

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No. 7877/Del/2018
Assessment Year: 2010-11

R.D. FOUNDATION,
C/O RRA TAXINDIA,
D-28, SOUTH EXTENSION
PART-I, NEW DELHI – 49
(PAN: AABTR3819D)
(APPELLANT)

VS. ITO, WARD (EXEMPTION)
GHAZIABAD
CGO COMPLEX-I,
HAPUR ROAD,
GHAZIABAD
(RESPONDENT)

Assessee by : DR. RAKESH GUPTA, ADV. & SH.
SHUBHAM SOBIT, ADV.
Department by : SH. SUNRENDER PAL, SR. DR.

ORDER

PER H.S. SIDHU, JM

This appeal has been filed by the Assessee against the order dated 24.10.2018 of the Ld. CIT(A), Ghaziabad relating to assessment year 2010-11. The assessee has raised the following grounds.

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in not allowing the benefit of section 11

& 12 and that too in the light of decision of Kolkata Bench of ITAT in the case of Sree Sree Ramkrishna Samity vs DCIT (2016) 156 ITD 646.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs. 1,63,00,000/- on account Of corpus donation by observing that assessee has not qualified for exemption u/s 11(l)(d) and that too by recording incorrect facts and findings and without observing the principles of natural justice.

3. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs. 1,63,00,000/- on account of corpus donation by observing that assessee has not qualified for exemption u/s 11(1)(d), is bad in law and against the facts and circumstances of the case.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.1,61,20,000/- on account of loan received and that too by recording incorrect facts and findings and without observing the principles of natural justice.

5. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs. 1,61,20,000/- on account of loan received, is bad in law and against the facts and circumstances of the case.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not holding the entire income assessed as exempt u/s 10(23C)(iiiad) of Income Tax Act.

7. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred

in law and on facts in not reducing the deficit of Rs. 88,85,091/- as per law.

8. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

2. The brief facts of the case are that the assessee filed its original assessment in this case for A.Y. 2010-11 and AO completed the assessment u/s143(3) of the Income Tax Act, 1961 (in short "Act") on 22.03.2013 at total income of Rs.3,24,88,010/-. Assessee appealed against the said assessment order, which was dismissed by the Ld. CIT(A) vide his order dated 19.02.2015 against which assessee preferred appeal before the Tribunal which was disposed by Tribunal vide its order dated 29.06.2016 in Appeal No. ITA 3229/DEL/2015. Copy of the order of the Tribunal dated 29.06.2016 is enclosed at page 283 to 303 of the paper book filed by the assessee, according to which all the issues involved in that appeal were restored to the A.O. for fresh adjudication and it was directed by the Tribunal in that order to A.O. to

consider the decision of the Hon'ble Apex Court in the case Queens Educational Society 372 ITR 699(SC) and also the decisions of Kolkata Bench in the case Sree Sree Ram Krishna Samity 156 ITD 646. Accordingly, the present assessment order dated 29.11.2017 was passed by the A.O. u/s 143(3) / 254. The appeal order dated 24.10.2018 was passed by Ld. CIT(A), Ghaziabad against which the present appeal before us has been filed raising the above mentioned grounds of appeal. At the time of hearing Counsel for the Assessee, Dr. Rakesh Gupta filed written synopsis and also orally argued the case and relied upon various pages of paper book also. Ld. Counsel for the assessee filed case laws compilation consisting 19 cases running into 119 pages. Ld. Counsel for the assessee made submissions relating to GROUND NO. 1 and contended that benefit of section 11 and 12 should be granted to the assessee in view of the fact that registration u/s 12AA has been granted by the Commissioner w.e.f. 01.04.2011 vide letter dated 16.07.2013. Ld. Counsel drew our attention to page 62-63 of the paper book, which is the order passed by CIT, dated 16.07.2013 in which registration has been granted w.e.f. 21.04.2011. Ld. Counsel for the assessee submitted that

proviso to section 12AA(2) was inserted w.e.f. 01.04.2014 but which should be read as retrospective as it is clarificatory in nature. Ld. Counsel for the assessee drew our attention to page 159 to 161, 166- 168 of the paper book explaining the case of the appellant and relied upon the following judicial decisions in support of his contention:-

- Sree Sree Ram Krishna Samity vs. DCIT, (2016) 156 ITD 0646 (Kol.)
- SNDP Yogam vs. Asstt. DIT (Exemption), (2016) 161 ITD 0001 (Cochin.)
- ITO vs. Shri Vishwakalyan Jivraksha, ITA No. 2013/Pune/2014, dated 22.07.2016.

3. On the other hand, Ld. Sr. DR opposed the contention made on behalf of the assessee and submitted that benefit of section 11 and 12 was granted w.e.f. 01.04.2011, whereas the case of the assessee relates to A.Y. 2010-11. Ld. Sr. DR further argued that proviso to section 12A(2) is not retrospective and the case laws relied upon by Ld. Counsel are distinguishable and registration was not granted during the period when assessment was pending of the present assessment year.

4. Having heard the rival submissions and having gone through the paper book, case laws cited before us, we are of the considered view that appellant is bound to succeed in respect of Ground No. 1. It is seen from para 4.1 at page 3 of the assessment order that assessee has been treated as engaged solely in the educational activities and has been , granted exemption by the A.O. himself u/s 10(23C)(iiiad) by following the decision of the Apex Court in the case Queens Educational Society 372 ITR 699(Supra). It is also seen that CIT has granted registration w.e.f. 01.04.2011 vide his letter dated 16.07.2013 as is clear from page 62-63 of the paper book. Registration initially was refused by Ld. CIT vide his order dated 28.10.2011 on the technical ground that since assessee's Trust is registered in Delhi, he being CIT, Ghaziabad does not have jurisdiction. Copy of this order dated 28.10.2011 is enclosed at page 325-326 of the paper book. Thus, it is clear that registration initially was refused on the technical ground that CIT did not have jurisdiction on the assessee trust. There were no adverse comments / findings or observations of CIT either in the matter of objects of the trust or in respect of the activities of the trust. When this order dated 28.10.2011 was

appealed by the assessee before the Tribunal, the Tribunal vide its order date 12.11.2012 restored the matter back to the CIT to consider the issue on merit and further that if CIT, Ghaziabad does not have jurisdiction, then CIT, Ghaziabad should transfer the application to the CIT, who holds jurisdiction over the assessee trust. This order of the Tribunal dated 12.11.2012 is available at page 327-330 of the paper book. The registration order dated 16.07.2013 was passed by CIT after receiving the direction from the Tribunal vide its order dated 12.11.2012 and such registration order is available at page 62-63 of the paper book in which CIT held that he was having jurisdiction over the assessee trust and since he was satisfied as to the charitable objects and activities of the trust, registration u/s 12AA was granted with effect from 01.04.2011. We find that first proviso has been inserted to section 12A(2), which is reproduced as under:-

Provided that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the

aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year:

Provided further that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA.

4.1 The above proviso was added by Finance Act, 2014 w.e.f 01.10.2014, according to which, if registration has been granted to the trust then the provision of section 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid

assessment year for which assessment proceedings are pending before the A.O. as on the date of such registration.

4.2 In the instant case, original assessment order was passed on 22.03.2013 whereas the registration was granted by CIT vide his order dated 16.07.2013 but it cannot be ignored that the registration was given w.e.f. 01.04.2011. It is also seen that the assessment order dated 22.03.2013 was appealed by the assessee and thus as on 16.07.2013, the appeal was pending before CIT(A). In any case when the present assessment order was passed on 29.11.2017 after the remand by the Tribunal, registration was already granted by CIT vide his order dated 16.07.2013. Therefore, in our considered opinion, the case of the appellant stands on better footing in as much as the registration stood already granted when the present assessment order was passed on 29.11.2017. Thus the benefit of section 11 and 12 should be made available to the assessee for the present assessment year i.e. A.Y. 2010- 11 also in terms of the proviso to section 12A(2). Ld. CIT while granting registration vide his order dated 16.07.2013 or the A.O. while passing the impugned assessment order have not made any adverse observation about the objects and activities

of the assessee's trust or that the objects and activities of assessee trust were not same in the year when the registration was granted. In other words the objects and activities of the trust remained same in A.Y. 2010-11 and in A.Y. 2012-13 and therefore, the conditions as required in terms of proviso to section 12A(2) stand met in the preset case. We are fortified in support our view and also as to the retrospectivity of the amendment, with the decision of Kolkata bench in Sree Sree Ram Krishna Samity vs. DCIT, (2016) 156 ITD 0646 (Kol.) 86 SNDP Yogam vs. Asstt. DIT (Exemption), (2016) 161 ITD 0001(Cochin) 86 ITO vs. Shri Vishwakalyan Jivraksha, ITA No. 2013/Pune/ 2014, dated 22.07.2016. It is appropriate to reproduce the relevant portion of the decision of Cochin Bench in the case of SNDP Yogam vs. Asstt. DIT (Exemption) (Supra .

"When section 12A of the Act was amended by introducing new provisos to sub-section (2) of s. 12A by Finance Act, 2014 with effect from 01.10.2014, the assessment orders passed by the assessing officer in respect of the present assessee were pending in appeal before the first appellate authority. During such pendency, the assessee was granted registration u/s 12AA of the Act on 29.07.2013

w.e.f. the assessment year 2013-14. Those appeals were the continuation of the original proceedings and that the power of the Commissioner of Income-tax was co-terminus with that of the assessing officer [ADIT (Exemption) in the present case] were two well established principles of law. In view of the above and going by the principle of purposive interpretation of statutes, an assessment proceeding which is pending in appeal before the appellate authority should be deemed to be 'assessment proceedings pending before the assessing officer' within the meaning of that term as envisaged under the proviso. It follows there-from that the assessee which obtained registration u/s 12AA of the Act during the pendency of appeal was entitled for exemption claimed u/s 11 of the Act.

4.3 Therefore, in view of the above discussion we hold that assessee is entitled to the benefit of registration & section 11 & 12 of the Act in the present assessment year i.e. AY 2010-11 also and it is directed to Ld. A.O. to grant benefit of section 11 and 12 to the assessee. Accordingly, this ground of appeal is decided in favour of the appellant-assessee.

5. Regarding Ground No. 2 & 3 in which challenge has been made to the addition of Rs. 1,63,00,000/- on account of corpus donations, A.O. held that such corpus donation cannot be treated as exempt u/s 11(1)(d) as according to the A.O. assessee trust is not registered u/s 12AIA in the year under appeal.

5.1 The facts relating to this addition are that assessee raised loans aggregating to Rs. 1,63,00,000/- from nine persons during the F.Y. 2008-09 as under:-

<u>S.NO.</u>	<u>NAME</u>	<u>AMOUNT</u>
1.	Anuj Mittal	Rs.20,00,000/-
2.	Ashwani Goel	Rs. 18,00,000/-
3.	Dhanesh Chand Gupta	Rs. 15,00,000/- 1
4.	Mayank Goel	Rs. 20,00,000/-
5.	Naresh Agarwal	Rs. 20,00,000/-
6.	Rakesh Mohan Goel	Rs. 15,00,000/-
7.	Shivalya Steel	Rs. 20,00,000/-
8.	Sushma Bhatia	Rs. 20,00,000/-
9.	Tejindra Singh	Rs. 15,00,000/-

5.2 During the year covered by the present appeal, the above said loans were converted into corpus donations at the instance of the lenders. According to the A.O. since benefit of section 11 and 12 is not available to the assessee trust, such corpus donations become taxable in view of the decision of Hon'ble Supreme Court in the case of U.P. Forest Corporation vs. DCIT 297 ITR 1(SC) as the per decision of Rasipuram Rotary Club Trust vs. ITO ITA No. 45/MDS/2015 (supra). Accordingly ne said amount of Rs. 1,63,00,000/- was brought to the tax by A.O. and which addition was confirmed by C1T(A).

5.3 Ld. Counsel for the assessee submitted that the said amount aggregating to Rs. 1,63,00,000/- was not received during the year under appeal but were received in previous year relevant to A.Y. 2009-10 where these loans were accepted as genuine loans. Ld. Counsel further submitted that since these loans were given by the promoters for the purpose of construction of the building of the assessee society, the promoters gave letters to the assessee trust converting their loans to the corpus donations. Our attention was drawn to page 64-72 of the paper book, which are the copies of letters from the promoters transferring their loans to the donations.

Also copy of the assessment order u/s 143(3) for A.Y. 2009-10 was placed before us which is available at page 73-74 of the paper book. Ld. Counsel further submitted that since benefit section 11 and 12 is to be granted to the assessee in view of the arguments made in Ground No. 1, benefit of section 11(I)(d) may also be allowed in respect of such corpus donations aggregating to Rs. 1,63,00,000/-. It was further submitted by Ld. Counsel for the assessee on a without prejudice basis that even if benefit of section 11 and 12 is not granted to the assessee yet such corpus donations are capital receipts and are not taxable in view of several judicial decisions mentioned at page—6 of the synopsis filed by the Ld. Counsel. Regarding the decision of Hon'ble Supreme Court, it was argued by Ld. Counsel for the assessee that facts of that case and proposition of the law are different from the fact & case of the assessee.

5.4 Regarding the decision of Chennai Bench of Tribunal in the case Rasipuram Rotary Club Trust vs. ITO ITA No. 45/MDS/2015 (supra), it was argued that decision is of single member bench whereas assessee seeks to rely upon the decisions of the Tribunal rendered by division benches and also by Hon'ble Delhi High Court decision in the case of DCIT vs.

Basanti Devi & Shri Chukhan Lai Garg Education Trust and Sh. Chakhan Lai Garg Education Trust, dated 23.09.2009, Copy of which was placed at page 62 of the case laws compilation.

5.5 On the other hand, it was argued by the Ld. Sr. DR that benefit of section 11(1)(d) cannot be made available to the assessee as assessee trust is not registered u/s 12AA for the current year and the decision of Chennai Bench in the case of Rasipuram Rotary Club Trust vs. ITO ITA No. 45/MDS/2015 (supra) be followed in which it has been held that corpus donation received by an unregistered trust is taxable. Ld. Sr. DR relied upon the decision of Hon'ble Supreme Court also in the case of U.P. Forest Corporation vs. DCIT 297 ITR 1(SC).

5.6 Having heard the rival submissions and perused the entire material before us and in view of our decision of Ground No. 1 it is held that the donations being corpus donation are eligible for exemption u/s 11(1)(d). Assessee trust having been granted registration w.e.f. 01.04.2011 vide CIT's order dated 16.7.2013, benefit of section 11 and 12 is to be given for the year before us as per our detailed decision given in Ground No. 1. Accordingly, as per section 11(1)(d), such corpus donations are exempt and cannot be brought to tax. Therefore, the action

of A.O. in bringing to tax the corpus donation of Rs.1,63,00,000/- to tax is not justified & hence is reversed. In any case, the corpus donations received as loans in 2009-10 were accepted as genuine and the assessment order for A.Y. 2009-10 was passed u/s 143(3) placed at page 73-74 of the paper book. We have gone through page 64-72 being copies of the letters from the promoters directing the assessee trust to transfer their loans to corpus donation. There is not even an iota of adverse observation as to the nature of impugned donations not being in the nature of corpus donations. Therefore, these amounts having been accepted as genuine loans in A.Y. 2009-10 and having been accepted as corpus donations in the year under appeal, benefit of section 11(1)(d) cannot be denied in view of our decision rendered in Ground No. 1 above. Regarding the alternative contentions raised by Ld. Counsel for the assessee, we find that it has been held in the decisions reproduced at page—6 of the synopsis and also the decision of Hon'ble Delhi High Court in the case of Basanti Devi, supra that even if trust is not registered u/s 12AA yet corpus donation being in the nature of capital receipts cannot be brought to tax. Therefore, the action of A.O. in making

addition of Rs.1,63,00,000/- covered by Ground No. 2 fit 3 cannot be approved and therefore, the addition is directed to be deleted. Accordingly Ground No. 2-3 are decided in favour of appellant.

5.7 We have gone through the decisions of Hon'ble Supreme Court in the case of U.P. Forest Corporation vs. DCIT 297 ITR 1 (Supra) and in our considered opinion the said decision is not applicable to the fact of the present case in as much as in the present case the benefit of section 11 and section 12 is deemed to be granted in view of the retrospective operation of the proviso to section 12A(2) and in any case even if it is taken that such benefit of section 11 and section 12 is not applicable yet corpus donations being in the nature of capital receipts cannot be brought to tax. Regarding Chennai Bench decision in the case of Rasipuram Rotary Club Trust vs. ITO ITA No. 45/MDS/2015 (supra), we find that the said decision is a single member Bench decision and therefore, we are inclined to follow the decisions of various division Bench, Supra and also the decision of Hon'ble Delhi High Court in the case DIT vs. Basanti Devi & Shri Chakhan Lai Garg Education Trust, ITA No. 927/2009, date of order 23.09.2009.

6. Regarding Ground No. 4-5, which is in respect of an aggregate addition of Rs. 1,61,20,000/- , A.O. held that these amounts were received from five persons as under:-

S.NO. NAME OF PARTY ADDITION

- | | | |
|----|---------------------------|-------------|
| 1. | Nav Bharat Enterprises | 9,00,000/- |
| 2. | Pranjal Steel Trading Co. | 15,50,000/- |
| 3. | Salasar Steel Syndicate | 30,50,000/- |
| 4. | Singhal Enterprises | 48,00,000/- |
| 5. | Sri Vasudcv Iron P. Ltd. | 58,70,000/- |

Total:- 1,61,20,000/-

6.1 According to A.O. the assessee has not established ingredients of section 68. Accordingly the addition was made which was confirmed by CIT(A).

6.2 Ld. Counsel for the assessee drew our attention to various pages of the paper book given at page 8-9-10 of the synopsis and submitted that these loans were confirmed by the respective lenders, that these loans were given through banking channel & that the lenders were assessed to tax and so much so these amounts have been returned through banking channel to the respective lenders. Ld. Counsel submitted that the notice issued u/s 133(6) were served on the

lenders and yet if lenders chose not to comply with such notices, blame cannot be put on the assessee. Ld. Counsel for the assessee therefore submitted that assessee has established not only the identity of the lenders but also the creditworthiness of the lenders and also the genuineness of the loans. Ld. Counsel for the assessee relied upon judicial decisions which are as under & which were part of case laws compilation: -

- Pr. CIT vs. Hi-Tech Residency (P) Ltd. (2018) 257 Taxmann 335 (SC)
- Pr. CIT vs. Hi-Tech Residency (P) Ltd. (2018) 257 Taxmann 390 (Del.)
- CIT vs. Real Time Marketing P. Ltd. (2008) 306 ITR 0035 (Del.)
- CIT vs. Jai Kumar Bakiliwal (2014) 366 ITR 0217 (Raj.)
- Aravli Trading Co. vs. ITG (2010) 187 Taxmann 0338 (Raj.)
- Nemi Chand Kothari vs. CIT & Anr. (2003) 264 ITR 0254 (Gau.)
- CIT vs. Shri Ram Narain Goel (1997) 224 ITR 0180 (P&H)

6.3 On the other hand, Ld. Sr. DR relied upon the assessment order and CIT(A)'s order and relied upon the decision of Hon'ble Delhi High Court in the case of DCIT vs. NDR Promoters P. Ltd. ITA No. 49/2018 dated 17.01.2019,

6.4 We have perused the entire material, which is before us and we find that assessee has brought sufficient material on record to prove that lenders have confirmed the amount of loans, which have been given through banking channel and the lenders were assessed to tax and that the loans have substantially been repaid back through banking channel. We would like to refer to various pages of the paper book relied upon by Ld. Counsel in the synopsis at page 8-9-10. We have gone through the various pages of the paper book as referred by Ld. Counsel and we are of the considered opinion that not only the identity and creditworthiness of the lenders stand proved but also the genuineness of the loans stands proved. The decisions relied upon by Ld. Counsel support the case of the assessee. The pages of the paper book referred by Ld. Counsel which we have also perused are as under:
PB 169-171 are submissions to Ld. CIT(A).

PB 173 is the details of repayment of loan of Rs. 38,70,000/- to Shri Vasudev Iron P. Ltd.

PB 174, 175-176 are the copies of bank statement / bank advice showing the repayment of Rs. 38,70,000/- through M/s Shri Vasudev Iron P. Ltd.

PB 177-178, 179 are the evidences of repayment of loans of Singhal Enterprises aggregating to Rs. 48,00,000/-.

PB 180, 181 is the copy of evidence of repayment of loans of Rs. 16,0,000/- to M/s Nav Bharat Enterprises.

PB 182-186 is the copy of bank statements of the assessee showing the repayments of various loans.

PB 83-127 are the evidences of loans as under:-

PB 83 is the copy of ledger account of M/s Nav Bharat Enterprises in the book of appellant.

PB 84 is the copy of confirmed ledger account of M/s Nav Bharat Enterprises.

PB 85 is the copy of PAN of M/s Nav Bharat Enterprises.

PB 86 is the copy central Excise registration certificate in the Form RC

PB 87-89 is the copy of bank statement of M/s Nav Bharat Enterprises to show that loan were received and refunded back through banking channel.

PB 90-92, 93-97 is the copy of computation of income, acknowledgment of return for A.Y. 2010-11 and A.Y. 2016-17 of M/s Nav Bharat Enterprises.

PB 98-99 is the copy of bank statement of the appellant to show that repayment of loan through banking channel.

PB 100 is the copy of ledger account of M/s Pranjali Steel Trading Co. in the book of appellant.

PB 101, 102 is the copy of confirmation of M/s Pranjali Steel Trading Co. along with confirmation letter.

PB 103-104 is the copy of statement of account of M/s Pranjali steel Trading Co.

PB 105 is the copy of ledger account of M/s Salasar Steel Syndicate in the book of appellant.

PB 106, 107 is the copy of confirmation of account of M/s Salasar Steel Syndicate along with confirmation letter.

PB 108-110 is the copy of statement of account of M/s Salasar Steel Syndicate

PB 111 is the copy of ledger account of M/s Singhal Enterprises in the book of appellant.

PB 112, 113 is the copy of confirmation of account of M/s Singhal Enterprises along with confirmation letter.

PB 114 is the copy of statement of account of M/s Singhal Enterprises PB 115 is the details of repayment of loan to M/s Singhal Enterprises.

PB 116-118 is the copy of bank statement of the appellant to show that repayment of loans through banking channel.

PB 119 is the copy of ledger account of Sh. Vasudev Iron P. Ltd. in the book of appellant

PB 120, 121 is the copy of confirmation of account of M/s Vasudev Iron P. Ltd. along with confirmation letter.

PB 122-124 is the copy of statement of account of Sri Vasudev Iron P. Ltd.

PB 125 is the detail of repayment of loan to M/s Sri Vasudev Iron P. Ltd.

PB 126-127 is copy of bank statement of the appellant to repayment of loan to M/s Vasudev Iron P. Ltd. through banking channel.

6.5 We have gone through the decision of Delhi High Court relied upon by Ld. Sr. DR but we find that the facts in the present case are materially different from the facts of the present case. In the present case there is no share capital involved nor is there any statement of accommodation entry having been given by any person. Therefore, addition of Rs. 1,61,20,000/- made in the assessment order is hereby deleted in view of above mentioned factual evidences establishing the identity, capacity of the lenders and genuineness of the loans. Thus, Ground No. 4-5 of the present appeal stand allowed in favor of the appellant.

7. Regarding Ground No. 6, it is held that Ld. A.O. himself has allowed the benefit of exemption u/s 10(23C)(iiiad) of the Income Tax Act, vide para 4.1 at page 3 of the assessment order, therefore, the income of the assessee trust is exempt u/s 10(23C)(iiiad) and it is held accordingly.

8. Regarding Ground No. 7 since the income of the assessee trust is exempt u/s 10(23)(iiiad) and benefit of section 11 and 12 having been allowed as per our decision in Ground No. 1, there is no substance left in (Ground No. 7 and hence it is dismissed.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on 05/02/2019.

Sd/-

**[L.P. SAHU]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Dated:05/02/2019

SR BHATNAGAR

Copy forwarded to: -

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

By Order,

ASSISTANT REGISTRAR

