



**आयकर अपीलीय अधिकरण “ऐ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, MUMBAI**

श्री शक्तिजीत दे, न्यायिक सदस्य एवं  
 श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।  
**BEFORE SHRI SAKTIJIT DEY, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.7513/Mum/2016  
 (निर्धारण वर्ष / Assessment Year: 2012-13)

<b>Adarsh Education Society</b> 1407, Casa Grand Towers, 14th Floor S.B. Marg, Opp. Peninsula Corporate Park, Lower Parel, Mumbai-400 018.	<b>बनाम/ Vs.</b>	<b>Income Tax Officer–(Exemptions)-1(1)</b> Room No.508, 5th Floor Piramal Chambers Parel, Mumbai-400 012.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AAATA-6104-D</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

पीलार्थीकी ओरसे/ <b>Appellant by</b>	:	Shri Satish Mody-Ld. AR
प्रत्यर्थीकी ओरसे/ <b>Respondent by</b>	:	Shri Manoj Kumar –Ld.DR

सुनवाईकी तारीख/ <b>Date of Hearing</b>	:	29/08/2019
घोषणाकी तारीख / <b>Date of Pronouncement</b>	:	04/09/2019

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member): -**

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2012-13 contest the order of Ld. Commissioner of Income-Tax (Appeals), Mumbai-1, [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)—I/IT/E-I(62)/2015-16 dated 14/10/2016* partly confirming the assessment



framed by learned AO u/s 143(3) on 28/03/2015. The assessee is aggrieved by disallowances / computations made by Ld. AO in terms of Section 11(1)(a) / 11(2) & 11(3) of the Income Tax Act, 1961. The assessee is stated to be a trust registered u/s 12A of the Act.

2 As per assessee's computation, the assessee has earned gross income of Rs.432.38 Lacs during the year consideration and 15% of the same i.e. 64.85 Lacs has been set apart for application as per Section 11(1)(a) of the Act. The assessee is stated to have applied amount for charitable purpose to the extent of Rs.166.33 Lacs (excluding expenditure of Rs.65.41 Lacs spent out of income of AY 2011-12). The balance surplus i.e. Rs.201.19 Lacs has been accumulated u/s 11(2). However, Ld. AO, vide para 5.2, recomputed the surplus for the year at Rs.147.34 Lacs as against Rs.201.19 Lacs computed by the assessee. Further, the amount of Rs.44.11 Lacs stated to be incurred out of accumulated income of earlier AY was held to be incurred for general purpose and not utilized for specific purposes in violation of Section 11(2). In the final computations, the claim u/s 11(2) was restricted to Rs.147.34 Lacs and an amount of Rs.114.43 Lacs was brought to tax as the income of the assessee u/s 11(3). Although the assessee assailed the computations before Ld. CIT(A), however, without any success vide impugned order dated 14/10/2016. Aggrieved, the assessee is in further appeal before us.

3. During the course of hearing, learned authorized representative for assessee, *inter-alia*, stressed the point that the action of Ld. AO has resulted into double taxation of income and the factual matrix require to be re-ascertained since the issue has not been independently examined /



deliberated by learned first appellate authority. The learned Departmental Representative also concurred with the said submissions and pleaded that the matter may be restored back to the file of Ld.AO for re-consideration.

4. Keeping in view the pleadings made by respective representative, the bench formed an opinion that it would be in the fitness of thing to set aside the impugned order on the stated issues and restore the matter back to the file of Ld. AO for adjudication *de-novo*. We order so. Needless to add that sufficient opportunity of being heard shall be granted to the assessee, who in turn, is directed to put forth his stand, in this regard.

5. In the result, the appeal stands allowed for statistical purposes.

*Order pronounced in the open court on 04<sup>th</sup> September, 2019.*

**Sd/-**  
**(Saktijit Dey)**  
न्यायिक सदस्य / **Judicial Member**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :  
Sr.PS:-Jaisy Varghese

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.**