आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL, VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गाराव, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं**./I.T.A.Nos.382, 465, 466 & 467/Vizag/2017**

(निर्धारण वर्ष / Assessment Years:
2009-10, 2008-09, 2010-11 & 2011-12 respectively)

The ACIT (Exemptions) Vijayawada	M/s. Sri Prakash Educational Society Tuni [PAN No.AACTS0826J]
(**अपीलार्थी** / Appellant)	(**प्रत्यार्थी** / Respondent)

C.O. Nos.75, 89, 90 & 91/Vizag/2017

(Arising out of I.T.A.Nos.382, 465, 466 & 467/Vizag/2017)

(निर्धारण वर्ष / Assessment Years:
2009-10, 2008-09, 2010-11 & 2011-12 respectively)

M/s. Sri Prakash Educational Society Tuni	The ACIT (Exemptions) Vijayawada
(**अपीलार्थी** / Appellant)	(**प्रत्यार्थी** / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri T. Satyanandam, DR
प्रत्यार्थी की ओर से / Respondent by	:	Shri G.V.N. Hari, AR
सुनवाई की तारीख / Date of hearing	:	07.03.2018
घोषणा की तारीख / Date of Pronouncement	:	14.03.2018

आदेश / O R D E R

PER Bench:

These appeals filed by the revenue are directed against common order of the Commissioner of Income Tax (Appeals)-2 {CIT(A)}, Guntur for the assessment years 2008-09 to 2011-12. The cross objections filed by the assessee are in support of the orders passed by the CIT(A)-2, Guntur. Since, the facts are identical and the issues are common, they are clubbed, heard together and disposed-off by way of this common order for the sake of convenience.

ITA Nos.382, 465, 466 & 467/Vizag/2017 (A.Y. 2008-09 to 2011-12):

2. The Assessing Officer (A.O.) has filed appeals for all the assessment years under consideration and the assessee has filed the cross objections. There was a delay in filing the appeals by the revenue for 4 days in all the appeals and the Assessing Officer (A.O.) has filed condonation petition for condoning the delay. After hearing both the sides, the delay is condoned and the appeals are admitted.

2.1 The common issue in all the appeals raised by the revenue is related to the treatment of development fee received by the assessee. The assessee is a Society registered under Societies Act, 1860 by

registration No.493 of 1983 on 27th day of November, 1983 and carrying on the activity of running educational institutions. In this case, a survey u/s 133A of the Act was conducted in the assessee's business premises and during the course of survey, certain descrepencies were found by the AO, hence, the Chief Commissioner of Income Tax cancelled the exemption granted u/s 10(23C) of the Income Tax Act, 1961 (hereinafter called as 'the Act') dated 8.11.2011. Therefore, the income of the assessee became taxable, as the assessee is not enjoying exemption u/s 11 of the Act.

2.2 The facts are identical in all the appeals and for the sake of convenience the facts are extracted from the A.Y 2008-09. During the assessment proceedings, the A.O. found that there was a short admission of income to the extent of ₹ 1,15,87,468/- for the assessment year 2008-09 and called for explanation from the assessee as to why the difference income of ₹ 1,15,87,468/- should not be assessed to income tax. The A.O. observed that the total receipt as per ledger account was ₹ 10,87,17,017/- and the income admitted was only ₹ 9,71,29,543/- thus resulting in difference of ₹ 1,15,87,468/-. Such difference for the assessment years 2009-10 to 2011-12 is as follows:

2009-10	-	₹ 1,37,06,214/-
2010-11	-	₹ 1,30,96,505/-
2011-12	-	₹ 70,44,262/-

2.3 The assessee explained to A.O. stating that it had received the voluntary contributions from the parents of the children towards the development fees for creating infrastructure in the school such as construction of buildings, etc. and the same is in the nature of capital receipt and the development fund so received was set apart for the specific purpose of infrastructure development provided to the students and is applied for the said purpose. The utilization of fund is included in the cost of fixed assets and argued that these receipts have to be excluded from the income and does not fall within the ambit of section 2(24) of the Act which is chargeable to income tax and no addition is warranted on account of development fund. Not being convinced with the explanation submitted by the assessee, the A.O. held the difference amount of ₹ 1,15,87,468/- as the income understated and accordingly, brought to tax in the assessment years as per the details mentioned above.

3. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) held that the voluntary contributions received are income and further held that the voluntary contributions received for specific purpose and the amount spent for the purpose specified should be allowed as deduction. The CIT(A) relied

on the order of the coordinate bench of ITAT Hyderabad in the case of Nirmal Agricultural Society Vs. ITO (2000) 67 TTJ 0127.

4. Aggrieved by the order of the CIT(A), the revenue filed appeal before us. The Ld. D.R. relied on the orders of the A.O. and argued that the development fees is an income which required to be brought to tax and should not be allowed as a deduction per contra the Ld. A.R. relied on the orders of the Ld. CIT(A).

5. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. In this case, the assessee had received the voluntary contributions for the purpose of building infrastructure in the educational institution. This fact was confirmed by the parents before the Ld. CIT(A). The CIT(A) has forwarded the affidavits received from the assessee confirming the contributions for specific purpose and the A.O. has submitted the remand report. Considering the remand report, the CIT(A) has given a finding that the contributions were received for specific purpose and used by the assessee for the same purpose and no surplus was left out. Thus, the A.O. as well as the CIT(A) held that the donations confirming part of corpus was in the nature of income within the meaning of section 2(24) of the Act. On identical facts, this Tribunal has considered issue with regard to the taxability of donations received for specific purpose in

the case of Touching Heart Ministries Vs. ITO in ITA No.101/Vizag/2015 dated 22.11.2017 and held that the contributions received for specific purpose cannot be regarded as an income u/s 2(24) of the Act. For the sake of convenience and clarity we extract relevant paragraph of the order of this Tribunal which reads as under:

"6. We have heard the rival submissions and perused the material placed on record and gone through the case laws relied upon by the assessee and the orders of the lower authorities. The assessee is a Trust registered under the Societies Act for the assessment year 2011-12. The assessee did not have exemption u/s 11 and the exemption u/s 11 was available to the assessee w.e.f. 31.03.2011 i.e. the date of application submitted by the assessee in the Form No.10A. During the previous year relevant to the assessment year, the assessee had received the donations amounting to Rs. 1,49,26,785/-out of which a sum of Rs.56,45,286/- for objectives credited to the 'Income and Expenditure Account' and Rs.92,81,499/- to 'capital fund' forming part of corpus. The said sum of Rs.92,81,499/- received by the assessee for acquiring the land , construction of building at Tuni for procurement of land and development of conference and training centre. The fact that the donations were received for the purpose of acquiring the capital assets was evidenced by the copies of the letters placed by the assessee in the paper book page nos. 32 to 36. From the return of income and the enclosed Balance sheet, it is evident that the entire sum of donations received for corpus was applied by the assessee for the purpose of acquiring the fixed assets as specified in the letters of donors. The sum of Rs.92,81,499/- was tied up donations for a specific purpose. There is no dispute with regard to the identity of the donor as well as the purpose for which the donations were received by the assessee. The AO as well as the CIT(A) held that both the receipts of the donations as well as the donations forming part of corpus was in the nature of income within the meaning of section 2(24)(iia) of I.T.Act. On the similar facts and circumstances, ITAT, Bangalore in ITO Vs. Vokkaligara Sangha reported in 2015 44 CCH 0509 Bangalore Tribunal held that voluntary contributions received for specific purpose cannot be regarded as income u/s 2(24)(iia) of I.T.Act. The Coordinate Bench while rendering the decision considered the number of decisions of various Tribunals including the decision of Coordinate Bench, ITAT, Hyderabad in Nirmal Agricultural Society Vs. Income Tax Officer, J.B. Educational Society vs. ACIT, Hon'ble Delhi High Court in the case of Basanti Devi & Sri Chakhan Lal Garg Education Trust. For the sake of convenience and clarity, we extract the relevant paragraphs of the order of the Tribunal which reads as under :

"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 coordinate 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. Tiedup 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 assesseetrust. 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)(iia) 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 coordinate 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 assessees. Therefore, the voluntary contributions received by the assessees 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 once 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 Anuved 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 he 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"

6.1. Further, Hon'ble Delhi High Court in the case of DIT vs. Society for Development Alternatives relied upon by the assessee has considered the decision of Hon'ble Rajasthan High Court in the case of Sukhdeo Charity Estate v. CIT [149 ITR 470] and upheld the order of the Ld.CIT holding that if the assessee fails to utilize the grants for the purpose for which it was sanctioned, the amounts so unutilized required to be brought to tax, if it is not refunded back to the funding agencies. For clarity and convenience, we extract the relevant paragraphs of the order of the High Court of Delhi in para no.7 and 8 which reads as under : "With regard to the second contention, the findings recorded by the tribunal are that the respondent-assessee had received grants for specific purposes/projects from the government, non-government, foreign institutions etc. These grants were to be spent as per the terms and conditions of the project grant. The amount, which remained unspent at the end of the year, got spilled over to the next years and was treated as unspent grant. The Commissioner of income Tax(Appeals) while deleting the said addition had observed as under:- "I have considered the assessment order and submissions of the appellant along with evidences placed on record. On perusal of the evidences regarding the project grants placed on record, it is seen that the said amounts are received/sanctioned for a specific purpose/project to be utilized over a Particular period. The utilization of the said grants is monitored by the funding agencies who send persons for inspection and also appoint independent auditors to verify the utilization of funds as settled terms. The appellant has to submit inter/final progress/work completion reports along with evidences to the funding agencies from time to time. These agreements also include a term that separate audits accounts for the project will be maintained. The unutilized amount has to be refunded back to the

funding agencies in most of the cases. All the terms and conditions are simultaneously complied with otherwise the grants are withdrawn. The appellant has to utilize the funds as per the terms and conditions of the grant. if the appellant fails to utilize the grants for the purpose for which grant is sanctioned, the amount is recovered by the funding agency. On the basis of the evidences placed on record, it is seen that the appellant is not free to use the funds voluntarily as per its sweet will and, thus, these are not voluntary contribution as per Section 12 of the Act. These are tied up grants where the appellant acts as a custodian of the funds given by the funding agency to channelize the same in a particular direction. In case of voluntary contribution, the appellant is free to use the money as per its will and neither have to render the account of the same to the donor nor the same is monitored by the donor. The said amount becomes income of the appellant and has to be used for charitable purposes as per its objects However, in case of specific tied up grants, money is received for specific purposes and is to be utilized for the same." The Commissioner of Income Tax (Appeals) has also referred to the judgment of the Rajasthan High Court in Sukhdeo Charity Estate v CIT(1984) 149 ITR 470 (Raj.)." In view of the aforesaid factual position, the tribunal has upheld the order passed by the Commissioner of Income Tax (Appeals) and has not accepted the appeal filed by the Revenue. In view of the aforesaid factual position, we are not inclined to entertain the present appeals on the second aspect"

6.2. In the instant case, the donations were received for specific purpose for acquiring the fixed assets. This is evidenced by the letters placed before us from the donors. The funds are not freely available to the assessee society, for utilizing its objectives other than acquiring specified assets. The entire amount received for acquiring the fixed assets was utilized by the assessee and there are no surplus funds available to the assessee. The above facts are not disputed by the Ld. DR. The fact that the amount was utilized was evidenced by the Balance Sheet, thus the facts of the case is squarely covered by the decision of the Coordinate Bench of Bangalore in the case of Vokkaligara Sangha cited supra, wherein the Coordinate Bench held that contributions received for specific purpose cannot be regarded as income u/s 2(24)(iia) of the act. Respectfully following the view taken by the ITAT, Bangalore, we hold that the donations received for specific purpose of acquiring the capital assets are tied up grants and cannot be treated as income u/s 2(24)(ii)(a) of I.T. Act. Accordingly, we set aside the orders of the lower authorities and allow the appeal of the assessee

6. Since the facts of the assessee's case are identical, respectfully following the view taken by the coordinate bench and Hon'ble High Courts (supra), we hold that the donations received for specific purpose should not be treated as income u/s 2(24) of the Act and accordingly, we uphold the order of the CIT(A) and dismiss the appeal of the revenue.

7. The next issue in revenue's appeal is addition u/s 40(ba) of the Act. During the previous year relevant to the assessment year, the assessee has paid the salaries to Mr. Ch. Vijay Prakash who happens to be the Joint Secretary of the assessee society. The A.O. invoked the provisions of section 40(ba) of the Act and disallowed the salary paid to Mr. Ch. Vijay Prakash for the assessment year 2008-09 to 2011-12 as under:

2008-09	-	₹ 2,11,200/-
2009-10	-	₹ 3,06,000/-
2010-11	-	₹ 3,66,000/-
2011-12	-	₹ 3,96,000/-

8. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The A.O. disallowed the salary paid to the Joint Secretary by applying section 40(ba) of the Act. The Ld. CIT(A) deleted the addition holding that the section does not apply to the assessee since it is a society registered under Societies Act. As discussed earlier, the assessee is a society registered under Societies Act, 1860. The disallowance u/s 40(ba) of the Act is applicable in case of assessee other than societies. For ready reference, we reproduce section 40BA of the Act, which reads as under:

Amounts not deductible.

40. Notwithstanding anything to the contrary in sections 30 to [95][38], the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

…….

[(*ba*) in the case of an association of persons or body of individuals [other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India], any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such association or body to a member of such association or body.

9. Plain reading of section 40(ba) of the Act clearly shows that the disallowance is applicable in case of an association of persons, body of individuals other than a company or a cooperative society registered under Societies Registration Act, 1860. Since the assessee is a registered cooperative society, section 40(ba) of the Act has no application. Accordingly, the orders of the CIT(A) on this ground is upheld and the appeals of the revenue are dismissed for the assessment years 2008-09 to 2010-11.

C.O. Nos.89, 90 & 91/Vizag/2017 (2008-09, 2010-11 & 2011-12):

10. The assessee filed cross objections for all the assessment years. There was a delay in filing cross objections by the assessee for 32 days for all the assessment years. The assessee filed condonation petition for condoning the delay. After hearing both the sides, the delay is condoned and the cross objections are admitted.

11. Ground No.4 in respect of cross objection in all the appeals for the assessment years 2008-09 to 2011-12 is related to the disallowance of notional interest. During the assessment proceedings, the assessing officer found that the assessee had advanced the sums to M/s. Chitturi Agro & Lactating Foods Private Limited (CALFPL) and also to Mr. Ch. V.K. Narasimha Rao, the Secretary of the society. In the case of CALFPL, the assessee explained that the assessee was receiving the supply of milk, gas, etc. from the above company at subsidized rates. Sometimes, it paid the amounts in advance which are adjusted in the subsequent bills as the assessee is getting subsidized rates, it is not charging interest on advances given. The A.O. not being convinced with the explanation offered by the assessee held that there is no rationale and commercial expediency since the assessee is paying interest on borrowed funds. Accordingly, the A.O. disallowed the notional interest @ 12% on the sums advanced and the same was reduced from the interest debited to the profit & loss account.

12. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) confirmed the additions stating that the Chief Commissioner of Income Tax cancelled the registration and has not accepted that the amounts given to related parties are not in the nature of rental advance. The issue is pending before the Hon'ble

High Court of Andhra Pradesh. However, since the A.R. of the assessee could not prove that there is no nexus between the loans given and amounts borrowed, the CIT(A) agreed with the assessing officer and accordingly confirmed the addition.

13. Aggrieved by the order of the CIT(A), the assessee filed petition before this Tribunal. During the appeal hearing, the Ld. A.R. argued that the assessee is having substantial interest free funds to meet the advances given to CALFPL, hence no interest required to be disallowed relating to diversion of borrowed funds. He submitted that tuition fee received in advance of ₹ 123.47 lakhs, sundry creditors for ₹ 38.81 lakhs and caution deposit of ₹ 21.33 lakhs are interest free funds which are available to the assessee, hence no interest disallowance is required. He argued that the funds advanced to the CALFPL are out of interest free funds and there is no reason to disallow the interest. The Ld. A.R. also submitted that in fact the amount of advance was given to CALFPL for the purpose of regular supply of milk, gas, etc. as submitted before the A.O. Since the assessee is having sufficient interest funds to meet the advances given to CALFPL, the Ld. A.R. argued that there is no reason for disallowing the interest.

14. On the other hand, the Ld. D.R. relied on the assessment order.

15. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. As per the balance sheet available, the assessee has given a sum of ₹ 22.11 lakhs as advance to CALFPL and the amount outstanding as on 31.3.2008 was ₹ 22.11 lakhs. The assessee argued that sufficient interest free funds are available to give such advances. Since assessee is not paying any interest on interest free funds, the Ld. A.R. argued that no reason to disallow the interest. We have gone through the balance sheet and found that sufficient interest free funds are available to the assessee in the current liabilities and the AO has not made out a case that the advances were given out of interest bearing fund. The assessee is free to give the interest free funds to make the advances as per the business requirements and contingencies. Hence we are of the view that the said advance was given out of interest free funds and for the purpose of business and accordingly, delete the disallowance made by the A.O. and set aside the orders of the lower authorities. The cross objection of the assessee on this ground is allowed.

16. The next issue in the cross objection is with regard to the disallowance of notional interest on the amounts advanced to Mr. Ch.V.K. Narasimha Rao, who happens to be Secretary of the institution. Before the A.O., the assessee argued that Mr. Narasimha Rao has

advanced more funds to the assessee society and if interest is to be calculated, society would be liable to pay interest to Mr. Narasimha Rao. Therefore, no part of the interest payment was disallowed by the assessee. The assessing officer examined the advance of funds and observed that the society has advanced more funds at regular intervals and after computing the interest Mr. Narasimha Rao required to pay interest of ₹ 28,974/- to the society. Accordingly, the A.O. brought the notional interest to tax. During the appeal hearing, the Ld. A.R. argued that the amounts are advanced from the interest free funds, and no disallowance called for. While deciding the issue with regard to the notional interest on CALFPL in para No.13, we observed that the assessee is having interest free funds and the assessee is free to make use of the funds for giving advances. Therefore, we do not see any reason to sustain the addition. Accordingly, we set aside the order of the Ld. CIT(A) and allow the appeal of the assessee.

17. The next issue in cross objection is disallowance u/s 40(a)(ia) of the Act as under:.

2008-09	-	₹ 1,50,000/-
2009-10	-	₹ 1,50,000/-
2010-11	-	₹ 39,500/-

The CIT(A) confirmed the addition. In this case, the assessee has made the payments without deduction of taxes. Since the payment was already made, the CIT(A) placing reliance on the special bench decision in the case of Merilyn Shipping & Transports allowed the appeal of the assessee. Since the issue is settled by Hon'ble Supreme Court in the case of Palam Gas Company in favour of revenue, we set aside the order passed by the CIT(A) and confirm he addition made by the assessing officer. The cross objection on this ground is dismissed.

C.O. No.75/Vizag/2017:

18. For the assessment year 2009-10, the assessee in ground No.3 raised the disallowance of ₹ 4,90,038/- being interest paid on capital work in progress u/s 36(1)(iii) of the Act. During the assessment proceedings, the A.O. found that the assessee had utilized the funds for work in progress as shown in balance sheet. However, the assessee debited interest paid to the banks in income and expenditure account and claimed as deduction. The A.O. treated the interest towards capital work in progress and has capitalized the same. The A.O. disallowed the interest expenditure and made the addition of ₹ 4,90,038/-. The CIT(A) confirmed the addition made by the A.O. During the appeal hearing, the Ld. A.R. relied on the ground of appeal.

19. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee has borrowed the funds and used for the work in progress for building the capital assets. Therefore, the interest accrued on the borrowing required to be capitalized to the concerned asset. Therefore, we do not find any infirmity in the order of the Ld. CIT(A) and the same is upheld. The cross objection of the assessee on this ground is dismissed.

20. The next issue in cross objection for the assessment year 2009-10 is disallowance of expenses amounting to ₹ 47,212/- claimed towards souvenir advertisement and festival mamools paid to staff. The Ld. A.R. did not press this ground during the appeal hearing, therefore, this ground is dismissed as not pressed.

21 The Ld. A.R. has raised various other grounds, which are general in nature and are not pressed at the time of hearing, therefore, the remaining grounds of cross objections are dismissed as not pressed.

22. In the result, all the appeals filed by the revenue for the assessment years 2008-09 to 2011-12 are dismissed, cross objections

filed by the assessee for the assessment years 2008-09, 2010-11 & 2011-12 are partly allowed and the cross objection filed by the assessee for the assessment year 2009-10 is dismissed.

The above order was pronounced in the open court on 14th Mar'18.

Sd/-	Sd/-
(वी. दुर्गाराव)	**(डि.एस. सुन्दर सिंह)**
(V. DURGA RAO)	**(D.S. SUNDER SINGH)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 14.03.2018

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – The ACIT (Exemptions), Vijayawada
2. प्रत्यार्थी / The Respondent – M/s. Sri Prakash Educational Society, D.No.5-17-20, Red Convent Street, Kothapet, Tuni, East Godavari Dist.
3. आयकर आयुक्त / The CIT (Exemptions), Hyderabad
4. आयकर आयुक्त (अपील) / The CIT (A)-2, Guntur
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम **/** DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM