

**IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND G. MANJUNATHA, AM**

**ITA No. 3080 To 3084/Mum/2016 and ITA No. 6952 To
6954/Mum/2017**

(A.Y. 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2012-13,
2013-14 and 2014-15)

M/s Free Trade Union Multipurpose Project Trust, Kennedy House, 4 th Floor, Goregaonkar Road, Nana Chowk, Mumbai-400007.	Vs.	The Income Tax Officer (Exemptions)-1(3), Mumbai-400 012
Appellant	..	Respondent
PAN No. AAFF0003F		

**ITA No. 1336/Mum/2014, ITA No. 3793 To 3795/Mum/2016 and
ITA No. 3800 To 3801/Mum/2016**

(A.Y. 2003-04, 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10)

The Income Tax Officer (Exemptions)-1(3), Mumbai-400 012	Vs.	M/s Free Trade Union Multipurpose Project Trust, Kennedy House, 4 th Floor, Goregaonkar Road, Nana Chowk, Mumbai-400007.
Appellant	..	Respondent

Assessee by : N. R Agrawal, AR

Revenue by : Pooja Swaroop, Sr.DR

Date of hearing: 28-06-2018 **Date of pronouncement :** 04-07-2018

ORDER

Per Bench:

These cross appeals filed by the assessee, as well as the Revenue are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals), Mumbai -37 [in short CIT(A)], dated 20/12/2013



and The Commissioner of Income Tax (Appeal), Mumbai-1 [in short CIT(A)], even dated for the A.Y. 2003-04, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2012-13, 2013-14 and 2014-15. Since, the facts are identical and issues are common, these appeals were heard together and are disposed off, by this common order for the sake of convenience.

2. The assessee, more or less has raised common grounds of appeal for all assessment years. The assessee, from these grounds of appeal, has challenged, rejection of exemption claimed u/s 11 of the Income Tax Act, 1961, taxation of corpus donations, denial of credit for TDS and further challenged action of the Id. CIT(A) non adjudication of specific ground No. 8 taken for Asst. Year 2005-06. The assessee also filed additional ground challenging action of Id. AO and CIT(A) rejection of carry forward and set off of loss. The Revenue, more or less has taken common grounds of appeal for all Asst. years. The Revenue, from these grounds of appeal challenged order of the Id. CIT(A) allowing relief in respect of addition made by the AO towards loans and advances, for purchase of motor car and expenses incurred for objects of the trust.

3. The brief facts of the case are that the assessee is a charitable trust engaged in various charitable activities as per objects of trust deed. The Trust is affiliated to two trade unions, i.e. Engineering Mazdoor Sabha (EMS) and Mumbai Mazdoor Sabha(MMS). The assessee has filed regular returns of income u/s 139 of the Income Tax Act, 1961 for all assessment years declaring Nil total income, after claiming exemption u/s 11 of the Income Tax Act, 1961. A search and seizure operation u/s 132 of the Act, was carried out on 20-08-2009 in Chandbibi Group. During the course of search, it was revealed that the trustees have siphoned off money for ultimate benefit of two trustees. The investigation further reveals that the trustees have siphoned off money by booking expenditure on repairs to building which was not owned by the trust. Consequent to search, the case has been reopened u/s 147 of the Act, on the ground



income chargeable to tax had been escaped assessment and hence, notice u/s 148 was issued. In response to notice, the assessee vide letter dated 7-4-2010, stated that return filed u/s 139 may be treated as return filed in response to notice issued u/s 148 of the Act. The assessee also sought reasons for reopening of assessment and such reasons have been furnished to the assessee.

4. The case has been selected for scrutiny and accordingly, notices u/s 143(2) and 142(1) of the Act, were issued. In response to notices, the authorized representative of the assessee appeared from time to time and filed various details, as called for. The assessments has been completed u/s 143(3), r.w.s.147 of the Act, for assessment years 2003-04 to 2009-10, and for A. Y 2012-13 to 2014-15 u/s 143(3) of the Act, and rejected exemption claimed u/s 11 of the Income Tax Act, 1961 by invoking provisions of section 13(1)(c) and 13(2) of the Act, for the reasons of siphoning of funds of the trust for ultimate benefit of trustees and for non genuine activities. The AO has determined total income by making additions towards, loans and advances given to Engineering Mazdoor Sabha (EMS) and Mumbai Mazdoor Sabha(MMS), corpus donations received, addition towards expenditure incurred for objects as per P & L account and purchase of Motor car in the name of R J. Mehta one of the trustee.

5. The assessee carried matter in appeal before the first appellate authority. Before the CIT(A), the assessee has challenged rejection of exemption claimed u/s 11 of the Act and also challenged various additions made by the AO towards loans and advances given to two trade unions, corpus donations, disallowances of expenditure incurred towards objects and addition towards purchase of motor car in the name of trustees. The Ld. CIT(A), for the detailed discussion in his appellate order, dismissed additional ground taken by the assessee challenging denial of exemption u/s 11 of the Act, and upheld findings of the AO for rejection of exemption by holding that various facts brought out by the AO in the assessment



order clearly shows that the assessee has violated provision of section 13(1)(c) and 13(2) which disentitled assessee to claim exemption u/s 11 of the Act. The CIT(A), further held that when exemption u/s 11 is rejected, income shall be computed under normal commercial principles by considering income and expenses to tax only surplus/deficit, accordingly, he has rejected income determined by the AO by making additions to returned income loans and advances, purchase of motor car, disallowance of expenses and addition towards corpus donation and recomputed income by applying normal commercial principles to tax surplus/deficit as per income and expenditure account. In the process, he has added corpus donations to gross receipts and deleted addition made towards loans and advances given to two trade unions, expenditure incurred towards objects and purchase of motor car by holding that these loans and advances, purchase of motor car and expenditure cannot be treated as income of the assessee.

6. The assessee as well as the revenue carried matter in further appeal before the Tribunal. The ITAT, Mumbai "F" bench vide its order dated 1612-2015 in ITA No. 352/Mum/2014 and ITA No. 1336/Mum/2014 for Asst. Year 2003-04 dismissed appeal filed by the assessee and upheld denial of exemption u/s 11 of the Act and also allowed appeal filed by the revenue without deciding the issues challenged by the revenue on merits towards deletion of additions made by the AO towards loans and advances and for purchase of motor car, repairs and expenses. The relevant portion of order is reproduced hereunder: -

"6. We have given a thoughtful consideration to the rival submissions. We have also gone through the orders of the authorities below and the relevant documentary evidences and have considered the judicial decisions relied upon. There is no denial that the assessee has given loan to two Mazdoor



Sabhas. There is also no denial that the Trustees of the assessee happen to be the final beneficiaries as mentioned at Para-3. Let us see the conduct of the assessee in the light of the provisions of section 13(1)(c) r.w.s. 13(3) of the Act, which are as under:-

Section 13(1)(c)

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof-

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in subsection (3):

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub- clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub- section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution:



Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub- clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub- section (3) in so far as such use or application relates to any period before the 1st day of June, 1970 ;

Section 13(3):

“(3) The persons referred to in clause (c) of sub- section (1) and sub- section (2) are the following, namely:-

(a) the author of the trust or the founder of the institution;

(b) any person who has made a substantial contribution to the trust or institution, 2 that is to say, any person whose total contribution up to the end of the' relevant previous year exceeds 3fifty] thousand rupees];

(c) where such author, founder or person is a Hindu undivided family, a member of the family; (CC) 4 any trustee of the trust or manager (by whatever name called) of the institution;]



(d) any relative of any such author, founder, person, 5 member, trustee or manager] as aforesaid;

(e) any concern in which any of the persons referred to in clauses (a), (b), (c) 6 , (cc)] and (d) has a substantial interest.

A perusal of this section, qua the chart exhibited elsewhere clearly show that the Trustees have been benefited directly or indirectly clearly violating the conditions.

6.1 The claim of the Ld. Counsel is that it is covered by the provisions of section 13(1)(d) of the Act. The relevant portion of the said section read as under:-

Section-13(1)(d):-

“ (d) 1 in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year-

(i) any funds of the trust or institution are invested or deposited after the 28th day of February, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11; or

(ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 continue to remain



so invested or deposited after the 30th day of November, 1983 ; or

These clauses referred to the amount invested or deposited otherwise, than the modes specified in section 11(5) of the Act. We fail to understand how a loan amount given to two Mazdoor Sabhas fit into the category of making investment or deposit as per provisions of section 11(5) of the Act, wherein investment have been referred to the investment in saving certificates of the Government as defined in clause (c) of section -2 of the Government Saving Certificate Act and deposits have been referred to being deposit in Post Office Saving Bank account or in Schedule Bank. Thus, it can be safely concluded that the assessee is not covered by the provisions of section 13(1)(d) of the Act. Therefore, the decisions relied upon by the assessee as mentioned elsewhere do not support.

6.2 As mentioned elsewhere the assessee has clearly violated the provisions of section 13(1)(c) r.w.s. 13(3) of the Act. Hence, the assessee is not eligible for the benefit of exemption under section 11 of the Act. The denial of exemption is confirmed.

7. In so far as the taxability of the corpus fund is concerned, we direct the Assessing Officer to decide the issue afresh as per the provisions of the law. In so far as the claim of expenditure is concerned the Assessing Officer is directed to verify whether the amount is given as advance or charged to the P&L Account, after giving a reasonable opportunity of being heard to the assessee and decide this issue as per the provisions of the law.



8. Before closing, we find that the assessee has also raised an additional ground by which it has challenged the validity of the reopening of the assessment. However, at the time of hearing, Ld. Counsel did not argue this additional ground; therefore, we do not find it necessary to decide this issue.

9. The appeal filed by the assessee is dismissed and since the denial of exemption has been upheld by us, the appeal filed by the Revenue is treated as allowed.”

7. Being, aggrieved the revenue filed miscellaneous application u/s 254(2) and requested to recall order passed by the Tribunal for the detailed reasons stated in their petition. The ITAT in MA No. 324/Mum/2017 dated 16-02-2018, recalled revenue appeal in ITA No. 1336/Mum/2014 and restored appeal filed by the revenue by observed as under: -

“2. We have heard the Id. AR of the assessee and Id. DR for the Revenue and perused the material available on record. The Id. AR of the assessee argued on the similar line as contended in the Miscellaneous Application. On the contrary, the Id. DR for the Revenue conceded that there is no discussion about the grounds of appeal raised by revenue.

3. We have considered the rival submission of the parties and perused the order passed on 16.12.2015. We have seen that the grounds of appeal raised by assessee in its appeal and the grounds of appeal raised by revenue are different. We have further noted that while dismissing the



appeal of the assessee in sustaining the denial of exemption, the appeal of the revenue was treated as allowed. We have further noted that the appeal of the Revenue was allowed without discussing the grounds of appeal and the facts related therewith. Considering the fact that is no discussion about the facts related with grounds of appeal and the submission of respective parties, we find that non-consideration of grounds of appeal and the fact thereof are mistake apparent. Hence, the order qua the appeal of revenue being ITA No. 1336/M/14 for AY 2003-04 is recalled. The case is now fixed for hearing on 05.04.2018. Issuance of fresh notice is dispensed with as the parties were informed in the Court during the hearing of the case.”

8. The recalled revenue appeal in ITA No. 1336/Mum/2014 is heard along with other appeals for subsequent Asst. years filed by the assessee as well as the revenue, as the issue involved in this appeal is identical to the issues in all appeals of the assessee and revenue for all assessment years.

9. The first issue that came up for our consideration from assessee appeal is denial of exemption u/s 11 of the Act. Although, the issue has been decided against the assessee by the ITAT, for Asst. year 2003-04 in ITA No. 352/Mum/2014, the Id. Authorized representative vehemently argued the matter at length with the help of certain judicial precedents to keep the issue alive. The Id. A R for the assessee submitted that the Id. AO as well as the Id. CIT(A) failed to appreciate the fact is right perspective in the light of facts of the case before rejection of exemption u/s 11 of the Act. The AO on the basis of appraisal of incorrect facts came to wrong conclusion that there is violation of section 13(1)(c) of the Act, insofar as loans and advances given to two trade unions without



understanding basic facts that the main object of the trust is to help members of trade union for which it has lent loan and the same has been used for the benefit of members of union. The AO made baseless allegation of siphoning of large scale money by trustees without appreciation fact that out of total loans given to two trade unions, only a sum of Rs. 8,00,000/- was given to Chandbibi and remaining amount has been spent for the objects for which necessary evidences has been filed. In so far as purchase of Motor car in the name of R. J Mehta, another trustee, although car is purchased in the name of trustee, the car is used exclusively for trust purpose and necessary approval has been taken from competent authority. Similarly, the AO has misconstrued the facts with regard to expenditure incurred for repairs of building without appreciating fact that amount given to Shankar Gadam of M/s Mahalaxmi Enterprises is treated as advance and not debited to the profit and loss account. The assessee has filed all details to prove an observation of the AO is incorrect and there is no violation of any of the provisions, but the AO has conveniently ignored all evidences to reject exemption u/s 11 of the Act. In this regard, he relied upon the decision of Hon'ble Supreme Court in the case of ACIT vs. Surat City Gymkhana 300 ITR 214(SC) and Hon'ble Karnataka HC in the case of CIT vs. Fr. Mullers Charitable Institution 363 ITR 230.

10. The Ld. DR on the other hand submitted that the issue has been already decided against the assessee by ITAT Mumbai "F" Bench in ITA No. 1336/Mum/2014, and without any change in facts no contrary decision can be taken in subsequent years. The Ld. DR further submitted that the assessee failed to explain violations of section 13(1)(c) pointed out by the AO and such violation is continued in subsequent years, therefore the AO has rightly rejected exemption and his order should be upheld.

11. We have heard both the parties, perused materials on record and gone through the orders of authorities below. We have also carefully



considered case law relied upon by the assessee. The coordinate bench of ITAT, "F" bench has already decided the issue against the assessee in ITA No. 1336/Mum/2014. The Tribunal after considering relevant facts in light of provisions of section 13(1)(c), 13(2) and 13(1)(d) observed that the assessee has violated provisions of section 13(1)(c) r.w.s 13(3) of the Act, and hence not eligible for exemption u/s 11 of the Act. The relevant portion of ITAT order from Para 6 to 6.2 is reproduced at Para 6 of this order.

12. Facts remain unchanged. When the bench pose a specific question about continuation of violation referred to u/s 13(1)(c) for subsequent years, the Id. AR for the assessee fairly accepted that such violation is perpetuated in subsequent years, however tried to argued that violations brought out by the AO shall not be reason for denial of exemption, when the assessee continued to carry out its activities in accordance with its objects. We find that, the assessee failed to negate observation of the lower authorities in the light of provisions of section 13(1)(c) of the Act. Therefore, consistent with the view taken by the Coordinate bench, we are of the considered view that the assessee is not eligible for exemption u/s 11 of the Act, and hence we are inclined to upheld finding of the Id. CIT(A) and reject ground of the assessee for all asst. years.

13. The next issue that came up for our consideration from assessee appeals is taxation of corpus donations. The Ld. CIT(A) dealt corpus donation issue in para 5.10 of his order. According to the lower authorities, corpus donation is forming part of income derived from property held under trust, once exemption u/s 11 is denied. The Id. CIT(A) further observed that, although assessee furnished letters indicating donors intention to donate for corpus of the trust, these letters are identically worded without any further evidences. The Id. CIT(A) further held that as per section 12(1) voluntary contributions will also deemed to be income derived from property held under trust, and provisions of section 11 and



13 shall apply and accordingly, once exemption is denied, then whole receipts including corpus donation shall be treated as receipt of trust and normal commercial principles shall be applied to determine income. It is the contention of the assessee that even if exemption is denied, still corpus donation shall not be taxed as income derived from property held under trust. The Ld. AR for the assessee vehemently argued the matter in the light of provisions of section 11(1)(d) and 12(1) and certain judicial decisions, and submitted that voluntary contributions made with a specific direction shall not form part of income derived from property held under trust, therefore cannot be taxed even if exemption is denied. In this regard, he relied upon plethora of judgments including the following judgments.

- “a) J.B Education Society V/s ACIT 159 TTJ 0236 (Hyd) violation of section 13(1)(c) still corpus donation were not taxable.*
- b) R.B. Shreeram Religious & Charitable Trust Vs. CIT (SC) 233 ITR 0053*
- c) CIT vs. Indore Table Tennis Trust 227 ITR 0836 (MP)*
- d) CIT vs. Bengal Mills & Stemers PRE. Association 140 ITR 0586 (Cal)*
- e) CIT vs. Vanchi Trust & Anr. 127 ITR 0227 (Kerala)*
- f) CIT vs. Bal Utkarsh Society 119 ITR 0137 (Gujarat)*
- g) CIT vs Punyarpan Charitable Trust 166 ITR 0214 (Cal)*



- h) *CIT vs Shri Billeswara Charitable* 145 ITR 29
(Mad)
- i) *M.N. Desai Charitable Trust Vs. CIT* 246 ITR
452 (Guj)
- j) *Trustees of Kilachand Foundation* 172 ITR
0382 (Bom)
- k) *CIT vs Eternal Science of Man's society* 128
ITR 456 (Del)''

14. We have heard both the parties, perused materials on record and gone through orders of authorities below. It is an admitted fact that exemption u/s 11 has been denied to the assessee. It is also an admitted fact that the assessee has failed to file necessary evidences to prove corpus donations are made with specific direction that they shall form part of corpus of the trust. No doubt, corpus donation received with a direction that they shall form part of corpus of the trust shall not be treated as income derived from property held under trust. But, the onus is on the assessee to prove that such donations are in fact corpus donations which shall not form part of income of the trust u/s 11(1) of the Act. In this case, on perusal of facts, we find that the AO as well as the Id. CIT(A) gave categorical findings that the assessee failed to file any evidences to prove that these donation are corpus donations. Once, these donations are not corpus donations, then, automatically all receipts including corpus donations shall be treated as receipts of the trust and income wherefrom shall be computed in normal commercial practices by deducting all expenses. The CIT(A) after considering relevant facts has rightly treated corpus donation as part of gross receipts to determine income. We do not find any error in the order of the Id. CIT(A). Hence, we are inclined to uphold the CIT(A) order and reject ground taken by the assessee for all years.



15. The next issue that came up for our consideration for A.Y.2005-06 is non adjudication of ground No.8. The assessee has taken ground on the issue of expenditure of Rs. 15,80,077 made out of corpus donations. Although, the AO has not made any specific additions for this amount in the assessment order, yet the assessee has taken a ground with abundant precaution for the reason that in para 2 of his order, the AO has said that exemption claimed towards corpus donation of Rs. 16,17,230 and expenditure of Rs. 15,80,077 is taxable.

16. Having heard both sides, we find that the AO did not made any addition towards expenditure of Rs. 15,80,077/- in the assessment, therefore, there is no cause of grievance for the assessee insofar this issue is concerned. But, fact remains that, the AO has said in para 2 of his order that the amount of expenditure is taxable. Once, exemption is denied, income shall be computed under normal accounting principles by considering all income and expenses to determine profit/loss, but at no stretch of imagination expenditure shall be treated as income, unless such expenses is unexplained or such expenses has not be substantiated with evidences. In this case, there are no findings from the AO on these aspects. Therefore, we are of the considered view that no addition can be made towards expenditure incurred for objects of the trust.

17. The next issue that came up for consideration for A.Y. 2013-14 is denial of credit for TDS. The assessee claims that the AO did not allowed credit for TDS amounting to Rs. 1,25,032/-. But, on perusal of orders of the Id. AO as well as the Ld. CIT(A), we find that facts with regard to claim of TDS is not emanating from orders of lower authorities. However, if the assessee able to prove the claim with necessary TDS certificates and corresponding income is already considered in books, then the AO is directed to allow credit for TDS. Hence, the matter is set aside to the file of the AO to cause necessary enquiries and allow credit for TDS.



18. The next issue that came up for our consideration from assessee additional ground of appeal is carry forward and set off of loss of earlier years. The assessee has taken additional ground in as much as, if benefit of exemption is denied and income is computed under commercial principles, then losses shall be allowed to carry forward and set off against income of subsequent years. We find that the assessee has claimed exemption u/s 11 and hence, not exercised option to carry forward and set off losses. The AO denied benefit of exemption u/s 11 and computed income under normal commercial principles. Once, benefit of exemption is denied and income is considered under normal commercial principles, then the benefit of carry forward and set off of losses shall be allowed, provided all other conditions of carry forward and set off of losses as provided under section 72 are satisfied. Therefore, we set aside the issue to the file of the AO to cause necessary enquiries and allow the benefit accordingly.

19. The next issue that came up for our consideration from revenue appeals is additions towards loans and advances given to two trade unions, i.e. Engineering Mazdoor Sabha(EMS) and Mumbai Mazdoor Sabha(MMS). The AO made additions to total income towards loans given to above two trade unions on the ground that trustees siphoned off money through above two trade unions as the said loan has been ultimately transferred to Chandbibi Account for purchase of property. The AO has made addition to loans for the reason that money has been siphoned off in contravention of provisions of section 13(1)(c) r.w.s. 13(3) and this would be one of the reasons for denial of exemption u/s 11 of the Act. The Ld. CIT(A) deleted addition made by the AO on the ground that loans given to two trade unions and transferred to trustees account could be a reason for denial of exemption u/s 11, but loans could not be added as income of the assessee as the same was not debited to profit and loss account as expenditure, but has been treated as current assets in balance sheet.



20. The Id. DR submitted that the Id. CIT(A) failed to appreciate fact that end use of the funds from those trade unions provided to the trustees through the series of transactions is merely camouflage the intention and diversion of funds from trust to the trustees. The DR further submitted that the assessee has violated provisions of section 13(1)(c) and 11(5) of the Act, which needs to be taxed in the hands of the assessee, but the Id. CIT(A) deleted additions on the ground that loans and advances cannot be treated as income of the assessee without appreciating fact that trust funds has been siphoned off by the trustees.

21. The Id. AR for the assessee, on the other hand strongly supported order of the CIT(A). The AR further submitted that at no stretch of imagination loans and advances being assets cannot be treated as income of the assessee only for the reason that these loans are hit by the provisions of section 13(1)(c). The violation of section 13(1)(c) may be a ground for denial of exemption, but such loans cannot be treated as income of the assessee.

22. We have heard both the parties and perused materials on record. The AO made additions to loans and advances given to two trade unions only on the ground that the said loan is hit by the provisions of section 13(1)(c) of the Act, by misconception of law and facts. There is no findings from the AO that assessee has claimed deduction for such loans against income. On the other hand, the Id. CIT(A) recorded categorical fact that these loans are not claimed as expenditure, but are treated as current assets in books of accounts. The facts gathered during assessment and violations of section 13(1)(c) brought out by the AO may be a good reason for rejection of exemption, but loans and advances being current assets cannot be treated as income of the assessee. The Id. CIT(A) after considering relevant facts has rightly deleted additions towards loan and advances. We do not find any error in the order of the Id.



CIT(A) and hence, we are inclined to uphold findings of the CIT(A) and reject grounds of revenue for all assessment years.

23. The next issue that came up for our consideration from revenue appeals is additions towards purchase car in the name of trustee and repairs and also other expenses. The AO, while completing assessment made additions towards expenditure incurred for objects of the trust, purchase car in the name of trustee and non genuine repair expenses on the ground that the trustees have siphoned off money by purchasing car in personal name and booking non genuine expenditure. It is the contention of the assessee that the facts gathered by the AO to hold there is violation of section 13(1)(c) may be a good reason for rejection of exemption, but purchase of car being capital expenditure and expenses incurred for objects of the trust cannot be treated as income.

24. Having heard both parties, we find that the Id. CIT(A) has recorded categorical facts that purchase of car has been treated as fixed assets in books. Similarly, amount paid to Shankar Gadam of M/s Mahalaxmi Enterprises has been treated as advance in books of account. The CIT(A) further observed that expenditure incurred for objects of the trust could not be treated as income, unless there is findings from the AO that these are non genuine expenditures. The revenue fails to bring on record any contrary evidences to controvert findings of the Id. CIT(A). We, therefore, of the opinion that once, exemption is denied, income shall be computed under normal accounting principles by considering all income and expenses to determine profit/loss, but at no stretch of imagination expenditure shall be treated as income, unless such expenses is unexplained within the provisions of section 69C or such expenses has not be substantiated with evidences. In this case, there is no finding from the AO on these aspects. Therefore, we are of the considered view that no addition can be made towards expenditure incurred for objects of the trust, purchase of car being capital in nature and treated as such in books



and amount paid to Shankar Gadam of M/s Mahalaxmi Enterprises. The Id. CIT(A) after considering relevant facts has rightly deleted additions made by the AO. We do not find any error in order of the Id. CIT(A) and hence, we are inclined to upheld findings of the CIT(A) and reject grounds of revenue for all assessment years.

25. In the Result, the appeals filed by the assessee in ITA No. 3080 to 3084/Mum/2016 and ITA No. 6952 To 6954/Mum/2017 are partly allowed for statistically purposes and the appeals filed by the Revenue in ITA No. 1336/Mum/2014, ITA No. 3793 to 3795/Mum/2016 and ITA No. 3800 to 3801/Mum/2016 are dismissed.

Order pronounced in the open court on 04-07-2018.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai, Dated: 04-07-2018

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

Assistant Registrar
ITAT, MUMBAI