

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ “बी” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

श्री डी. करुणाकरा राव , लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI D.KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.1147, 1133, 1134 & 1136/PUN/2016
निर्धारण वर्ष / Assessment Years : 2007-08 to 2009-10 & 2011-12

Bansilal Ramnath Agarwal
Charitable Trust,
251, Budhwar Peth,
Pune 411 002
PAN : AAATB4383K

.... अपीलार्थी/Appellant

Vs.

DCIT, Central Circle-1(2),
Pune

.... प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Smt. Nirupama Kotru, CIT-DR

सुनवाई की तारीख / Date of Hearing : 20.03.2018	घोषणा की तारीख / Date of Pronouncement: 01.06.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are 4 appeals filed by the assessee under consideration covering the assessment years 2007-08 to 2009-10 and 2011-12. The issues are interlinked, therefore, these appeals are clubbed together for adjudication in this composite order.

We shall take up the appeal for A.Y. 2007-08 first.

ITA No.1147/PUN/2016
A.Y. 2007-08

2. Grounds raised by the assessee for the A.Y. 2007-08 are extracted here as under :

“On facts and in law,

1. *The learned CIT(A) erred in not specifically directing the learned A.O. to grant exemption u/s.11 to the assessee trust particularly since he*

himself has held that the assessee has not violated any provisions of Section 11 to 13.

2. The assessee submits that it has complied with all the conditions laid down in section 11 to 13 and hence, the ld. CIT(A) should have directed the ld. A.O. to grant the exemption u/s.11 to the assessee trust.

3. The learned CIT(A) erred in confirming the disallowance u/s.36(i)(va) of Rs.1,64,980/- without appreciating that the assessee trust was entitled to claim exemption u/s.11 and hence, no disallowance could be made u/s. 36(i)(va) while computing the income of the assessee u/s.11.

4. The learned CIT(A) erred in confirming the disallowance u/s.36(i)(va) of Rs.17,445/- without appreciating that the assessee trust was entitled to claim exemption u/s.11 and hence, no disallowance could be made u/s.36(i)(va) while computing the income of the assessee u/s.11.

5. The Ld. CIT(A) erred in confirming the disallowance of expenditure of Rs.50,00,292/- in respect of the payment made to Pune Information Pvt. Ltd. (Pure IT) on the ground that the assessee had failed to submit any evidence of receipt of services from the said party.

5.1 The Ld.CIT(A) failed to appreciate that the Pure IT had rendered web multimedia training to the students of the assessee trust and the assessee had also furnished all the relevant evidences to demonstrate that Pure IT had rendered the relevant services and hence, the disallowance made was required to be deleted.

5.2 The Ld. CIT(A) erred in not appreciating that Pure IT had rendered services to the assessee trust and the payments made to it were not excessive and therefore, the said expenditure should have been allowed to the assessee while computing its income.

5.3 The Ld.CIT(A) erred in confirming the disallowance of expenditure of Rs.84,180/- in respect of the payment made to Emboss Technopreneurs Pvt. Ltd. (Emboss) on the ground that the assessee had failed to submit any evidence of receipt of services from the said party.

6.1 The Ld.CIT(A) failed to appreciate that Emboss had rendered soft skill training to the students of the assessee trust and the assessee had also furnished all the relevant evidences to demonstrate that Emboss had rendered the relevant services and hence, the disallowance made was required to be deleted.

6.2 The Ld.CIT(A) erred in not appreciating that Emboss had rendered services to the assessee trust and the payments made to it were not excessive and therefore, the said expenditure should have been allowed to the assessee while computing its income.

7. The Ld.CIT(A) erred in confirming the disallowance of interest of Rs.2,06,335/- on account of the advances given to Shri Memane without appreciating that the advance was given in the course of activities of the assessee trust and hence, no disallowance of interest was warranted.

8. The Ld.CIT(A) erred in confirming the disallowance of Rs.43,74,000/- on the ground that the said expenditure was capital in nature without appreciating that the expenditure incurred by the assessee was revenue in nature.

9. *Without prejudice, the assessee trust submits that since it is eligible for exemption u/s.11, in case, the said expenditure of Rs.24,70,369/- is held to be capital in nature, still the same should be allowed as an application of income of the assessee trust.*

10. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

Summary of the Grounds : From the above grounds, the assessee asks (a) for grant of exemption u/s.11 to 13 (Ground Nos. 1 & 2) fully or on proportionate basis, (b) the grant of deduction u/s.36(1)(va) (Ground Nos. 3 & 4) on account of the delayed payments towards the Provident Fund of Employees by the Employer , (c) the allowability of payments made to related concerns, i.e. Pure-IT and Emboss (Ground Nos. 5 to 6.2) towards the services, (d) the allowability of payments made to Memane amounting to Rs.2,06,335/- (Ground No.7); and finally (e) the allowability of expenditure of Rs.43,74,000/- held by AO of capital nature (Ground Nos. 8 and 9).

3. **Facts :** Briefly stated relevant facts are that assessee is a Charitable organization (Bansilal Ramnath Agarwal Charitable Trust-in short 'BRAC') located in Pune. It manages various Educational institutions in Pune. Assessee was registered as a Charitable organization on 16-06-1975 under Bombay Public Trust Act, 1950. The main objects of the trust include imparting primary, secondary, higher, university technical education and also to reconstruct temples/hospitals/Dharmashalas etc. Assessee was granted registration u/s.12AA of the Act vide order dated 02-08-1976. Assessee has been consistently claiming exemption u/s.11 of the Act.

4. Assessee submitted that most of the issues raised in this year were already the subject matter of litigation between the Revenue and the Assessee since A.Y.2000-01 onwards. The revenue took a view in

the past against the assessee in matters of allegation of the violation of the provisions of section 13 of the Act and consequent withdrawal of the benefits of section 11 and 12 of the Act. However, most of the said allegations never fructified eventually and therefore, the allegation of the provisions of section 13(1)(b) of the Act stands decided in favour of the assessee. In this year, consistent with the past, AO invoked the said provisions and at the end of the assessment proceedings, AO made various additions to the income arrived at the in the 'income and expenditure' statement (Rs.1,67,09,038/-). Eventually, while rejecting the claim of exemption u/s.11 of the Act due to the said violation of the provisions of section 13(1)(c) of the Act, the AO made the following additions and determined the total income at Rs.2,76,11,529/- for this assessment year. The details of the additions as summed up by the AO in his order for A.Y. 2007-08 are extracted here as under :

<i>(All figures in Rupees)</i>				
	<i>Income as per the recasted income & expenditure</i>			1,67,09,038
<i>Add.</i>				
1	<i>Annual value of the property rented to m/s. Angels less the actual rent charged to m/s. Angels (refer para No. 6.2)</i>	3,67,000		
2	<i>Expenses towards payment to Pure Information Technologies Pvt. Ltd. disallowed. (Para 6.3)</i>	50,00,292		
3	<i>Expenses towards payment to Emboss Technopreneurs disallowed. (Para 6.3)</i>	84,180		
4	<i>Vehicles registered in the name of Chief Trustee disallowance of depreciation and incidental expenses. (Para 6.6)</i>	7,74,153		
5	<i><u>Interest bearing funds diverted for purposes other than business purposes without charging interest.</u></i>			
	<i>i. R.B Memane (Para 5.1) (1,30,135/-+76,200)</i>	2,06,335		
	<i>ii. Ravindra Rathi (Para 6.1)</i>	6,293		
	<i>iii. Rajesh Rathi (Para 6.2)</i>	1,69,860		

	<i>iv. Shivseva Trust (Para 6.3)</i>	<i>1,15,746</i>		
6	<i>Donation as per para 8</i>	<i>55,000</i>		
7	<i>Prior period expenses as per para 10</i>	<i>4,207</i>		
8	<i>Employees contribution towards P.F. as per Para 7</i>	<i>1,64,980</i>		
9	<i>Employer contribution towards P.F. as per Para 7</i>	<i>17,445</i>		
10	<i>Capital Expenditure as per Para 9</i>	<i>43,74,000</i>		<i>1,13,39,491</i>
	Total			<i>2,80,48,529</i>
<i>Less</i>	<i>Depreciation allowed as per para 9 on a/c of addition of capital expenditure</i>		<i>4,37,400</i>	<i>4,37,400</i>
	<i>Total Income</i>			<i>2,76,11,529</i>
	<i>Rounded to</i>			<i>OR</i> <i>2,76,11,530</i>

5. In the assessment, AO rejected the claim of exemption u/s.11 and 12 of the Act. For this decision, AO examined the issues relating to the violation of the objects of the Trust as well as the provisions of section 13 of the Act. AO also suspected the siphoning of funds by the trustees and eventually, held that trust funds are diverted for the benefits of the principal trustee. AO referred to the addition of item No.5 (page 4 N-ante) and mentioned that securing of loans without providing the guarantee and without charging of interest, constitutes the case of diversion of Trust funds.

6. **Before the CI(A) :** Aggrieved with the said additions as well as on the decision of rejection of exemption u/s.11 of the Act, the assessee filed an appeal before the CIT(A) with nine grounds. At the end of the First Appellate proceedings, the claims of the assessee are partly allowed. The summary of the same from the order of the CIT(A) are extracted here as under :

<i>Ground 1 to 4</i>	<i>The appellant's grounds of appeal against validity of the assessment order are dismissed.</i>
<i>Ground 5.1</i>	<i>The disallowance made by the AO regarding rent charged to M/s. Angels of Rs.3,67,000 is deleted</i>

Ground 5.2	The addition made by the AO on account of the donation of Rs.55,000 is deleted
Ground 5.3	The disallowance made by the AO u/s.36(1)(va) of Rs.1,64,980 is directed to be allowed after carrying our verifications as directed
Ground 5.4	The disallowance made by the AO u/s.36(1)(va) of Rs.17,445/- is directed to be allowed after carrying out verification as directed
Ground 5.5	The disallowance made by the AO on account of the payment of Rs.50,00,292 made to Pure Information Technologies Private Limited is confirmed
Ground 5.6	The disallowance made by the AO on account of the payment of Rs.82,180 made to Emboss Technopreneurs Private Limited is confirmed
Ground 5.7	The disallowance made by the AO on account of the depreciation and incidental expenses amounting to Rs.7,74,153 is deleted
Ground 5.8	Grounds of appeal on the disallowance of the interest of Shri R.B.Memane amounting to Rs.2,06,335/- is partly allowed . Disallowance of interest made by the AO in the cases of Shri Ravindra Rathi amounting to Rs.6,293, Shri Rajesh Rathi amounting to Rs.1,69,860 and Shivseva Trust amounting to Rs.1,15,746 are deleted .
Ground 5.9	The disallowance of Rs.43,74,000 made on being treated the same as capital expenditure is confirmed
Ground 6	The AO is directed to grant the deduction u/s.80L in case of the exemption available to the Appellant u/s.11 and u/s.12 is denied to it
Ground 7	There is no error on part of the AO on levying interest u/s.234A, 234B and 234C
Ground 8	This Ground of Appeal on admission of additional evidence is dismissed
Ground 9	The Appellant's Ground of Appeal against initiation of the penalty proceedings u/s.271(1)(c) and 271B are pre-mature, hence are dismissed .

7. CIT(A) partly allowed the appeal of the assessee. However, it is the case of the assessee that there are certain issues where the CIT(A) went astray in reading into the orders of the CIT(A) for earlier assessment years with reference to the claim of exemption u/s.11 of the Act. There is another issue relating to granting proportionate deduction by the Tribunal in the earlier assessment years.

From the above, it is evident that the CIT(A) granted full relief on account of (1) purchase of vehicles in the name of trustees (2) payment to Shri R.B. Memane, (3) rent paid to M/s. Angels – the payments towards the Provident Fund. However, CIT(A) confirmed the (a)

disallowance made on account of payments made to (i) Pure IT; and (ii) Emboss (b) capital nature of certain expenditure amounting to Rs.43.74 lakhs. Aggrieved with the same, the assessee filed the present appeal with the grounds of appeal already extracted above. Of course, on the issue of claim of exemption u/s.11 of the Act, the CIT(A) is not categorical in denying the exemption. However, there is no issue relating to claim of exemption u/s.11 to 13 on proportionate basis.

BEFORE THE TRIBUNAL

8. Before us, deviating from the grounds, Ld. Counsel for the assessee submitted that all the additions made by the AO stand deleted eventually except the issue relating to the payment made to 'Pure IT' and 'Emboss'. Mentioning, without conceding that these payments fall within the mischief of provisions of section 13 of the Act, Ld. Counsel for the assessee submitted that, for grant of benefits of section 11 and 12 of the Act to the assessee, the genuineness of the activities and the objects of the trust are relevant. So long as the activities of the trust are genuine and they are being carried out in accordance with the objects of the trust, the benefit of exemption u/s.11 of the Act to the income of trust cannot be denied. Further, referring to the slight violation if any to the provisions of section 13(1)(c) of the Act, Ld Counsel submitted that the claim of exemption is allowed on the proportionate basis. In this case, income needs to be proportionate qua the payments made to 'Pure IT' and 'Emboss'. To support the same, Ld. Counsel relied on catena of decisions on this issue. Further, Ld. Counsel mentioned that the CIT(A) was wrong in presuming that the issues relating to section 11 and 12 were dismissed against the assessee while dealing with Ground Nos. 1 and 2 of the appeal. Ld.

Counsel mentioned that the CIT(A) rightly relied on the order of CIT(A) for the A.Y. 2000-01 and understood the final conclusion wrongly. Ld. Counsel referred to Para No.2.1.16 in this regard. According to Ld. Counsel, the CIT(A) for that assessment year, never gave such a decision of dismissal. We shall deal with this issue more in the subsequent paragraphs. In this regard, Ld. Counsel for the assessee filed written submissions clarifying the same as well as asking for grant of exemption u/s.11 on proportionate basis.

9. On the other hand, on the issue of rejecting the claim of the exemption u/s.11 of the Act, Ld. DR for the Revenue relied heavily on the orders of the AO and the CIT(A). Before us, Ld.CIT-DR submitted that the CIT(A), in denying the benefits of section 11 and 12 of the Act, relied on the order of his predecessor for the A.Y. 2000-01. In this regard, Ld. CIT-DR read out the relevant lines from the order of CIT(A).

Thus, to sum up the arguments, it is the case of Ld. Counsel for the assessee that, in principle, the claim of exemption u/s.11 of the Act should be allowed to the assessee as the same stood allowed in the past too. Further, Ld. Counsel submits that the allegation of the AO with reference to the rental payments, car use details, stands allowed in favour of the assessee and therefore, on many counts, there is no violation of the provisions of section 13(1)(c) of the Act. Further also, in connection with the payments to the said sister concerns, i.e. Pure IT and Emboss. The alternate claim of the Ld. Counsel before us relates to grant of the benefit of exemption u/s.11 of the Act proportionately.

FINDING OF THE TRIBUNAL

10. We heard both the parties on the issue of (1) granting of exemption u/s.11 and 12 of the Act, and (2) restricting the claim of

exemption if any, to the extent of payments made to the sister concerns 'Pure IT' and 'Emboss' in violation of the provisions of section 13(1)(b). We also perused the relevant decisions in support of the grant of proportionate exemption. We have also examined the written submission of the Ld. Counsel for the assessee. From the above, it is evident that the AO denied the benefit of section 11 of the Act in view of the alleged violation to the provisions of section 13 of the Act. AO treated the assessee as an AOP and assessed the income accordingly. In support of this violation to the provisions of section 13(1)(c) of the Act, the income-tax authorities concluded that the transactions relating to purchase of vehicles in the name of the trustees, payments made to Shri R.B. Memane, rent paid to M/s. Angels etc. are allowed in favour of the assessee in the First Appellate proceedings.

11. It is the submission of the Ld. Counsel for the assessee that barring the payments to Emboss and Pure IT, assessee got relief on all other accounts. Further, he submitted that the assessee will not press this issue so long as proportionate exemption of income is granted by the Tribunal. For this proposition, on the allowing of proportionate exemption, Ld. Counsel relied on catena of decisions mentioned in Para 5 of his written note. The contents of written submissions and the decisions are given as under :

"1. The assessee is a charitable trust and is registered u/s.12A of the Income Tax Act. For this year, the assessee filed its return of income declaring exemption u/s.11. The learned A.O. completed the asst. wherein he has denied exemption u/s.11. According to the A.O., the assessee had violated the provisions of section 13 and therefore, was not entitled for claiming exemption u/s.11. The learned A.O. after denying exemption u/s.11, has treated the assessee trust as an AOP and has assessed the income accordingly.

2. The learned A.O. in this year had held that the assessee had violated the provisions of section 13(1)(c) on the following grounds –

a. Purchase of vehicles in the name of the trustees.

- b. *Payment made to Shri R.B. Memane.*
- c. *Rent paid to M/s. Angels.*
- d. *Payment made to Emboss Technopreneurs Pvt. Ltd.*
- e. *Payment made to Pure Information Technologies Pvt. Ltd.*

3. *Out of the above five items on which section 13(1)(c) was invoked by the learned A.O., the learned CIT(A) held that there was violation of the provisions of section 13(1)(c) on the part of the assessee trust in respect of payments made to Emboss Technopreneurs Pvt. Ltd. and Pure Information Technologies Pvt. Ltd. Accordingly, he confirmed the action of the A.O. in invoking the provisions of section 23(1)(c) on these two grounds.*

4. *The assessee submits that invocation of section 13(1)(c) in respect of the payments made to M/s. Emboss and M/s. Pure IT is not justified. On this issue, the assessee has given detailed submission before the learned CIT(A) which are reproduced by him in his order. The relevant discussion in respect of payment made to Pure IT is given on pages 80-86 of the order while in respect of payment made to Emboss is on pages 35-46 of the order. The assessee submits that the payment made to these two entities does not result in any personal benefit of the Trustees of the assessee trust and therefore, there is no reason to invoke the provisions of section 13(1)(c).*

5. *Without prejudice to the above submission, the assessee submits that assuming without admitting that there is violation of provisions of section 13(1)(c), the total denial of exemption u/s.11 is not justified. It is submitted that in case, it is held that the assessee has violated the provisions of section 13(1)(c), the exemption u/s.11 can be denied only to the extent of the violation made u/s.13 and there cannot be total disallowance of exemption u/s.11. For this proposition, the assessee places reliance on the following decisions :*

- a. *Sinhgad Technical Education Society Vs. ACIT vide ITA No.320/PUN/2010 order dated 14-12-2016*
- b. *Maharashtra Academy of Engineering and Educational Research v. DCIT [ITA Nos. 915 – 920/PN/12]*
- c. *Shri Mukund Bhavan Trust v. DCIT [ITA No. 223/PN/14]*
- d. *CIT Vs. Kamataka Industrial Area Development Board - ITA No.557/2008 order dated 17-06-2014 (Kar. HC)*
- e. *Sheth Mafatlal Gagalbhai Foundation Trust reported in 249 ITR 533 (Bom.)*
- f. *CIT Vs. Fr. Mullers Charitable Institutions - ITA No.589/2007 order dated 10-02-2014 (Kar. HC)*
- g. *CIT Vs. Fr. Mullers Charitable Institutions reported in (2014) 227 Taxmann 369 (SC)*
- h. *Jamshetji Tata Trust Vs. JCIT (Exemption) reported in (2014) 148 ITD 388 (Mum)*
- i. *Maharashtra Academy of Engineering and Educational Research v. DCIT [ITA Nos. 921 – 923/PN/12]*

6. *The assessee further submits that once the exemption u/s.11 is allowed on a pro-rata basis, the other grounds of appeal raised relating to the computational aspect would be academic. Accordingly, Ground Nos. 3, 4, 7, 8 & 9 would become academic.”*

12. Referring to the assessee’s request for grant of exemption u/s.11 of the Act either fully or on pro-rata basis, Ld. Counsel brought our attention to Para No.2.1.16 and read the same as following :

“2.1.16 Accordingly, I dismiss the Appellant’s these Grounds of Appeal (sic) ”

CIT(A) held so against the assessee in the context of the ground for grant of exemption u/s.11 of the Act. While deciding against the assessee, the CIT(A) extracted Para No. 8.1 & 8.2 from his predecessors order for A.Y. 2000-01 (Para No.2.1.15 of order of CIT(A) is relevant).

In this regard, Ld. Counsel for the assessee brought our attention to the contents of Para No.8.2 and submitted that the then CIT(A) for A.Y. 2000-01 never denied the claim of exemption u/s.11 of the Act. The fact that the CIT(A) in A.Y. 2000-01 merely held that the said issue discussed and disposed of under Ground No.7, was demonstrated before us. The benefit of exemption u/s.11 of the Act was granted to the assessee.

13. On hearing the parties on this issue raised in Ground Nos. 1 and 2 of the present appeal and unnecessary confusion created by the CIT(A), we find it relevant to extract the Para No.8.1 and 8.2 of the order of CIT(A) for A.Y. 2000-01 and the same reads as under :

“8. Grounds No.4 & 6 : Under these grounds of appeal, denial of exemption under section 11 to the appellant trust and invoking of the provisions of section 13 by holding that the nature of the appellant trust was not charitable, that the activities were not genuine, and that the trustees had siphoned off funds of the trust, have been challenged. It is contended that the burden of proof in this regard was squarely upon the AO.

8.1 *The various findings which led the Ld. AO to conclude that of the appellant trust was ineligible for exemption under section 11 and was hit by the provisions of section 13 have been discussed in great detail under paragraphs of 6 and 7 appearing on pages 5 to 49 of the impugned assessment order. These include the transaction with Shri Rohidas Baban Memane, rent paid by the appellant trust to the firm M/s. Angels, payment made to Emboss Technopreneurs Pvt. Ltd., payment to Pune Information Technologies Pvt. Ltd. advance given to Trimit Builders, vehicles purchased in the name of trustee, loan given to Bansilal Cloth Market, advance to Shikshan Prasarani Sabha, advance to Siddheshwar Mandir Trust, advance to Dhanraj Mulchand Rathi, advance to Ravindra Dhanraj Rathi, advance to Rajesh Dhanraj Rathi, advance to Shiv Seva Trust and acceptance of capitation fee.*

8.2 *Upon closer perusal of the appellant's grounds of appeal, it is seen that the above issues which were cited by the Ld. AO while denying the appellant the benefit of exemption under section 11, have been separately challenged under the various sub-grounds of Ground No.7. **Accordingly, the issues raised under these grounds are discussed and disposed of under Ground No.7.** Accordingly, these two grounds of appeal are not being separately adjudicated upon."*

From the above, there is an error on part of the CIT(A) for A.Y. 2007-08 in reading of the order of CIT(A) for the A.Y. 2000-01. The disposal of said Ground No.7 was never resulted in denial of exemption u/s.11 of the Act for that year. Therefore, we are of the view that CIT(A) erroneously came to the wrong conclusion in effect to conclude that the objects of the present trust are not charitable and therefore, the claim of exemption u/s.11 of the Act are to be decided against the assessee. Considering the same, we are of the opinion that the order of the CIT(A) on this issue requires correction to that extent on the activities of trust or carrying out of the same in accordance with objects of the Trust are concerned, we find, the Revenue did not make out any case for denying the said exemption, in principle. In effect, there is no damage to the objects and activities of the trust. Therefore, in principle, the assessee is entitled to the claim of exemption u/s.11 of the Act. Accordingly, in principle, the ground Nos. 1 and 2 of this appeal are allowable.

14. Further, coming to the allegation of the violation of the provisions of section 13(1)(c) of the Act, it is undisputed fact that the assessee got relief on many accounts mentioned above (Para 2 of the written note) only exceptions are (1) payments to the sister concerns, i.e. Pure IT and the Emboss (2) contribution to the Provident Fund (3) the issue relating to the capitalization of certain expenses. Before us, it is the claim of Ld. Counsel that the item Nos. (2) and (3) are already allowed in the past leaving only the item No.(1).

15. Regarding the payments made by the assessee to 'Pure IT' and 'Emboss', it is the submission of the Ld. Counsel for the assessee that said payments are actually allowable on merits and the provisions of section 13(1)(c) of the Act have no application. Alternatively, even if the said provisions apply, Ld. Counsel submitted that the proportionate exemption may be granted in respect of the rest of the income of the assessee excluding the said disallowance of Rs.50,00,292/- (Pure IT) and Rs.82,180/- (Emboss).

16. We heard both the parties on this issue of grant of proportionate exemption and find that it is a settled legal proposition in favour of the assessee in view of binding decision of the Tribunal (supra). For the sake of completeness of this order, we proceed to extract relevant para of an order of Tribunal in the case of Sinhgad Technical Education Society (ITA No.320/PN/2010, dated 14-12-2016) and the same reads as under :

"128. We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We find the assessee in the instant case is holding 220 shares ranging from 1 to 15 in different limited blue-chip companies. Although the Assessing Officer has not discussed the issue in the body of the assessment order, however, on the basis of the information provided by the Assessing Officer in the remand report for

the preceding assessment years the CIT(A) observed that the assessee has violated the provisions of section 13(1)(d) of the I.T. Act by investing in shares in the listed blue chip companies. Therefore, the assessee is not entitled to the benefit of provisions of section 11. It is the submission of the Ld. Counsel for the assessee that the assessee trust is conducting courses on business management namely, MBA, MCA, DBM etc. for which the audited accounts of different companies are required for the benefit of the students and therefore considering the miniscule amount invested in the shares of these companies for Rs.1,50,000/- it can be considered as application of income and not an investment. It is also his alternate submission that there cannot be wholesale denial of exemption u/s.11 and at the most the dividend earned on these shares should lose the benefit of exemption.

129. *We find some force in the alternate argument of the Ld. Counsel for the assessee. The Pune Bench of the Tribunal in assessee's own case in ITA No.113/PN/2010 order dated 18-03-2011 for A.Y. 2009-10 at Para 28 of the order has held **that denial of exemption has to be restricted to the relatable income in view of the specific provisions of the proviso to section 164(2) of the Act as explained by the binding jurisdictional High Court judgment in the case of Sheth Mafatlal Gagalbhai Foundation Trust (Supra) and in principle the denial cannot be extended to other income of the trust.** It was also brought to our notice that relying on the decision of the Tribunal in assessee's own case for A.Y. 2009-10 the CIT(A) has decided the issue in favour of the assessee for A.Y. 2008-09 by observing as under :*

“7.9 I have considered the above submissions of the appellant. In view of the facts mentioned in para 7.8 above, I do not find the contention of the appellant acceptable on this issue. However, the alternate contention of the appellant that denial of exemption has to be restricted to the relatable income only has to be accepted in view of the categorical observation of the jurisdictional Bench of the Tribunal in para 28 of ITA No.113/PN/2010 in the appellant's own case for 1999-2000.

7.10 The AO is directed accordingly. In view of the above decision with regard to investment in shares of co-operative society and shares of public limited companies, this ground of appeal may be treated as partly allowed.”

130. *We find the CIT(A) has also followed the same view in A.Y. 2007-08. It was brought to our notice by the Ld. Authorised Representative that the Revenue has not gone on appeal on this issue.*

131. *While deciding the additional ground No.3 **we have already held that there cannot be wholesale denial of exemption of the entire income of the assessee and at the most dividend on shares would lose the benefit of exemption. In view of the above, we restore the issue to the file of the Assessing Officer with a direction to find out the dividend income, if any, out of these shares including that of value of bonus shares that were received/obtained during the year and bring the same to tax. We hold and direct accordingly. Ground of appeal No.8 by the assessee is accordingly partly allowed for statistical purposes.***

From the above, it is evident that the concept of grant of exemption on proportionate basis is the settled legal proposition. With regard to the additions at Ground No. 3 and 4, we find the claims were found allowed after due verification by the AO. Further, on the disallowance listed at ground Nos. 7 to 9, they are debatable issues/additions. Such disallowance, in principle, do not amount to carrying out the activities of the trust against the objects of the trust. Therefore, such disallowances must not come on the way of computation of allowable exemption u/s.11 of the Act. We order the AO accordingly. Thus, we order the AO to grant the exemption u/s.11 of the Act to the assessee and also direct the AO to deny the exemption made on account of payment to Pure IT and Emboss; and any other disallowances are finally confirmed by us. Accordingly, the grounds raised by the assessee at Ground Nos. 1 and 2 are partly allowed; Ground Nos. 3 and 4 are dismissed as academic, Ground Nos. 5 to 6.2 are dismissed' and Ground Nos. 7 to 9 are dismissed as academic; and Ground No.10 is dismissed as general.

17. In the result, appeal of the assessee is partly allowed.

ITA No.1133/PUN/2016
A.Y. 2008-09

18. Assessee raised the following grounds in the appeal and the same read as under :

“On facts and in law,

1. *The Ld.CIT(A) erred in not specifically directing the Ld. AO to grant exemption u/s.11 to the assessee trust particularly since he himself held that the assessee had not violated any provisions of section 11 to 13.*
2. *The assessee submits that it has complied with all the conditions laid down in section 11 to 13 and hence, the Ld.CIT(A) should have directed the Ld. AO to grant the exemption u/s.11 to the assessee trust.*

3. *The Ld.CIT(A) erred in confirming the disallowance of Rs.23,73,000/- on the ground that the said expenditure was capital in nature without appreciating that the expenditure incurred by the assessee was revenue in nature.*

4. *Without prejudice, the assessee trust submits that since it is eligible for exemption u/s.11, in case, the said expenditure of Rs.23,73,000/- is held to be capital in nature, still the same should be allowed as an application of income of the assessee trust.*

5. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

From the above, the common issue raised in the appeals of the assessee in Ground Nos. 1 and 2 relates to granting of exemption u/s.11 of the Act. This issue is dependent on the outcome of Ground Nos. 1 and 2 of the appeal for A.Y. 2007-08. In principle, the claim of exemption u/s.11 is allowed for A.Y. 2007-08.

19. Before us, Ld. Counsel for the assessee submitted that in this assessment year, there is no violation whatsoever to the provisions of section 13(1)(c) of the Act. Assessee got relief on all the items of additions, i.e. (1) purchase of vehicles in the name of the trustees, (2) Advance given to Mr. Rajesh Dhanraj Rathi and (3) Advance given to Mr. Siva Seva Trust. He also submitted that the disallowance by way of capitalization of certain expenses of Rs.23.73 lakhs, being a legal issue and debatable one, it does not have the effect of violation of the provisions of section 13(1)(c) of the Act. Further, Ld. Counsel argued vehemently stating that so far as the trust carries on the activities in accordance with the objects of the trust, the claim of exemption u/s.11 of the Act cannot be denied. Ld. Counsel also filed written submissions before us. Further, he submitted that there is no transaction of payment to Pure IT & Emboss (supra) in this year.

20. Per Contra, Ld. DR for the Revenue relied on the order of the AO.

21. We heard both the parties and perused the paper book and the written submissions filed before us. For the sake of completeness of this order, the written submissions are extracted as follows :

“1] The assessee is a charitable trust and is registered u/s 12A of the Income Tax Act. For this year the assessee filed its return of income claiming exemption u/s 11. The learned A.O. completed the asst. wherein he has denied exemption u/s 11. According to the A.O., the assessee had violated the provisions of section 13 and therefore, was not entitled for claiming exemption u/s 11. The learned A.O. has discussed the issue regarding violation of provision section 13 in paras 4 to 6.2 of the order. According to the A.O., the assessee has violated provision of section 13 on the following grounds –

- a. Vehicles purchased in the names of trustees (para 5 of the asst. order).*
- b. Advance given to Rajesh Dhanraj Rathi (para 6.1 of the asst. order)*
- c. Advance given to Shiv Seva Trust (para 6.2 of the asst. order)*

2] The assessee agitated the above issues before the learned CIT(A). In his order, the learned CITCA) has held that there is no violation of section 13 on the part of the assessee trust in respect of the above referred three issues. The CITCA) has discussed the issue regarding purchase from vehicles in the name of trustees in para 5.4.1 and 5.4.2, page 109, of the order. Similarly, the issue regarding Shri Rajesh Rathi is discussed in para 5.5.1.1 and 5.5.1.2 and the issue regarding Shiv Seva Trust is discussed in para 5.5.2.1 and 5.5.2.2 of the order.

3] Accordingly, the assessee submits that all the three issues raised by the learned A.O. for holding that the assessee trust had violated the provisions of section 13 has been deleted by the learned CIT(A). Now, once, the provisions of section 13 are not violated, there is no reason to deny the exemption u/s 11 to the assessee trust. The grounds of appeal for this year raised before learned CITCA) are reproduced by him on pages 10 - 11 of the order. In ground Nos. 2 - 4, the assessee had specifically raised the issue regarding denial of exemption u/s section 11.

Now, once, the CIT(A) has held that there is no violation of section 13, he ought to have allowed these grounds and the exemption u/s 11 should have been granted. However, the learned CIT(A) has dismissed these grounds. On page 108 of his order, he has dismissed the said grounds. Further, on page 127 of his order he has given a chart wherein in nutshell, his decision on various grounds of appeal of the assessee is summarised. Even in the said chart, he has dismissed grounds 2 to 4 which were raised by the assessee for allowing exemption u/s 11.

4] The assessee submits that while dismissing the grounds regarding claim of exemption u/s 11, the CIT(A) has basically followed the order passed by his predecessor for A.Y. 2000 - 2001. This is evident from para 2.1.15, page 25 - 26 of the order. He has reproduced paras 8.1 and 8.2 of the order passed by his predecessor for A. Y. 2000 - 01. The assessee has submitted the copy of the order for A. Y. 2000 - 01 in the course of hearing. In the paras 8.1 and 8.2 reproduced by the CIT(A), his predecessor has not dismissed the grounds regarding exemption u/s 11. Accordingly, the learned CIT(A) has inadvertently dismissed these

grounds for A.Y. 2008 - 09 on the basis of the said paras which is not correct. In fact for A.Y. 2000 - 01, the learned CIT(A) has clearly noted in paras 10 to 10.2 that exemption u/s 11 is allowable to the assessee Trust.

5] The assessee submits that the learned A.O. had specifically denied exemption u/s 11 on the ground of violation of section 13 on three issues mentioned in para 1 supra. The learned CIT(A) has deleted the additions made on the three issues and has held that there is no violation of section 13. Accordingly, it is submitted that he ought to have allowed the exemption u/s 11 to the assessee and the grounds relating to the allowability of exemption u/s 11 should not have been dismissed. Thus, the assessee prays for a specific finding for allowing exemption u/s 11."

Considering the above, it is now concluded that the allegation made by the AO u/s.13(1)(c) of the Act on the additions did not fructify and the CIT(A) deleted the same and the Revenue is not in appeal against the said decision of the CIT(A). Further, we find no damage to the objects of the trust in any form by the activities of the trust. Hence, we are of the opinion, the ground Nos. 1 and 2 are allowed. Ground Nos. 3 and 4 are dismissed as academic. Ground No.5 is dismissed as general.

22. In the result, the appeal of the assessee is partly allowed.

ITA Nos.1134 & 1136/PUN/2016
A.Yrs. 2009-10 & 2011-12

23. Grounds raised by the assessee in these two appeals are identical and the same were homologous to the grounds for the A.Y. 2008-09. In these appeals also, assessee raised the issue relating to denial of claim of exemption u/s.11 of the Act in view of violations by the assessee to the provisions of section 13(1)(c) of the Act. In the assessments, the AO alleged that purchasing of the vehicles in the names of the trustees and advances given to Siva Seva Trust are the two common issues which were already adjudicated by us in favour of the assessee for the A.Yrs. 2007-08 & 2008-09. Considering the commonality of the issues,

arguments of the counsels, we are of the opinion that the grounds raised by the assessee in both the appeals are required to be allowed in favour of the assessee for these two assessment years too. At this point of time, the additions made by the AO claiming to be violation to the provisions of section 13(1)(c) of the Act are not sustained. Therefore, the assessee is entitled to claim exemption u/s.11 of the Act. Accordingly, the grounds 1 and 2 raised by the assessee in both the appeals are allowed. Grounds 3 to 5 are dismissed as academic.

24. In the result, both the appeals of the assessee are partly allowed.

25. To sum up, all the appeals of the assessee are partly allowed.

Order pronounced in the open court on this 01st day of June, 2018.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(D. KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 01st June, 2018
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-13, Pune
4. The Pr.CIT Central, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B Bench" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune