

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 710/Del/2008
AY: 2004-05**

**ITA No. 2404/Del/2008
AY: 2005-06**

**ITA No. 896/Del/2009
AY: 2006-07**

**ITA No. 1477/Del/2011
AY: 2007-08**

ITO (E), Trust Ward IV New Delhi	vs.	Maharaji Education Trust No.1, Santosh Nagar Pratap Vihar Ghaziabad 201 009
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**ITA No. 311/Del/2008
A.Y. : -----**

Maharaji Educational Trust Ghaziabad	vs.	DIT(E), N.Delhi
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(Appellant)

(Respondent)

Assessee by : Sh. R.S.Singhvi, C.A. and
Sh.V.K.Sabharwal, Adv.

Respondent by : Sh. Ravi Jain, CIT, D.R.

ORDER

PER J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

ITA 710/Del/08 for the Assessment Year (A.Y.) 2004-05, ITA 2404/Del/08 for the A.Y. 2005-06, ITA 896/Del/09 for the A.Y. 2006-07 and ITA 1477/Del/11 for the A.Y. 2007-08 are appeals filed by the Revenue

directed against separate orders of the Ld.Commissioner of Income Tax (Appeals) (CIT(A) -XXI, New Delhi.

1.1. ITA 311/Del/08 is an appeal filed by the assessee against refusal of DG(Exemptions) to grant recognition u/s 80G of the Income Tax Act, 1961 (the Act). As the issues arising in all the Revenue appeals are similar, for the sake of convenience they are heard together and disposed of by way of this common order.

2. Facts in brief:- The assessee “Maharaji Educational Trust” is registered u/s 12A of the Act vide order no.DIT(E)2(213)/94-95 dt. 31.01.1995 issued by DIT (Exemptions) Madras and also u/s 80G of the Income Tax Act, 1961 (the Act). Subsequently, the assessee Trust has also been allowed exemption u/s 10(23)(C)(vi) of the Act by DG (Exemptions), New Delhi vide order dt. 27.3.2009 vide F.No.DGIT(E)/10(23)(C)(vi)/2008-09/1766.

2.1. The registration u/s 12A of the Act continues and has not been withdrawn till date. The Trust has been claiming and was allowed the benefit of exemption u/s 11 of the Act for the A.Y. 2002-03 in an order passed u/s 143(3) of the Act on 28.3.2005.

2.2. Also for the A.Y. 2008-09 and 2009-10, the assessee’s claim for exemption u/s 11 was accepted by the A.O. vide his orders of assessment u/s 143(3) of the Act dt. 21.12.2010 and 13.12.2010 respectively.

2.3. The Trust is running medical college and para-medical courses at Ghaziabad and Chennai. The list of such courses are given in pages 1 and 2 of the assessment order for the A.Y. 2004-05. For the sake of brevity, we do not repeat the same.

2.4. A survey was conducted on the assessee Trust and u/s 133A of the Act on 10.8.2006 at its premises at Ghaziabad. During the course of survey certain loose papers, receipt books and other relevant records were found containing the transactions relevant to the receipt of admission fee, incurring of an expenditure etc. which were confronted to the Chairman of

the Trust Dr.P.Mahalingam. Statement of the Chairman was recorded an oath on 21.8.2006 and 25.8.2006 respectively. Statement of Shri Kamal Kannan, Accounts Officer was recorded on the date of survey itself i.e. 10.8.2006. Mr.Kamal Kannan stated that he was not an authorised person. To further questions he stated that the fee structure of students of management quota and government quota was the same. It is contended by the assessee, that its Chairman, in order to keep mental peace and avoid unnecessary harassment and also without going into the authenticity of the documents found in several and on advise of the officials of Income Tax Department had declared additional income of Rs.3 crores for the F.Y. 2006-07 relevant to the A.Y. 2007-08 and has paid taxes thereon.

2.5. Thereafter the assessments for all these A.Ys were taken up and completed.

3. We now take up the appeals year wise.

ITA 710/Del/08 for the A.Y. 2004-05:- The assessee filed a return of income on 23.10.2004 declaring 'nil' income. Based on the material found during the course of survey the Assessing Officer (AO) in his order u/s 143(3) dt. 28.12.2006 came to the following conclusion.

“To summarise, the assessee issues unnumbered unbound receipts to students of the management quota by its own admission, the bills/vouchers and receipts for entries in the project work account were not produced, receipts of fees for project work is not recorded in the students register produced in the assessment proceedings, the undertaking signed by the student of management quota from which the quantum of fees taken from management quota students could have been determined as stated to have been returned back to the students for reason that there are no outstanding from the students. As such even after due diligence it is not possible to verify the fees received by the assessee from the management quota students which are so fixed but are determined on student to student basis.

Further, complete books and vouchers have not been produced as discussed earlier in the order. Therefore the books results of the assessee cannot be accepted. Therefore I am not satisfied with the correctness and completeness of the accounts of the assessee.

As per reply dated 8.12.2006 filed during assessment proceedings the number of seats in management quota is 21 in MBBS course and 20 in BDS, The only specific information available on record regarding fees received under the head Project Works available on seized annexure - 9 which shows recovery of 10 lakhs to 25 lakhs from MBBS students on account of project work which is the component of fees not supported by receipts from all students. And assessee's reply dated 26.12.06 stating that maximum fees permitted to be collected from MBBS students is 30 lakhs and from BDS students 12 lakhs.

Making a conservative estimate based on the actual figures of Rs.45 lakhs for 3 students i.e average of Rs, 15 lakh per MBBS student the unaccounted fees under the head project work from MBBS students is estimated at 21×15 lakhs = 3,15,00,000/- which is fees over and above that accounted by the assessee. So far as the BDS students are concerned fees on account of project work are estimated at 6 lakhs { considering pw component out of 12 lakhs total fees) per student i.e. 20×6 lakhs = 1.20 crores. Since the assessee has shown an amount of Rs.3.02 crores out of project work receipts as fees the total addition on this accounts works out to $Rs.3.15 + 1.20 - 3.02$ crores = 1.33. crores.

The assessee was specifically asked to furnish the details of building under construction with supporting evidence vide note sheet entry dated 06.12.2006. The same was again asked vide note sheet entry dt. 8.12.2006. Thereafter the assessee appeared on 11.12.2006, 14.12.2006, 18.12.2006, 22.12.2006 and 26.12.2006 but no information was furnished stating that the same was used to be kept at Chennai Office and the same was destroyed due to tsunami on our premises at Elliots beach Chennai on 26.12.2004 and we are unable to provide the same.

Since the receipts of assessee are not fully accounted for in its books of accounts, income from property held under trust to that extent has been

diverted for purposes other than to meet the objects of the trust. In addition, in this case, even expenditure of Rs.5,82,94,052/- through books for building under construction is unvouched.

It may be mentioned that in assessment proceedings it has been stated that the income of Rs, 3 crores surrendered during survey was made by Dr. P.Mahalingam in his personal capacity on account of personal professional receipts but in his statement recorded on 25.8.2006 after survey conducted on 10.8.2006 on page no. 2 Sh. Mahalingam. Managing Trustee of the assessee Trust. had stated that "my declaration of Add.. Income of Rs.3 crores should also cover the organization and institutions where I am acting as Managing Trustee/Chairman or as a Director namely M/s Maharaji Educational Trust, M/s Santosh Hospitals (P) Ltd. I will be given the copies of returns filed by all these institutions.

In view of the same the Addl declaration in the current financial year should be taken to cover my personal Income Tax Assessments, M/s Mabaraji Educational Trust and M/s Santosh Hospital Pvt, Ltd. as well.

In view of the detailed discussion and after denying the benefit of exemption u/s 11. Income is computed as under :

Surplus as per I&E A/c	Rs.2,04,12,921
Addition on Ale of undisclosed fees	Rs.1,33,00,000

	Rs.3,37,12,921.
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3.1. Aggrieved the assessee carried the matter in appeal. The First Appellate Authority had granted relief. He at para 10.3. and 10.4 had held as follows.

“10.3 Regarding estimation and an additions of Rs.1.33 Crores made on account of undisclosed fee, it is seen from the assessment order and the records produced by the appellant, that the Assessing Officer has failed to invoke the provisions of section 145 (3) of the Act or pinpointed any unrecorded single entry in respect of fees received from the students and for that matter, any other entry in respect of any expenditure because the entire amount realised from the students are reflected in the account books under

the head Project Work, which was transferred to Fee A/c and the same has been accepted by the Assessing Officer as correct. Therefore, there is no reason for the Assessing Officer for estimating the fee received from all the medical students of both MBBS and BDS Courses and adding the same twice to the returned version without the support of any cogent material.

10.4 In view of the above discussion and respectfully following the decisions of various appellate authorities cited supra and also taking into consideration all the relevant facts and circumstances of the case, I am of the considered opinion that the Assessing Officer was not justified to tax the surplus amount of Rs.2,04,12,921/- disclosed in the Income & Expenditure A/c, after denying the benefit of exemption u/s. 11 of the Act and further the addition made on account of undisclosed fees to the extent of Rs.1,33,00,000/- and therefore, not sustainable. Accordingly, the entire addition of Rs.3,37,12,921/- made to the returned version is hereby deleted. I also allow exemption u/s. 11 of the Act to the appellant.”

3.2. Aggrieved the Revenue is in appeal before us on the following grounds.

“1. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs.2,04,12,921/- by allowing the benefit of s.11 and 12 of the Income Tax Act, 1961 (the Act) ignoring and overlooking the material gathered during the course of survey u/s 133A of the Act and also when the receipts were not fully accounted for in the books and the expenditure of Rs.5,82,94,052/- on building under construction, was unvouched.

2. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs.1,33,00,000/- made by the AO on account of the unaccounted fee received by the assessee from the MBBS and BDS course students on the basis of the material found during the course of survey u/s 133A of the Act.

3. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in observing that the AO has failed to invoke the provisions of s.145(3) of the Act or pin point any unrecorded single entry in respect of the fees especially when the assessee failed to produce the complete books of accounts and supporting vouchers before the A.O.

4. *On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in admitting additional evidence under Rule 46A of the IT Rules, 1962 in shape of the certificate from Tehsildar that the books of accounts were destroyed in tsunami when the applicant had sufficient time and adequate opportunities to produce the same before the A.O.”*

4. We have heard Shri Ravi Jain, Ld.CIT, D.R. on behalf of the Revenue and Shri R.S.Singhvi, C.A. the Ld.Counsel for the assessee. On a careful consideration of the facts and circumstances of the case, perusal of material on record, orders of lower authorities, case laws cited, we hold as follows.

5. After hearing rival contentions, we find that, the addition made by the A.O. is not sustainable, as it is based on guess work and extrapolation. It is not based on evidence. There was no documents found during the course of survey, which supports such an addition. There was no enquiry or investigation conducted by the A.O. from the concerned students or parents during the assessment proceedings and no evidence was collected by the A.O. to support his conclusions.

5.1. The assessee has relied upon a number of case laws for the proposition that the amount deemed to be income u/s 68 is also entitled to exemption. He further submitted that the eligibility u/s 11 and 12 cannot be denied as long as the registration u/s 12 and u/s 10(22) continues. The assessee is imparting education and the activities of the Trust are in accordance with its objectives. There is no adverse finding on this aspect by the A.O. in his orders.

5.3. We have gone through the case laws relied upon before us. These are extracted for ready reference.

- i. DIT(E) vs. Raunaq Education Foundation 249 ITR 76 (Del)
- ii. DDIT vs. Shanti Devi Progressive Education Society 340 ITR 320 (Del)
- iii. ITO vs. Baba Dhall Educational Society of India 27 SOT 391 (Del.)
- iv. CIT vs. Geetanjali Education Society 174 Taxman 440 (Raj.)
- v. ACIT vs. Shri Ganpati Educational Society ITA 2655/Del/11(Delhi ITAT)

- vi. Gagan Education Society vs. ACIT 131 ITD 443 (Agra)
- vii. CIT vs. Khalsa Rural Hospital & Nursing Training Institute 173 Taxman 180 (P&H)
- viii. ACIT vs. Balaji Educational & Charitable Public Trust 48 SOT 281 (Mad.)(2011) 11 ITR 179 (Mad.)
- ix. CIT vs. Mool Chand Sharbati Devi Hospital Trust 190 Taxman 338 (All.)
- x. Chief CIT vs. Geetanjali University Trust 352 ITR 433(Raj.)

5.4. Applying the propositions laid down in these case laws to the facts of the case, we find no infirmity in the order of the Ld.CIT(A) in granting exemption u/s 11 of the Act to the assessee and also in deleting the addition made on inferences, specifically when the registration u/s 12 continues and when Sec.11 exemption was granted both in earlier as well as later years.

5.5. The A.O. had also made an observation that the expenditure on construction of a building in Chennai could not be verified as relevant books were not produced. The assessee filed additional evidence to demonstrate that these vouchers were destroyed in tsunami. The additional evidence was in the form of a Certificate from the Competent Authority. The assessee supported the quantum of expenditure incurred on construction of a building by way of a Report from Approved Valuer as well as by way of an audited Balance Sheet. The Ld.CIT(A) at para 10.2 of his order observed as follows.

“10.2. So far the contention of AO that the funds applied in construction of building under the head of project are not vouched, the assessee has demonstrated by filing an additional evidence that such vouchers were destroyed in tsunami which is apparent from the certificate filed during the appellant proceedings from the Competent Authority. On this ground also exemption u/s 11 cannot be denied.

5.6. We find no infirmity in this finding. We also do not find any merit in the objection of the A.O. to the admission of additional evidence under Rule 46A by the Ld.CIT(A) which was in the form of a Certificate from the

Competent Authority confirming that the records, documents and books of accounts of the Trust were destroyed and washed away during tsunami.

5.7. In our view there is no ground made out by the A.O. for denying benefit of exemption u/s 11 to the assessee for this A.Y. Admittedly the objects of the Trust are charitable and there is no allegation that the activities of the Trust are not in accordance with its objects. No violation of Sec.13 is made out.

5.8. Thus, we uphold the order of the First Appellate Authority and dismiss the appeal of the Revenue.

6. ITA 2404/Del/2008 A.Y. 2005-06:- The Revenue has filed this appeal on the following grounds.

1. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs.6,46,65,262/- by allowing the benefit of s.11 and 12 of the Income Tax Act, 1961 (the Act) even when it was established on the basis of the material found during the course of survey u/s 133A of the Act on 10.8.2006 that the assessee was running educational institutions on commercial lines with profit motive.

2. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in allowing the benefit of s.11 and 12 of the Income Tax Act, 1961 (the Act) overlooking the fact that it was only because of discrepancies detected during the course of survey on 10.8.2006 that the assessee has subsequently revised the original return filed on 31.10.2005 by filing a revised return on 31.3.2007 and enhanced the surplus (excess of income over expenditure) from Rs.4,56,95,467/- declared in the original return to Rs.6,46,65,262/- in the revised return. Thus excess surplus amounting to Rs.1,89,69,795/- was declared.”

6.1. The A.O. in this A.Y. rejected the claim for exemption u/s 11 of the Act by observing as follows.

“In the instant case, during certain enquiries, it came into notice, that the assessee Institution is taking capitation fee from the students over and above the fee prescribed by the authorities. Thus the assessee has commercialised the education.”

The activities of the Society cannot be said to be for general public utility as the assessee society is providing education to rich people only and on pick and choose basis. Mere reservation of such benefits in the Objects Clause can lose the Trust from sight its exemption.”

6.2. On appeal the Ld.CIT(A) for the reasons recorded at para 4.10 and 4.11 granted exemptions u/s 11 of the Act. Aggrieved the Revenue is in appeal.

6.3. After hearing rival submissions, we find that the registration granted u/s 12A and u/s 10(23)(C)(vi) continue. There is no dispute during the year about the correctness of the income declared by the assessee. When the objections of the assessee is to provide “education”, it does not fall under the Proviso to S.2(15) of the Act. Under these circumstances we have to uphold the order of the First Appellate Authority that the assessee is entitled to exemption u/s 11 of the Act.

6.4. Even otherwise, exemption u/s 11 and 12 cannot be denied merely because the activities of the Assessee Trust have resulted in profit or surplus. The principles of law in this regard have been laid down by the Hon’ble Supreme Court in the case of ACIT vs. Surat Art Silk Cloth Manufacturers Association, 121 ITR 01 (SC)

6.5. The Hon’ble Delhi High Court in the case of St.Lawrence Educational Society (Regd.) vs. CIT (2013) 353 ITR 320 (Del)) held as follows:

“the assessee has filed an application for approval u/s 10(23)(C)(vi) of the Act. The application was rejected on the ground that the Educational Institution run by the assessee was generating surplus out of their gross receipts year after year.

On a Writ Petition held that “the rejection of the application is solely on the ground that there has been some profit was not justified.”

6.6. As already stated, the A.O. has allowed exemption u/s 11 of the Act to the assessee for the A.Y. 2004-05 as well as for the A.Y. 2008-09 and A.Y. 2009-10. Hence even on the principle of consistency the order of the First Appellate Authority has to be upheld.

6.7. As regards the ground referring to the filing of a revised return, it is explained that the revised return was filed merely to transfer the project work account to donation account. Such filing of a revised return of income cannot be a reason to reject claim of exemption u/s 11 of the Act. In any event as the returned income has been accepted by the A.O. and no additions have been made.

6.8. Hence we uphold the order of the First Appellate Authority and dismiss this appeal of the Revenue.

7. ITA 896/Del/09 A.Y. 2006-07:- This appeal of the Revenue is filed on the following grounds.

1. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs.6,46,65,262/- by allowing the benefit of s.11 and 12 of the Income Tax Act, 1961 (the Act) even when it was established on the basis of the material found during the course of survey u/s 133A of the Act on 10.8.2006 that the assessee was running educational institutions on commercial lines with profit motive.

2. *On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in allowing the exemption u/s 11 of the Act when it has been clearly established by the AO that activities of the Trust are commercial in nature.”*

7.1. The facts and circumstances of the case, as well as the issues and decisions of the Authorities below are identical with that of the case for the A.Y. 2005-06.

7.2. Consistent with the view taken by us for the A.Y. 2005-06 in ITA 2404/Del/08, we uphold the order of the First Appellate Authority and dismiss this appeal of the Revenue.

8. ITA 1477/Del/11 A.Y. 2007-08 :- This is a Revenue’s appeal for the A.Y. 2007-08 on the following grounds.

“1. In the facts and in the circumstances of the case, the Ld.CIT(A) has erred in allowing the benefit of s.11 and 12 of the Income Tax Act, 1961 (the Act) as the assessee was involved in commercial activities.

2. In the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs.2,50,74,146/- and Rs.1,50,970/- as the assessee has failed to furnish any documentary support to evidence the nature of payments.

3. In the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs.1,70,23,219/- made u/s 68 of the Act as the donations received were anonymous donations and the assessee failed to furnish the identity of the persons who made such donations.

4. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”

8.1. The A.O. in his order u/s 143(3) of the Act, considered the material found during the course of survey and made an addition u/s 69C of the Act, as well as, u/s 68 of the Act. The A.O. made the addition on the basis of

Annexure A-2 and A-10 found from the possession of Dr.P.Mahalingam. A statement of Dr.P.Mahalingam was recorded on 21st August,2006 in respect of these very documents found during the course of search. Dr.P.Mahalingam made a surrender of Rs.3 crores with reference to the said seized material in his individual status as his income. The case of the assessee is that, the income relatable to these particular seized material has been disclosed by the Chairman of the Trust Dr.P.Mahalingam, as his income and that a perusal of the seized material on facts cannot lead to a conclusion that the income pertains to the assessee and under such circumstances no addition can be made in the hands of the assessee based on this seized material. The A.O. on the other hand concluded as follows.

“3.3. Conclusion: Now the issue is to draw inference on the notings available in the said Annexure. It is humanly impossible to have an accurate idea of the nature of entries in the absence of clear cut description. The onus to furnish and prove the nature of transactions was upon the assessee as the said annexure was impounded from the premises of the assessee as has been claimed as well as admitted during the course of survey proceedings by Dr.P.Mahalingam, Chairman of assessee trust that the same is maintained by one of its employee. It is a matter of record that the assessee trust is found to have been involved in commercial activities by way of receipt of donations and other receipts over and above the stipulated fee structure. It is pertinent to mention here that a view cannot be drawn in respect of each page of the annexure. Therefore, in the absence of detailed clarification coming from the assessee, it can only be possible to draw a reasonable view. While doing so explanations given by the Counsel of the assessee are also taken into consideration and to the best of my judgement.”

8.2. Thereafter he made an addition of Rs.2,50,74,146/- u/s 69C of the Act and Rs.1,70,23,290/- u/s 68 and a further addition of Rs.1,50,970/- u/s 69C of the Act.

8.3. Aggrieved the assessee carried the matter in appeal.

8.4. The First Appellate Authority at para 5 and 5.1 of his order has held as follows.

“5. The second and the third issue pertains to the additions u/s 69C of Rs.2,50,74,146/- and Rs.1,50,970/- and of Rs.1,70,23,219 u/s 68.

5.1. The assessee has stated that the AO has added both the expenditure as well as the receipts leading to double addition. Register A2 and A10 pertain to certain transaction which were not recorded in the books of accounts of the assessee. However the AO can add either the unexplained expenditure or unexplained cash credit u/s 68 whichever is higher. The peak of the two has to be added to the income because, the unrecorded out goings have been incurred from the unrecorded in flow of cash. Thus, there is no justification in adding both the credit and debit entries. In this case the unexplained expenditure is Rs.2,50,74,146/- and Rs.1,50,970/- thus the unexplained expenditure is aggregating to Rs.2,52,25,116/- and the unexplained receipts are aggregating to Rs.1,17,23,219/-. The greater of the two amounts i.e. Rs.2,52,25,116/- has to be added to the income. Now the question arises in whose hand this amount has to be added.

5.2 As a result of the survey Dr P Mahalingam the trustee declared an additional income of Rs 3 Crores in the Financial Year 2006-07 relevant to the Assessment Year 2007-08 in his individual capacity in respect of Annexure A-2 and A-10. In the statement recorded on the 25/08/2006 Dr P Mahalingam chairman of the Maharaji Educational Trust has state that "Considering the totality of the circumstances I hereby declare as an additional income of Rs 3 Crores (three crores) for the current financial year is FY 2006-07 relevant to the assessment year 2007-08 for which I shall be paying taxes as per law this will be my additional income which will be over and above the normal returned income declared approx. 6 lakhs. Since I have totally co-operated with the Department in the best positive manner no prosecution and penalty proceedings should be initiated against me. Further I may be allow to credit this amount of Rs 3 crores to my capital account on payment of taxes and use the amount accordingly. "

5.3 Thus, it is seen that Dr P Mahalingam has declared this income regarding the unrecorded transaction in his own hands and also paid the taxes thereon. The individual assessment of Dr P Mahalingam has been completed u/s 143(3) on 31112/2009 for the Assessment Year 2007-08 on a returned income of Rs 3,03,82,035/-. The appellant has stated that the amount of Rs 3 Crores disclosed as his individual income under, the head "income from other sources" was on account of disclosure made as a result of the survey.

5.4 Thus it is seen that Dr P Mahalingam has already offered this amount for taxation in his return of income which has been duly accepted by the Income Tax Department, hence, the question of taxing the same amount in the hands of the assessee shall amount to double taxation. It has been held of the case of Hira Singb And Co. Vs CIT (SC) 287 ITR 209 that additions made on the basis of admission by assessee is justified.

5.5. Once the Department has accepted the statement of Dr P Mahalingam which was recorded as a result of survey. The Assessing Officer without any evidence cannot make an addition of the same amount in the hands of the assessee. Thus, the addition of the following amounts Rs 2,50,74,146/-, Rs 1,70,23,219/- and Rs 1,50,970/- is hereby deleted, since it has already been taxed in the hands of Dr P Mahalingam. It is also observed that instead of an unrecorded amount of Rs 2,52,25,116/-, Dr. P Mahalingam has surrendered an amount of Rs 3 Crores and therefore these amounts cannot be again added in the hands of the appellant. As such the addition of Rs 4,22,48,335/- (Rs.2,50,74,146/- + Rs 1,70,23,219/- + 1,50,970/-) is hereby deleted.”

8.5. Aggrieved the Revenue is in appeal before us.

8.6. After hearing rival contentions we hold as follows.

8.7. A perusal of the statement recorded from Dr.Mahalingam specifically answers to question no.13, 19 in the statement recorded on 21st August,2006 and the question recorded in the subsequent statement dt. 25th August,2006 demonstrate that the disclosure of Dr.Mahalingam is based on the material Annexure A-2 to A-10. This is the very seized

material based on which an addition is once again made in the hands of the assessee. We have asked the assessee to file photo copies of this material, he did so by way of a paper book. We have verified the same and found that the contentions of the Ld.Counsel for the assessee is correct.

8.8. Once the income is relatable to particular material found during the course of survey and when the same is offered to and assessed to tax in the hands of Dr.Mahalingam in his individual capacity, then the same income cannot be brought to tax once again in the hands of the Trust. This would amount to double taxation of the same income. The Ld.D.R. before us could not demonstrate as to how the seized material could be said as evidence of income being earned by the Trust.

8.9. Even otherwise as observed by the Ld.CIT(A) as the alleged unexplained receipts is aggregating to Rs.1,70,23,219/- and the alleged unexplained expenditure is much above the same i.e. aggregating to Rs.2,25,02,116/-. When the income of the assessee is exempt u/s 11, if this income is taxed as income of the Trust, then, as the same is applied, there would be no sum which can be taxed in the hands of the assessee.

8.10. We also find that the Hon'ble Delhi High Court in the case of DIT(E) vs. Raunaq Education Foundation 249 ITR 76 (Del), held that exemption u/s 11 of the Act is to be granted when income is brought to tax u/s 68 of the Act.

8.11. Out of the additions u/s 68 and 69C totalling to Rs.4,22,48,338/-, no amount can be brought to tax, as the deemed application u/s 11(1) would be Rs.5,44,75,960/- and the application of income in respect of capital expenditure would be Rs.12,69,84,028/- totalling to Rs.18,14,59,988/-. This results in a net deficit of Rs.3,07,03,982/-. Thus looking at the issue from another angle, we have to uphold the order of the First Appellate Authority and dismiss this appeal of the Revenue.

9. ITA 311/Del/08 : This is an appeal filed by the assessee directed against the order of the DIT(E) dt. 24.9.2007, wherein he refused to recognise the Trust u/s 80G of the Act. This was rejected on the ground that the conditions laid down u/s 11 to 13 were violated. The Ld.DG(Exemptions) also records that the claim u/s 11 and 12 made by the assessee were rejected.

10. After hearing rival contentions, as we have upheld the order of the Ld.CIT(A) for all the 4 A.Ys granting exemption u/s 11 and 12 of the Act to the assessee, consequently the DG(E) is directed to grant recognition to the assessee u/s 80G(v) of the Act.

11. In the result this appeal of the assessee is allowed.

12. In the result all the four Revenue appeals are dismissed and the assessee's appeal is allowed.

Order pronounced in the Open Court on 17th March, 2016.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 17th March, 2016

- *Manga*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR