IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 13th DAY OF MARCH 2013

BEFORE

THE HON'BLE MR. JUSTICE RAM MOHAN REDDY

W.P.NO.42179/2012 (T-IT)

BETWEEN

M/S UNITED EDUCATION SOCIETY
B.M.ROAD, HASSAN-573 201
(REPRESENTED BY ITS SECRETARY
SMT. K.R.ANUSUYA
AGED ABOUT 54 YEARS
D/O RUDRAPPA) ... PETITIONER

(BY SRI CHYTHANYA K K, ADV.,)

AND

THE CHIEF COMMISSIONER OF INCOME TAX
CENTRAL REVENUE BUILDING
QUEENS ROAD, BANGALORE-560 001 ... RESPONDENT

(BY SRI K V ARAVIND, ADV.,)

THIS W.P. FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH AS FAR AS THE PETITIONER IS CONCERNED BY AN APPROPRIATE WRIT OR ORDER IN THE NATURE OF CERTIORARI OR OTHERWISE THE IMPUGNED ORDER ISSUED U/S 10 (23C) (VI) ISSUED BY THE RESPONDENT TO THE PETITIONER DATED 28.8.12 VIDE ANNX-A AND ETC.,

THIS W.P. COMING ON FOR, PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner's application in Form No.56D dated 26.9.11 for exemption under Section 10 (23C) (vi) of the Income Tax Act, 1961, when rejected by order dated 28.8.12 Annexure-A of the Chief Commissioner of Income Tax (for short 'the CCIT), Bangalore-III, has resulted in this petition.

2. The only submissions of learned counsel for the petitioner is that the CCIT having considered all relevant material documents such as the memorandum of bylaws of the petitioner-Society and the rules and regulations attached thereto, in addition to, the books of accounts for the three years preceding the application, though observed that there was no monetary profits in the activity of imparting education, nevertheless, rejected the application on an unjustifiable ground that

the collection of donations from pupils would amount to an act for the purpose of profit and therefore does not fulfill the objectives mentioned in Section 10(23C)(vi) of the Act.

3. The petition though not opposed by filing statement of objections, nevertheless learned counsel for the respondent-revenue seeks to sustain the order as being well merited and fully justified and does not call for interference.

4. Section 10(23C)(vi) reads thus:

"any University or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority;

xxxx"

5. The exemption from the application of the Act is available to any University or educational institution imparting education if it is not for the purpose of profit. The CCIT having extracted the objects of the association as recorded in the memorandum of association and the rules and regulations of the Society, stating that donations may also be collected from the pupils and the same shall be decided by the Executive Committee from time to time, opined, that collection of donations from students in addition to regular fees is not an acceptable principle. He further observed that the donations collected are required to be placed at the discretion of the Executive Committee, which could be exercised for a purpose other than education. In that context, the CCIT concluded that such an act of collecting donation and placing it at the discretion of the executive committee, is in the direction of establishing profit motive and for

purposes other than imparting education and accordingly, rejected the request of the petitioner.

6. Petitioner having not explained the rules and regulations more appropriately, relating to the collection of donations from pupils contrary to provisions of Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, coupled with the failure to explain, with material particulars, over the discretion to be exercised by the Executive Committee over such donations, no exception can be taken to the reasons findings and conclusions arrived at by the CCIT's in the order Annexure-A. In the absence of explanation, it cannot be said that it is not the actual user but the likelihood and the capacity of the trustees to do so which is important as held by the High Court of Madras in Reliance Motor Company Private Limited –vs- Commissioner of Income Tax reported in 1995 213 ITR

733, the exercise of discretion by the Executive Committee to put to use the donation is of primary concern.

In the result, *the petition without merit is accordingly rejected.*

Sd/-
JUDGE

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