

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH " B "**

**BEFORE SHRI VIJAYPAL RAO, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

I.T.A. Nos.281 to 285/Bang/2014 (Assessment Years : 2005-06 to 2009-10)		
Income Tax Officer, Ward-2, Hassan.	Vs.	M/s. Vokkaligara Sangha, BEO Office Road, Belur. Hassan Dist. PAN AAATV 9854F
Appellant		Respondent.

Appellant By : Dr.P.K. Srihari, Addl. CIT (D.R.)

Respondent By : Shri V. Srinivasan, C.A.

Date of Hearing : 3.7.2015.

Date of Pronouncement : 14.8.2015.

O R D E R

Per Bench :

These appeals by Revenue are directed against the common order of the CIT (Appeals), Mysore dt.20.8.2013 for Assessment Years 2005-06 to 2009-10. Since common issues are involved, the same were heard together and are being disposed off by way of this common order.

2. The facts of the case, briefly, are as under :-

2.1 The assessee is a society registered under the Karnataka Societies Registration Act, 1960 for carrying on activities for charitable purposes. The assessee was granted registration under Section 12A of the Income Tax Act, 1961 (in short 'the Act') w.e.f.

Assessment Year 2012-13 onwards. In the course of proceedings for registration under Section 12A of the Act, the Assessing Officer noticed that the assessee society had received certain voluntary contributions in the period relevant to Assessment Years 2005-06 to 2009-10 for the purpose of construction of a 'Kalyana Mantapa'; which were credited to the Building Fund in the Balance Sheet, treating these amounts as capital receipts and not as income by crediting the profit and loss account. The Assessing Officer observed that as per the returns of income for Assessment Years 2005-06 to 2009-10, the income from voluntary donations were claimed to be exempt from taxation by claiming application towards charitable purposes, even though the income of the assessee was not eligible for exemption as it did not have the benefit of registration under Section 12A of the Act for these assessment years. In that view of the matter, the Assessing Officer initiated proceedings under Section 147 of the Act to bring to tax income of the assessee that had escaped assessment for Assessment Years 2005-06 to 2009-10 and issued notices under Section 148 of the Act. Subsequently, the Assessing Officer completed the assessments for Assessment Years 2005-06 to 2009-10 under Section 143(3) rws 147 of the Act by separate orders dt.28.9.2012, wherein the Assessing Officer rejected the assessee's contentions that the voluntary contributions received was not income and held the same as liable to be treated as income and brought the same to tax accordingly.

2.2 Aggrieved by the orders of assessment for Assessment Years 2005-06 to 2009-10, all dt.28.9.2012, the assessee preferred appeals before the CIT (Appeals), Mysore. The

learned CIT (Appeals) disposed off these appeals by way of a common order dt.20.8.2013 and allowed the assessee's appeals by following the decision of a co-ordinate bench of the ITAT, Bangalore in the case of St.Anns Home for the Aged V ITO 10 TTJ 144 relied on by the assessee. The issue that was considered by the learned CIT (Appeals) in these appeals was whether the voluntary contributions received from the specific purpose of construction of 'Kalyana Mantap' is falling within the definition of income under Section 2(24)(iia) of the Act.

3. Aggrieved by the common order of the CIT (Appeals), Mysore dt.20.8.2013 for Assessment Years 2005-06 to 2009-10, revenue is in appeal before us raising the following common grounds for all the Assessment Years 2005-06 to 2009-10 :-

"1. The CIT (Appeals) erred in deleting the income from Voluntary contributions taxed by the Assessing Officer relying on ITAT decision reported in 13 TTJ 185 ignoring the fact that in the case before ITAT, assessee was registered under Section 12AA of the Act but in the present case, assessee was not registered under Section 12AA during the relevant period.

2. The CIT (Appeals) erred in allowing the relief overlooking the fact that any voluntary contribution received by Trust (whether towards capital or revenue account) is income of the Trust as per section 2(24)(iia) of the Act.

3. The CIT (Appeals) erred in allowing the relief overlooking the decision of Hon'ble Supreme Court in 297 ITR 1, as per which benefit of section 11 & 12 will not be available to the Trust, once it is not registered under Section 12AA of the Act.

4. For these and such other grounds that may be urged at the time of hearing, the order of the CIT (Appeals) be set aside and that of the Assessing Officer be restored."

4. Ground No.4 (supra), raised by Revenue is general in nature and therefore no adjudication or finding is called for thereon.

5.0 Grounds No.1 to 3.

5.1 In respect of the Grounds at S.Nos. 1 to 3, the learned Departmental Representative submitted that the assessee society has secured registration only w.e.f. Assessment Year 2012-13 and therefore the voluntary contributions received by the assessee in the period relevant to Assessment Years 2005-06 to 2009-10 are liable to be considered as income under Section 2(24)(ia) of the Act. The learned Departmental Representative contended that the learned CIT (Appeals) was not justified in deleting the addition made towards voluntary donations by relying on the pamphlet dt.16.8.2003 soliciting donations. The learned Departmental Representative contends that there is no difference between voluntary donations received for specific purpose and voluntary donations that are general in nature and that since section 2(24)(ia) of the Act speaks only of voluntary contributions therefore all voluntary contributions are includable as income irrespective of whether they are for a specific purpose or otherwise.

5.2 The learned Authorised Representative for the assessee filed a paper book containing, inter alia, details of donations, copy of pamphlet dt.16.8.2003 and a copy of sample receipt in support of the collection of donations. Copies of certain judicial pronouncements were also placed on record by the learned Authorised Representative. The ld. A.R. submitted that voluntary contributions received for a specific purpose cannot be regarded as income, as they do not fall within the ambit of the provisions of Section 2(24)(ia) of the Act. It was submitted that the principles relating to capital versus revenue have to be borne in mind and capital receipts cannot be treated as income. The ld.

A.R. contended that the voluntary contributions received for specific purposes is a capital receipt and prayed for upholding of the impugned order of the learned CIT (Appeals).

5.3.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited and placed reliance upon. Firstly, we would like to consider the legal position with regard to the voluntary contributions urged by the parties. The case of the assessee before the authorities below was that the voluntary contributions received by it was for the specific purpose of construction of a 'Kalyan Mantap'. In short, the assessee has pleaded that the amount received by the assessee was a tied up grant or an amount received for a specific purpose as being capital in nature. In support of this proposition, the assessee has cited / placed reliance on several decisions of various benches of the ITAT, wherein it has been held that voluntary contributions received for specific purposes cannot be considered as income.

5.3.2 In the case of J.B. Educational Society V ACIT reported in 159 TTJ 234 (Hyd), the Hyderabad Bench of the Tribunal followed an earlier decision of the Hyderabad Bench in the case of Society for Integrated Development in Urban and Rural Areas reported in 90 ITD 493 (Hyd) wherein the Tribunal followed the order of another co-ordinate bench in the case of Nirmal Agricultural Society (2000) 67 TTJ (Hyd) and recorded the observations therein which were as under :-

"24. Coming to the second limb of the argument of the learned counsel for the assessee that the entire receipts cannot be taxed, we find that the issue is covered by the judgment of this Bench in Nirmal Agricultural Society v. ITO, 71 ITD 152. In that case, it has been held (as per head note) as under:-

"The assessee had not been granted registration under Section 12A, as the Commissioner thought it fit to refuse to condone the long delay caused by the assessee in applying for the registration. Therefore, the Assessing Officer had no other option but to complete the assessments in the status of AOP also closing his eyes towards Section 11 and Section 13.

To that extent, the Assessing Officer was right as he had acted only according to will of law.

But as far as the contents of the assessments were concerned, even when the assessee had been assessed as AOP and deprived of Section 11 benefits, the Assessing Officer could assess only net income of the assessee and not gross receipts. As far as the assessee was concerned, construction of houses, reclamation of land, etc., were part of its regular activities. Houses were built on the land of poor agriculturists. The assessee-society had no legal title or right over the land or houses of those villagers/ agriculturists who were the beneficiaries. The purpose and activity of the assessee-society was to engage in such charitable activities. Whatever amount had been spent on those programmes/projects, it was spent in the usual course of carrying on its acclaimed objects. Therefore, there was no basis whatsoever, factual or legal, to hold that the amounts spent by the assessee in constructing houses or reclaiming land were capital expenditure. As far as the assessee was concerned, those expenses were revenue expenses. The assessee had no right or title over those properties. Those expenses were incurred as part of its normal activities for which the society was formed. Therefore, the money spent by the assessee- society in constructing houses, reclaiming the land, for non-formal education, etc., had to be allowed as deduction in the computation of income.

The grants received from foreign donor were for specific purposes. The grants which were for specific purposes did not belong to the assessee-society; such grants did not form corpus of the assessee or its income. Those grants were not donations to the assessee so as to bring them under the purview of Section 12. Voluntary contributions covered by Section 12 are those contributions freely available to the assessee without any stipulation, which the assessee can utilise towards its objectives according to its own discretion and judgment. Tied-up grants for a specified purpose would only mean that the assessee which was a voluntary organisation, had agreed to act as a trustee of a special fund granted by donor with the result that it need not be pooled or integrated with the assessee's normal income or corpus. In the instant case, the assessee was acting as an independent trustee for that grant, just as same trustee could act as a trustee of more than one trust. Tied-up amount need not, therefore, be treated as amounts which were required to be considered for assessment for ascertaining the amount expended or the amount to be accumulated.

The assessee should have actually credited the grant in the personal account of the donor and any amount spent against that grant should have been debited to that separate account of the donor. That incoming and outgoing need not be reflected in the income and expenditure account of the assessee. At the end of the project, the balance, if any, available to the credit of the donor, could be treated as income of the assessee, if the donor did not insist for the repayment of the balance amount.

Therefore, the Assessing Officer was to be directed to redo the assessment on the following lines.

(1) The tied-up grants received from the donor, Bread for the World, will be taken out of the computation of income from the income-side.

(2) All the money spent under the tied-up programmes directed by the donor also will be taken out of the computation of income from the expenses-side.

(3) Any non-refundable credit balance in the personal account of Bread for the World will be treated as income in the year in which such non-refundable balance was ascertained.

(4) The expenses incurred by the assessee for house construction, reclamation of land, non-formal education programme (other than covered by the tied-up grants) will be deducted as revenue expenses."

25. Honourable Rajasthan High Court in the case of Sukhdeo Charity Estate (supra) held as follows (as per head note):-

"It was for the specific purpose of implementation of the water supply scheme that the request for contribution had been made by the assessee-trust and it was in response to that request that the amount had been given by the Calcutta trust. It was clear that the intention of the donor and the donee was to treat the money as capital to be spent for the water supply scheme. The fact that the amount had not been paid over to the State Government and was kept unutilised in the account of the assessee-trust was not relevant. The amount could not be said to be "income" and could not be included as part of the assessable income of the trust under the provisions of Section 12(2)."

In Yet another judgment in the case of Sukhdeo Charity Estate (supra), the Honourable Rajasthan High Court held as follows (as per head note):-

"The intention of the donor-trust as well as the donee-trust was to treat the money as capital to be spent for the Ladnu Water Supply Scheme. It was of no significance whether the amount had since been paid to the State Government or kept in the account of the said scheme by the assessee-trust. The amount of Rs. 70,000/- did not constitute income of the petitioner. The reassessment proceedings were not valid and were liable to be quashed."

This Bench of the Tribunal in the case of Arya Vysya Abhyudaya Sangham (supra) for asst. year 1998-99, in its order dated 25-6-2002 to which one of us was a party, was inclined to uphold the view of the Commissioner (Appeals) in that case by holding in para 15 of that order as follows:

"Though we find considerable force in the other argument of the assessee's counsel i.e. the income should be computed on commercial principles, as we have held that the assessee-society is eligible for exemption Under Section 11 of the Act and as we have also held that the objects of the society were of charitable nature within the meaning of Section 2(15) of the Act, and as we have further held that there is no violation, whatsoever of the provisions of Section 13(1)(c) and (d) of the I.T. Act,

1961, the other grounds of the assessee need not be gone into, as it would be of academic interest only."

The Revenue has not brought to our notice any judgment from any High Court which has dealt at length on this issue and which is in its favour. It is also not clear whether the Revenue has accepted or gone on appeal against the judgment of this Bench in the case of Nirmal Agricultural Society (supra).

26. Honourable Andhra Pradesh High Court in the case of Chairman, Andhra Pradesh Welfare Fund v. CIT, as per head note, held as follows:-

"(i) That the finding of the Tribunal, that the assessee could not be regarded as a branch or as a part of the parent body, was a finding of fact and no question of law arose for reference.

(ii) That the mere fact that the rice millers paid contributions with an oblique motive would not affect the character of the contributions, as voluntary contributions.

(iii) That the finding of the Tribunal, that the assessee was not entitled to exemption as a trust under Section 12 because some of the funds were being utilised for purposes other than charitable and religious was a finding of fact and no question of law arose for reference."

This judgment was relied upon by the Reference. A careful reading of this judgment does not indicate that the question raised by the assessee before us was posed to the court. We do not feel that this is a precedent for laying down a proposition of allowability of expenditure for computation of income of a charitable institution which is denied benefit Under Section 11. Honourable Supreme Court in the case of Goodyear India Ltd. v. State of Haryana (1991) 188 ITR 402 (SC), as per head note, held as follows:

"Precedent -- Authority only for what it decides - Not for what may remotely or even logically follows - Decision on question not argued cannot be treated as precedent."

Thus, the judgment of Honourable Andhra Pradesh High Court (supra) does not help the case of the Revenue.

27. On other hand, learned authors Chaturvedi and Pithisaria in their book Income Tax Law, Fifth edition, Vol.1, at page 424, under the heading "Income, when falls into the tax net", observed as follows:-

"Although Section 14 of the 1961 Act classifies income under six heads, the main charging provision is Section 4(1) which levies income-tax, as only one tax, on the "total income" of the assessee as defined in Section 2(45) of that Act. AO income in order to come within the purview of that definition must satisfy two conditions. Firstly, it must comprise the "total amount of income referred to in Section 5". Secondly, it must be "computed in the manner laid down in this Act". If either of these conditions fails, the income will not be a part of the total income that can be brought to charge [CIT v. Harprasad & Co. P. Ltd., (1975) 99 ITR 118, 125 (SC)]".

28. As argued by the Revenue, though by virtue of Section 2(24)(ia) voluntary contributions are income, to our mind this by itself does not entitle the tax gatherer to ignore all other well settled principles of taxation and general law and levy tax on gross receipts without considering the claim for deductions. Principles such as capital versus revenue, doctrines of overriding title, form versus substance, interpretation of "deeming" provisions etc., have to be applied wherever necessary. Only the surplus or profit can be brought to tax and the same has to be computed in the manner laid down in the Act applying the normal principles of accountancy and taxation laws.

29. The learned authors Kanga and Palkhivala in the book *The Law and Practice of Income Tax*, Eighth edition, Vol. I, at page 387, state the legal position as follows:-

"Voluntary contributions towards corpus of recipient trust.--

The present Section 12 is expressly made applicable to voluntary contributions which are made with a specific direction that they shall form part of the corpus of the trust [original in italics]. Therefore, such contributions on capital account do not have to be applied to charitable purposes but can be retained as the corpus of the recipient trust without attracting any tax liability. Although the italicized words have now been omitted from Section 2(24)(ii-a), the exclusion of such capital donations from the definition of "income" implicit in that section. The correct legal position is as under:

(a) All contributions made with a specific direction that they shall form part of the corpus of the trust are capital receipts in the hands of the trust. They are not income either under the general law or under Section 2(24)(ii-a) rightly construed. (See under Section 2(24)(ii-a), "Voluntary contributions received by charity".)

(b) Section 2(24)(ii-a) deems revenue contributions to be income of the trust. It thereby prevents the trust from claiming exemption under general law on the ground that such contributions stand on the same footing as gifts and are therefore not taxable. (See under Section 10(3), "Voluntary payments ..."p.320.)

(c) Section 12 goes one step further and deems such revenue contributions to be income derived from property held under trust. It thereby makes applicable to such contributions all the conditions and restrictions under Sections 11 and 13 for claiming exemptions. (See also Expln. (1) to Section 11(1).]

(d) Section 11(1)(d) specifically grants exemption to capital contributions to make the fact of non-taxability clear beyond doubt. But it proceeds on the erroneous assumptions that such contributions are of income nature - "income in the form of voluntary contributions". This assumption should be disregarded."

5.3.3 After, relying on the observations from the decision of the co-ordinate bench

(supra), the Hyderabad Bench in the case of *J.B. Educational Society* (supra) observes as

under :-

58. Further, in the case of Shri Shankar Bhagwan Estate vs. ITO (61 ITD 196) wherein even after considering section 2(24)(iia) of the Act it was held as follows:

"Section 2(24)(iia) has to be read in the context of the introduction of present section 12. In the instant case the Assessing Officer on evidence had accepted the fact that all the donations had been received towards the corpus of the endowments. In view of this clear finding, they could not be assessed as income of the assessee. Therefore, the voluntary contributions received by the assessee towards the corpus could not be brought to tax."

59. Now the issue for our consideration is whether the amounts received by the assessee were in the nature of voluntary donations received for specific purpose. If yes, whether the same could be considered towards corpus of the trust. Alternatively, if the donations are not voluntarily made, then whether such donations could be considered as income chargeable to tax. The assessee has taken a plea before us that these donations are received from members of the trust and their associated companies/persons for a specific purpose, it is a tied up grant. Sections 11, 12 and 2(24)(iia) of the Act speak of voluntary contributions. Therefore, firstly, it has to be seen whether such donations are voluntary or not. According to the dictionary meaning, an act can be said to be voluntary if it is done by free choice of one's own accord, without compulsion or obligation, without valuable consideration, gratuitous, etc. There is no material on record to suggest that such donations are given against the will of the donors or by any compulsion or under any obligation. In that sense, it can be said that the donations are voluntary. Before us, the assessee filed a list of donors in Paper Book form at page Nos. 637 to 656 giving details of the donors. If the donations are not voluntarily made, the same fall outside the ambit of sections 11, 12 and 2(24)(iia) of the Act. Consequently, general provisions of Income-tax Act would become applicable. According to the general provisions of the Act all receipts are not income. Donations received for specific object are to be considered as tied up fund and it is capital receipt. If the donations are made voluntarily for specific purpose, the same cannot be held as income of the assessee, since the donations were, in our opinion, given for specific purpose as tied up grant and it cannot be taxed as income.

60. In the present case, the resolution passed by the assessee shows that it has been received from members of the trust and their associated companies/persons towards "building construction" and the same were expended for that purpose. So far as section 2(24)(iia) is concerned, this section has to be read in the context of introduction of section 12. It is significant that section 2(24)(iia) was inserted with effect from 1.4.1973 simultaneously with the present section 12, both of which were introduced from the said date by Finance Act, 1972. Section 12 makes it clear by the words appearing in parenthesis that contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall not be considered as income of the trust. The Board circular No. 108 dated 20.3.1973 is extracted at page 1754 of Volume I of Sampath Iyengar Law of Income-tax (10th Edition), in which the interrelation between sections 12 and 2(24) has been brought out. Gifts made with clear direction that they shall form part of the corpus of the religious endowment can never be considered as income. In the case of R.B. Shreeram Religious and Charitable Trust v. CIT (172 ITR 373) (Bom) the Hon'ble High Court held that even ignoring the amendment to section 12, which means that even before the words appearing in parenthesis in the present section 12, it cannot be held that voluntary contributions specifically received towards corpus of the trust may be brought to tax.

The aforesaid decision was followed by the Bombay High Court in the case of CIT vs. Trustees of Kasturbai Scindia Commission Trust (189 ITR 5) (Bom). In the present case donations being received for specific purpose, towards corpus of the trust, cannot be assessed as income of the assessee.

61. Same view was taken in the case of Shri Dwarakadeesh Charitable Trust vs. ITO (98 ITR 557), DCIT vs. Nasik Gymkhana (77 ITD 500), ITO vs. M/s. Gaudiya Granth Anuvud Trust in ITA No. 386/Agra/2012 order dated 2.8.2013, Penta Software Employees Welfare Foundation vs. ACIT in ITA Nos. 751-752/Mds/2007 and DIT (Exemptions) & Anr. vs. Sri Belimath Mahasamsthana Socio, Cultural and Educational Trust (336 ITR 694) (Kar).

62. Further, we have also carefully gone through the order of the Tribunal in the case of Nirmal Agricultural Society vs. ITO (71 ITD 152) relied on by the DR. Specifically paragraphs 9 to 12 of that order support the case of the assessee rather than the Revenue. For clarity, we reproduce the said paragraphs as under:

"9. But as far as the contents of the assessments are concerned, we find much force in the contentions advanced by the assessee. Even when the assessee has been assessed as AOP deprived of s. 11 benefits, the AO could assess only net income of the assessee and not gross receipts. As far as the assessee is concerned, construction of houses, reclamation of land, etc., are part of its regular activities. Houses are built on the land of poor agriculturists. The assessee-society has no legal title or right over the land or houses of those villagers/ agriculturists who are the beneficiaries.

The purpose and activity of the assessee-society is to engage in such charitable activities. Whatever amount has been spent on those programmes/ projects, they were spent in the usual course of carrying on its acclaimed objects. Therefore, there is no basis whatsoever, factual or legal, to hold that the amounts spent by the assessee in constructing houses or reclaiming land are capital expenditure. As far as the assessee is concerned, those expenses are revenue expenses. The assessee has no right or title over those properties. Those expenses were incurred as part of its normal activities for which the society was formed. Therefore, the money spent by the assessee-society in constructing houses, reclaiming the land, for non-formal education, etc., has to be allowed as deduction in the computation of income.

10. The grants received from Bread for the World were for specific purposes. The grants which are for specific purposes do not belong to the assessee- society. Such grants do not form corpus of the assessee or its income. Those grants are not donations to the assessee so as to bring them under the purview of s. 12 of the Act. Voluntary contributions covered by s. 12 are those contributions freely available to the assessee without any stipulation which the assessee could utilise towards its objectives according to its own discretion and judgment. Tied-up grants for a specified purpose would only mean that the assessee, which is a voluntary organisation, has agreed to act as a trustee of a special fund granted by Bread for the World with the result that it need not be pooled or integrated with the assessee's normal income or corpus. In this case, the assessee is acting as an independent trustee for that grant, just as same trustee can act as a trustee of more than one trust. Tied-up amounts need not, therefore, be treated as amounts which are

required to be considered for assessment, for ascertaining the amount expended or the amount to be accumulated.

11. The assessee should have actually credited that grant in the personal account of the donor, Bread for the World and any amount spent against that grant should have been debited to that separate account of the donor. That incoming and outgoing need not be reflected in the income and expenditure account of the assessee. At the end of the project, the balance, if any, available to the credit of Bread for the World, the donor, could be treated as income of the assessee, if the donor did not insist for the repayment of the balance amount.

12. Therefore, in the light of the examination of the facts of the case, we direct the AO to redo the assessments in the following lines:

(1) The tied-up grants. received from the donor, Bread for the World, will be taken out of the computation of income from the income side.

(2) All the money spent under the tied-up programmes directed by the donor also will be taken out of the computation of income from the expense side.

(3) Any non-refundable credit balance in the personal account of Bread for the World will be treated as income in the year in which such non- refundable balance was ascertained.

(4) The expenses incurred by the assessee for house construction, reclamation of land, non-formal education programme (other than covered by the tied-up grants) will be deducted as revenue expenses. "

63. Being so, as seen from the above order of the Tribunal the amount received by the assessee for specific purpose would only mean that the assessee agreed to act as a trustee of a special fund granted by assessee's trustees/members or associated persons. As a result it need not be pooled or integrated with the assessee's normal income or corpus. The assessee is acting as an independent trustee for that amount received from the assessee's trustees/members just as some trustee can act as a trust for more than one trust. Tied up or specific grant need not, therefore, be treated as amounts which are required to be considered for assessment. In other words, tied up grant received from donors for a specific purpose cannot form part of assessee's income.

64. In view of the above discussion, we are of the opinion that voluntary contributions in the nature of tied up grant received by the assessee cannot be brought to tax even the trust is not registered u/s. 12AA of the Act. The tied up donations received by the assessee should not be taxable as income of the assessee, if it is used for specific purpose for which it has been given and it cannot be considered as revenue receipts so as to tax the same....."

5.3.4 In coming to the aforesaid conclusion the Hyderabad Bench of the ITAT has also relied upon the decisions of the ITAT, Delhi Bench in the case of Smt. Basanthi Devi (supra) and Sri Chakhan Lal Garg Education Trust (supra) and in the case of Gaudiya Granth Anved Trust (supra) wherein similar issue raised has been considered by both the Delhi and Agra Benches of the ITAT. We also find that the Hon'ble Delhi High Court in the case of Basanti Devi & Sri Chakhan Lal Garg Education Trust vide its order in ITA No.927/09 dt.23.9.2009 has also affirmed the view taken by the Hon'ble ITAT in holding that corpus donations cannot be regarded as income under Section 2(24)(iia) of the Act.

5.3.5 Following the above decisions of the Tribunal (supra), relied upon by the assessee, we hold that voluntary contributions received for a specific purpose cannot be regarded as income under Section 2(24)(iia) of the Act since they are capital receipts and tied up grants for specific purpose.

5.3.6 Before looking into the facts of the case, we notice that Revenue has relied upon a judgment of the Hon'ble Apex Court in the case of U.P. Forest Corporation & Another V DCIT reported in 297 ITR 1 (SC). According to the aforesaid decision, registration under Section 12AA of the Act is mandatory for availing the benefits under Section 11 & 12 of the Act. However, the question that arises for our consideration in the case on hand is not the benefit under Section 11 & 12 of the Act, but rather whether voluntary contributions are income at all. Thus, with due respects, the aforesaid decision, in our view, would not be of any help to Revenue in the case on hand.

6.1 Now coming to the facts of the case on hand, it is seen that the learned CIT (Appeals) has relied upon a pamphlet dt.16.8.2003 soliciting donations for construction of the 'Kalyana Mantap'. An English translation of the same has also been filed before us (placed at pages 26 & 27 of assessee's paper book). From a plain reading of the same, it can be seen that the assessee society has solicited donations for the specific purpose of construction of a 'Kalyana Mantap' building. For this purpose, it has established a building corpus fund and donations received have been credited to the said fund. The list of Donors has been filed before us in the assessee's paper book for the five years under consideration; viz. for the years ending 31.3.2005 to 31.3.2009; along with a sample receipt and an English translation thereof (placed at pages 82 & 83 of assessee's paper book). From a perusal of the orders of the authorities below, it appears to us that the list of donors filed by the assessee has not been examined by the authorities below, since the Assessing Officer has extensively considered the legal issue in the order of assessment. We have already upheld the impugned order of the learned CIT (Appeals) on the legal principles / issues. However, since the facts have not been discussed, we are of the opinion that, in the interest of justice it is necessary to direct the Assessing Officer to examine and verify the donation receipts maintained by the assessee, to come to the conclusion as to whether the amounts credited as building fund corpus in the accounts are supported by donation receipts issued. Subject to the examination and verification of the donation receipts as directed above, the amounts credited cannot be regarded as income

as the same has been credited to the corpus fund/building fund and the order of the learned CIT (Appeals) is upheld.

7. In the result, Revenue's appeals for Assessment Years 2005-06 to 2009-10 are treated as partly allowed for statistical purposes.

Order pronounced in the open court on 14th Aug., 2015.

Sd/-
(VIJAYPAL RAO)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
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(True copy)

By Order

Asst. Registrar, ITAT, Bangalore