - too have a role to play."

39. That private educational instructions are a necessity becomes evident from the fact that the number of government-maintained professional colleges has more or less remained stationary, while more private institutions have been established. For example, in the State of Karnataka there are 19 medical colleges out of which there are only 4 government- maintained medical colleges. Similarly, out of 14 Dental Colleges in Karnataka, only one has been established by the government, while in the same State, out of 51 Engineering Colleges, only 12 have been established by the government. The aforesaid figures clearly indicate the important role played by private unaided educational institutions, both minority and non- minority, which cater to the needs of students seeking professional education.

40. Any system of student selection would be unreasonable if it deprives the private unaided institution of the right of rational selection, which it devised for itself, subject to the minimum qualification that may be prescribed and to some system of computing the equivalence between different kinds of qualifications, like a common entrance test. Such a system of selection can involve both written and oral tests for selection, based on principle of fairness.

41. Surrendering the total process of selection to the state is unreasonable, as was sought to be done in the Unni Krishnan scheme. Apart from the decision in St. Stephen's College v. University of Delhi, which recognized and upheld the right of a minority aided institution to have a rational admission procedure of its own, earlier Constitution Bench decision of this Court have, in effect, upheld such a right of an institution devising a rational manner of selecting and admitting students.

42. In R. Chitralekha and Anr. v. State of Mysore and Ors., while considering the validity of a viva-voce test for admission to a government medical college, it was observed at page 380 that colleges run by the government, having regard to financial commitments and other relevant considerations, would only admit a specific number of students. It had devised a method for screening the applicants for admission. While upholding the order so issued, it was observed that "once it is conceded, and it is not disputed before us, that the State Government can run medical and engineering colleges, it cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it. This is a power which every private owner of a College will have, and the Government which runs its own Colleges cannot be denied that power." (emphasis added).

43. Again, in Minor P. Rajendran v. State of Madras and Ors., it was observed at page 795 that "so far as admission is concerned, it has to be made by those who are in control of the Colleges, and in this case the Government, because the medical colleges are Government colleges affiliated to the University. In these circumstances, the Government was entitled to frame rules for admission to medical colleges controlled by it subject to the rules of the university as to eligibility and qualifications." The aforesaid observations clearly underscore the right of the colleges to frame rules for admission and to admit students. The only requirement or control is that the rules for admission must be subject to the rules of the university as to eligibility and qualifications. The Court did not say that the university could provide the manner in which the students were to be selected.

44. In Kumari Chitra Ghosh and Anr-. v. Union of India and Ors., dealing with a government run medical college at pages 232-33, para 9, it was observed as follows:

"It is the Central Government which bears the financial burden of running the medical

college. It is for it to lay down the criteria for eligibility......"

45. In view of the discussion hereinabove, we hold that the decision in Unni Krishnan's case, insofar as it framed the scheme relating to the grant of admission and the fixing of the fee, was not correct, and to that extent, the said decision and the consequent direction given to UGC, AICTE, Medical Council of India, Central and State Government, etc., are overruled."

6.1.1 The Hon'ble Supreme Court framed 11 questions and majority of judges answered the Question No. 9 that there should not be capitation fee or profiteering, but reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amounted to profiteering.

6.1.2 In the case of Islamic Academy (supra) also held that each institute must have the freedom to fix its own fee structure taking into consideration the needs to generate funds to run the institution and to provide facilities necessary for the benefit of the students, however, there can be no profiteering and charging of capitation fees.

6.1.3 In P.A. Inamdar (supra), the Supreme Court while answering question no. 3 held that every institution is free to devise its own fee structure but the same can be regulated in the interest of preventing profiteering. No capitation fee can be charged. Leverage was allowed to educational institutions to generate reasonable surplus to meet cost of expansion and augmentation of facilities which would not amount to profiteering. The Court upheld the two Committees for monitoring admission procedure and determining fee structure as held in Islamic Academy was permissible as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities

6.2 Before the learned CIT(A), the assessee has submitted that pursuant to Supreme Court decision's mentioned above, the State Government of Uttar Pradesh enacted the Uttar Pradesh Private Professional Educational Institution (Regulation of Admission and Fixation of Fees) Act, 2006 and fee fixation commit was constituted on 27.06.2008. As regard to fees, the assessee submitted before the ld. CIT(A) as under:

"13. Pursuant to Supreme Court/Govt. of U.P. order, the committee fixed provisional fee for Academic Year 2011-12 at Rs. 4.07 lacs vide G.O. no. 3392/71-2-11-W- 64/2007 dated 14.09.2011. Committee also decided to fix final fee and also fee for academic year 2012-13 and 2013-14 later on. Consequently, the Committee was required to fix the final fee for session 2011-12 and thereafter. This has not been done in the instant case, in fact the assessee has gone on record to make a request to this effect. In the G.O. it is also mentioned that final fee will be fixed later on and if the college has taken excess fee, the same will be refunded to students or adjusted against future dues. If fee paid by student is less than fixed, the college will collect the difference from student.

14. The fee fixation order came on 14.09.201, till then the admissions for academic year 2011-12 were almost completed and fee, as decided by the college committee, was deposited by students. Since the final fee was never fixed by the Government, there was no question of refund/collection of different of fee.

15. The facts of the instant case would reveal that there is no surplus at all, that is earned by the assessee. Ld. Assessing Officer has herself accepted that total utilization of income was Rs. 28,59,66,154/- and total receipts was Rs. 27,02,54,348.23 as per para 13 of assessment order.

16. That Ld. Assessing Officer have not referred to any fee fixation order in the assessement order but merely mentioned that the fee fixation committee order has been brought on records by the assessee or the fee fixation order is available in public domain.

There after neither final fee for academic year 2011-12 nor fee for next academic years, as mentioned in para-3, has been fixed by Govt./DGME. It means no fee has been fixed by the competent authority for academic session 2013-14 relevant to A.Y.2014-15 under consideration.

As regards fee for BAMS course, the Govt./DGME/Fee Fixation Committee has fixed fee for Govt. Unani, Aurvedic and Homeopathic Medical Colleges only which is clearly mentioned in the order and has no application on the private ayurvedic medical colleges.

As regards fee for paramedical courses, it is submitted that Uttar FTadesh State Medical Faculty, U.P. had granted permission to start th,e paramedical courses vide letter no. 3461/12 dated 23.05.2012. As per point 3 of the aforesaid letter the college is permitted to charge tution fee of Rs. 36000/- per student. The assessee college has charged the total fee of Rs. 37500/- which includes tution fee Rs. 36000/- and examination fee Rs. 1500/-. Thus the assessee has not charged any excess fee than fixed by the authorities. Ld. AO has taken the fee fixed at Rs. 28000/- as per own imagination. The copy of letter of U.P. State Medical Faculty is enclosed and Marked as ANNEXURE-G.

In view of the discussion and facts stated above it is very clear that no fee has been fixed by the Govt, or and other Competent Authority for MBBS and BAMS courses run by the assessee, for the academic session 2013-14 (relevant to A.Y. 2014-15).

19. That with regards to question no 2 as to whether assessee has charged fee in excess of fee fixed by the Fee Fixation Authority, the question has no relevancy for MBBS and BAMS courses because, as discussed in para 18 above, no fee has been fixed by the Authority for F.Y. 2013-14 (relevant to A.Y. 2014-15) for these courses, hence there is no question of charging/collecting fee in excess of fee fixed. As regards paramedical courses the assessee has charged the fee as permitted by Uttar Pradesh State Medical Faculty and no excess fee has been charged."

6.3 On perusal of submission of the assessee, it is clear that only extra fee of Rs.1,500/- was charged and that too was for examination fee. In such circumstances, it cannot be said that any capitation fee has been charged from the students. Moreover, there is no surplus has been generated in the year under consideration and the assessee cannot be alleged for engaged in profiteering also.

6.4 The assessee has contested that no fee was fixed by the state level fee fixation committee for the year under consideration and, therefore, computation of the excess fee by the Assessing Officer, is based on presumption and without any documentary evidence in support. The decisions relied upon by the Assessing Officer are in respect of the capitation fee and in absence of any such evidence of collection of capitation fee, the decisions relied upon are not applicable over the facts of the assessee. The Ld. CIT(A) has correctly held that once the assessee is registered under section 12AA of the Act, the Assessing Officer has to examine applicability of section 11, 12 and 13 of the Act. No such violation has been pointed out by the learned Assessing Officer of section 11, 12 and 13 of the Act. The Section 11 prescribe application of the income toward charitable purposes, which in the case of the assessee is for education and the assessee has duly applied its income for said purposes as per the rules specified in the Act. In view of the above facts and circumstances, we do not find any error in the order of the Ld. CIT(A) on the issue in dispute and, accordingly, we uphold the same. The ground of the appeal of the Revenue is accordingly dismissed. 7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 29 th July, 2021.

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Customized Notes

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