

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.5411/Del/2012
I.T.A. Nos.1640 & 1642/Del/2019
Asstt.Years: 2009-10, 2007-08 & 2014-15**

**Hamdard National Foundation (India), vs ACIT(Exemption)
2A/3, Hamdard Building, New Delhi.
Asaf Ali Road, New Delhi.
PAN: AAATH0843G**

**I.T.A. No.4789/Del/2012
I.T.A. No.3403/Del/2014
I.T.A. Nos.1845 & 4260/Del/2016
Asstt.Years: 2008-09, 2010-11, 2011-12 & 2012-13**

**ACIT(Exemption) vs Hamdard National Foundation (India),
New Delhi. 2A/3, Hamdard Building,
Asaf Ali Road, New Delhi.
PAN: AAATH0843G**

**Cross Objection No.464/Del/2012
(In I.T.A. No.4789/Del/2012)
Assessment Year: 2008-09**

**Hamdard National Foundation (India), vs ACIT(Exemption)
2A/3, Hamdard Building, New Delhi.
Asaf Ali Road, New Delhi.
PAN: AAATH0843G
(Appellant) (Respondent)**

**Assessee by: Shri R.M. Mehta, Advocate
Department by: Ms. Sushma Singh, CIT DR
Shri Amit Katoch, Sr. DR**

Date of Hearing: 13.08.2019

Date of Pronouncement: 01.11.2019

ORDER

PER K. NARASIMHA CHARY, JM

This is a batch of eight appeals, three appeals by the assessee for Asstt. Years 2007-08, 2009-10, & 2014-15, four by the revenue for Asstt. Years 2008-09, 2010-11, 2011-12 & 2012-13 and Cross Objection by the assessee for the Asstt. Year 2008-09 against the separate orders of the Commissioner of Income-tax (Appeals), New Delhi for the respective assessment years. For the sake of convenience, we deem it fit and proper to dispose of these appeals by a common order.

2. Brief facts of the case are that the Hamdard Laboratories (India) ("HLI") came into existence being constituted on 28/08/1948. Partners of the business in HLI are also known as "Hamdard Dawakhana (Wakf)". They dedicated the said business to charity. Hamdard National foundation (India) ("HNF") ("the assessee") was setup as a charitable trust in 1964 with the main objects of running educational and medical institutions/providing medical relief, namely, as a special purpose vehicle to effectuate the charitable activities of HLI in the areas of relief to the poor, education and medical relief. Hamdard Dawakhana (Wakf) as a charitable institution has been enjoying the benefits of section 11 and 12 of the Income-tax Act, 1961 ("the Act") and also exemption under section 10(23C)(iv) of the Act. The assessee enjoyed the benefit of sections 11 and 12 of the Act all the while till the assessment year 2007-08, but in the year assessment year 2007-08 the learned Assessing Officer rejected the

claim for exemption under section 11 and 12 of the Act to the assessee for the years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 on the ground that there had been a violation of the provisions of section 13(2)(b) of the Income Tax Act, 1961 (for short "the Act") read with the provisions of section 13(3)(b) of the Act vis-à-vis the letting of properties at the Asif Ali Road and Rajdoot Marg, New Delhi owned by the assessee to another trust, namely, Hamdard Dawakhanna (Wakf) at the rents alleged to be lower than the prevailing market rates. The properties were said to have been taken by Hamdard Dawakhana (Wakf) for charitable activities only.

3. In the appeals preferred by the assessee, Ld. CIT(A) reversed the assessment orders for the assessment years 2007-08, 2008-09 and 2010-11 whereas confirmed the same for the assessment year 2009-10. For assessment years 2010-11 and 2011-12, the Ld. CIT(A) had allowed exemption under section 11 of the Act.

4. Learned Assessing Officer also invoked the proviso to section 2 (15) of the Act in respect of the royalty income earned by the assessee pursuant to an agreement entered into between the assessee and HLI for the use of the brand names/patent rights (owned by HNF) for its medical preparations. According to the learned Assessing Officer, the said royalty represented a commercial receipt as it assisted HLI in furthering its business activity.

5. Besides this, learned Assessing Officer recorded that the assessee paid a major portion of the scholarship amount to the students of a

particular religious community and therefore there is violation of section 13(1)(b) of the Act. We shall deal with these aspects hereunder.

ITA No. 1640/Del/2019 (AY 2007-08).

6. Coming to the issue covered by grounds No. 1 to 5, namely, rejection of exemption under section 11 of the Act on the ground of violation of provisions under section 13(2)(b) of the Act read with section 13(3) of the Act, it could be seen from the assessment order for the assessment year 2007-08, during the scrutiny learned Assessing Officer found that the assessee received a sum of Rs.46,41,028/- towards rentals received in respect of the property of the assessee. On enquiries, learned Assessing Officer came to know that the market rent of the properties at a Chanakya Puri and Asaf Ali road was much higher than the rent at which the assessee had entered into agreement with its substantial donor Hamdard Dawakhana among other organisations. Further, we find that the learned Assessing Officer based the addition on the website information and also two letters from two estate agents under section 133(6) of the Act from one HSN Reality Services and CB Richard Ellis South Asia private limited.

7. Ld. CIT(A), on consideration of the material available on record and in the light of the submissions made on either side, observed that the onus to prove the basis for the addition was on the learned Assessing Officer; that the examination of the facts reveal that such a onus was not discharged by the Revenue because the learned Assessing Officer was completely misdirected by placing the onus on the assessee; that the assessing officer had acted entirely on the basis of information on the Internet without confronting the assessee with any evidence and that

also under legal notion that something which was in the public domain need not be confronted to the affected party; that the learned Assessing Officer having accepted that there was no mechanism with the Department to undertake “valuation of rent” should not have applied the provisions under section 13 of the Act entirely on surmises and conjectures without the existence of evidence including the so-called collaborative evidence; that the property at Asaf Ali road was tenanted to HLI as far back as in the year 1981 with a periodical increase in the rent and on numerous occasions in the numerous assessments framed under section 143(3) of the Act, learned Assessing Officer had accepted the agreement between the parties is not violative of section 13 of the Act; that the property Chanakya Puri was not occupied till December 2009, lying vacant prior thereto; and that there had to be uniformity in treatment and consistency of approach when the facts and circumstances were identical and the learned Assessing Officer cannot change his view by examining the same set of facts in a different light, more so when the question is one of an exemption enjoyed over a few decades and the case of the Department sans evidence. *Ld. CIT(A)*, therefore, for the assessment year 2008-09 had taken a view that such an addition is not sustainable. However a different view was taken for few other years.

8. It is the submission on behalf of the assessee that right from 1981-82 for about a period of 26 years, on the same set of facts, the rents received by the assessee in respect of the property at Asaf Ali Road, New Delhi has been accepted by the Revenue, that the rent between the parties had been increased from time to time, beginning from Rs.20,000/- per month from 1981-82 and going up to Rs. 2 Lacs per

month in the period under consideration, that the rent received is higher than the annual lease value fixed by the Municipal Corporation of Delhi for the purpose of house tax, that the HLI to whom the property has been let out is also a charitable institution and enjoying the exemption under section 10(23C)(iv) of the Act/11 of the Act and even if the benefit is assumed, the same is not derived by any individual but by another charitable institution, the department had accepted all these years the agreement between the HNF and HLI without drawing any adverse view in all the assessments under section 143(3) of the Act; and that the "market rent" had to be determined with reference to the period of tenancy, the terms of lease, the area etc and not by referring to websites which may reflect the current position, dehors the facts of the case and without any guarantee as to its accuracy.

9. Grievance of the assessee has been that the learned Assessing Officer never confronted the assessee with any evidence that was collected behind the back of the assessee, but the learned Assessing Officer maintained that the said information is available on Internet and can also be accessed from the Internet which is a public domain and the Department has no method to have valuation of rent done independently by any government agency.

10. As a matter of fact, in the order for the assessment year 2008-09, Ld. CIT(A) dealt with this aspect in detail and recorded a finding that the learned Assessing Officer cannot say that the information collected by him has already been in the public domain and not obtained behind the back of the assessee, inasmuch as the Assessing Officer is duty bound to confront the assessee with such information if it is to be used against the

assessee in any proceedings. CIT(A) further found that it is an admitted fact that the property of the assessee at Asaf Ali Road was tenanted to Hamdard Wakf as far back as in the year 1981 with a periodical increase in the rent and in numerous assessments framed under section 143(3) of the Act, the Assessing Officer accepted the agreement between the parties finding no ground to invoke the provisions of section 13(2)(b) of the Act/13(3) of the Act; whereas the property at Chanakya Puri was not even prepared during the assessment year 2008-09 and was lying vacant.

11. It has rightly been observed by the Ld. CIT(A) that there has to be uniformity in treatment and consistency in approach when the facts and circumstances are identical and the learned Assessing Officer cannot change the views by looking at the same set of facts in a different manner more so when the question is of exemption enjoyed by an assessee for the last few decades and case of Revenue sans evidence and based entirely on surmises and conjectures.

12. It could be seen from the letters issued by HSA reality services and CB Richard Ellis South Asia private limited, they have given information available with them and to the best of their knowledge and belief whereas CB Richard Ellis South Asia Private limited is clear in their observation that there is no verified market referral rate and the information furnished by them and make no guarantee, warranty or representation about it, requested the learned Assessing Officer to independently verify and confirm its accuracy and completeness. They are also specific in their statement that the information furnished by them does not represent the current or future performance of the market. Even on the face of the caveat mentioned above, it does not

seen from the record that the Assessing Officer did any independent exercise to verify the correctness or applicability of the information furnished by those two persons vis-à-vis the extent location and suitability of the property in dispute for its comparison to the market rates provided by those persons and also the information gathered from the website.

13. Further we have gone through the information furnished relating to the annual rent received in respect of these two properties in the light of the valuation as per the MCD and find that the rent received by the assessee is far above the valuation as per the MCD. According to section 6A of the Delhi Rent Control Act, 1958 the standard rent, or, where no standard rent is fixed under the provisions of such an Act in respect of any premises, the rent agreed upon between the landlord and the tenant, maybe increased by 10% every 3 years. The statement clearly show that for every three years there is an enhancement of rent received by the assessee in respect of both these properties and way back in 2006-07 the rent received by the assessee was Rs.24 Lacs whereas the valuation as per the MCD was Rs.18,11,619/- which was increased every three years, namely, by 2009-10, it was Rs.20.64 Lacs as against the valuation of MCD Rs.18,11,619, by 2011-12 it was Rs.63.13 lakhs and by 2014-15 it was Rs.90.96 Lacs as against Rs.21.47 lakhs and Rs.25.37 lakhs respectively in respect of the Asaf Ali road property. Likewise, the rent received by the assessee in respect of Chanakya Puri property was Rs.18 Lacs, Rs.19.8 lakhs, Rs.37.61 Lacs, and Rs.54.24 Lacs by 2006-07, 2010-11, 2011-12 and 2014-15 respectively as against the corresponding MCD

value of Rs. 1.80 Lacs, Rs. 1.80 Lacs, Rs. 8.74 Lacs and 10.48 lakhs respectively for such years.

14. Moreover, the lease agreement in question was executed on 16/7/1982 in respect of Asaf Ali road property and also for this period this agreement was accepted in the same set of facts and circumstances without raising any objection. It is submitted on behalf of the assessee that, the assessee gave property on rent to another charitable trust which perhaps has given the same to its directors so should there be anything to be charged to tax that has to be charged to tax in the hands of such other charitable trust or the director, but in any case not in the hands of the assessee.

15. On consideration of the entire material before us and in the light of the submissions made on either side which are conclusive that the law requires the Revenue to bring on record cogent evidence to justify the invocation of section 13 of the Act and the material collected by the learned Assessing Officer from the Internet as well as the estate agents cannot be termed as the collaborative piece of evidence to any facts which is established substantively first; that the actual rent received by the assessee from HLI far exceeds the valuation adopted by the MCD for the purpose of levying house tax as could be seen from the information furnished by the assessee and also that unless and until the learned Assessing Officer brings on record some credible information, the burden to rebut does not shift to the assessee.

16. We are, therefore, convinced with the reasoning given by the Ld. CIT(A) in his order for the Assessment Year 2008-09 wherein while

dealing with this issue in detail, the Ld. CIT(A) reached a conclusion that on the date of the observations of the learned Assessing Officer that there is no mechanism with the Department to determine “valuation of rents” imperative the adjudicatory authorities to look further corroborative evidence in the absence of which it is not desirable to disturb the consistent view taken over a period of more than two decades. We are in agreement with the Ld. CIT(A) that not only on the basis of the rule of consistency but also on the basis of the facts relating to the rent received by the assessee from HLI vis-à-vis the rent under the Delhi Rent Control Act. Without vouchsafing the correctness of the information received from the website and without correlating the information furnished by the property dealers without realities on ground with a specific reference to the property in dispute, it is not open for the Assessing Officer to proceed to make addition, that disturbing the accepted position for about more than two decades. No change of facts and circumstances are brought on record and no independent evidence with a specific relation to the property in dispute is available on record. Merely because the other charitable trust **guilty** property for accommodation of the person covered under section 13(3) of the Act, such a fact ipso facto does not lead to the addition in the hands of the assessee without first clinching the issue with corroborative piece of evidence. We therefore, hold that there is no justification for addition made by the learned Assessing Officer by invoking the provisions under section 13(2)(b) of the Act read with section 13(3) of the Act and we direct him to delete the same.

17. Ground No. 6 relates to the alternative ground taken by the assessee before the Ld. CIT(A) stating that in the event that exemption is not allowed, a sum of Rs.9,43,81,000/- has to be excluded from the taxable income.

18. Ld. CIT(A), on this aspect, observed that as per the definition of 'income' as contained in section 2(24)(iia) of the Act, income includes voluntary contributions received, and further the said voluntary contributions are not included in total income by virtue of the provisions of section 12(1) of the Act which deems such contributions to the income derived from property held under the trust. According to him, once the provisions of section 11 are not applicable, such contributions have to be charged to tax in terms of section 164(2) of the Act and on this premise, Ld. CIT(A) rejected the contention of the assessee for exclusion of Rs.9,43,81,000/-.

19. It is submitted by the Ld. AR that from a reading of section 12(1) of the Act and Section 2(24)(iia) of the Act, it clearly emerges that the position would change in case an institution is not treated as a charitable being denied the benefit of section 11, then the sums received as voluntary contributions would not be treated as "income". He placed reliance on the decision of the Hon'ble Andhra Pradesh High Court in the case of CIT vs. SRMT staff Association (1996) 221 ITR 234 (AP).

20. On grounds No.1 to 5, it is held that the assessee cannot be denied exemption under section 11 and 12 of the Act by invoking the provisions under section 13(2)(b) of the Act read with section 13(3) of the Act. On the face of the findings returned on grounds No. 1 to 5, the question of

alternative plea does not arise and any discussion on this issue is only an academic one. We therefore dismiss this ground.

21. I.T.A. No. 1640 of 2019 is, accordingly, allowed in part.

ITA No. 4789/Del/2012 and CO 464/Del/2012.

22. Ground No. 1 of ITA 4789/Del/2012 is substantially the same as is dealt with in the immediately preceding paragraphs while dealing with ITA 1640/Del/2019. Following the same, we find this ground of Revenue is devoid of any merits and is liable to be dismissed. Ground No. 1 is accordingly dismissed.

23. Ground No. 2 of this appeal relates to the denial of exemption by the Assessing Officer to the assessee based on the withdrawal of notification of exemption under section 10(23C)(iv) of the Act for Hamdard Dawakhana (Wakf) passed by the DGIT. Ld. CIT(A) dealt with this aspect stating that the withdrawal was on 22/02/2012 whereas the assessment order was passed on 26/11/2010 and the order of withdrawal of notification under section 10(23C)(iv) of the Act in the case of Hamdard (Wakf) does not impact the case of the assessee inasmuch as one has to examine on facts of the case as to whether there is a violation of the provisions of section 13(2)(b) of the Act read with the provisions of section 13(3) of the Act.

24. Further, it is brought to our notice on behalf of the assessee that the Hon'ble Delhi High Court vide order dated 18/09/2015 in WP (C) 5711/2013 had restored the notification granting the benefit of section 10(23C)(iv) of the Act to HLI and a copy of the order is produced before

us. We have perused the same. Since we reached a conclusion on ground No. 1 that the exemption under section 11 cannot be denied to the assessee by invoking the provisions of section 13(2)(b) of the Act read with section 13(3) of the Act and also in the light of the order of the Hon'ble High Court, would not find any merits and the contentions of the Revenue. We, accordingly, dismiss ground No. 2 of the appeal.

25. Coming to the Cross objection preferred by the assessee in Cross Objection No 464/Del/2012, it is submitted by the Ld. AR that depending upon the answer to the grounds of Revenue's appeal, the answering of the grounds in C.O. would be academic. Since we dismiss the Revenue's appeal in ITA 4789/Del/2012, we find that the discussion in this Cross Objection would only be academic in nature. Recording the same, we dismiss the Cross Objection.

26. Accordingly revenue's appeal in ITA No.4789/Del/2012 and Cross Objection No.464/Del/2012 of the assessee are dismissed.

ITA No. 5411/Del/2012 (2009-10).

27. Only issue involved in this appeal is relating to the denial of the exemption under section 11 of the Act to the assessee by invoking the provisions under section 13(2)(b) of the Act read with section 13(3) of the Act and such an issue has been dealt with in extenso in ITA No. 1640/Del/2019 and it was held in favour of the assessee. Following the same, we allow this appeal.

ITA No. 3403/Del/2014 (2010-11).

28. There are three issues involved in this appeal. First issue is relating to the finding of the Assessing Officer that the assessee has been carrying out activity in the nature of trade, commerce or business and thus, is covered by the proviso to section 2(15) of the Act inasmuch as the assessee received a sum of Rs.36,66,91,558/- as royalty from the Hamdard Dawakhana on account of patent rights of the products manufactured by it. According to the learned Assessing Officer, the said royalty amount represented a commercial receipt as it assisted HLI in furthering its business activity.

29. Ld. CIT(A) in his order observed that there is no dispute that the assessee is a charitable trust and is involved in relief to the poor, education and medical relief; that the assessee is not involved in any trade, commerce or business activity and the whole income of the assessee is from donation, royalty income, rental income and from interest income etc; and that there is no dispute that the assessee had applied the income for charitable purpose and has followed the provisions of section 11 and 12 of the Act.

30. It is submitted on behalf of the assessee that the patents admittedly are owned by the assessee and given to HLI since 1975 by means of a valid and legal agreement entered into and such an agreement has been accepted by the Department also for these years. It is further submitted that since the assessee had to earn income to support its charitable activities, they have done just that by letting HLI to use its asset and patent rights by paying royalty, and such payment

simplicitor does not turn a charitable institution into the one conducting commerce or trade; and that the reference to proviso to section 2(15) effective from 1.4.2009 vis-a-vis the income from royalty is misconceived since the transaction does not involve any activity in nature of trade, commerce or business. Lastly, it is submitted that the activities of the assessee comes within the categories of education, medical relief and relief to the poor whereas the proviso to section 2(15) of the Act applies only to the last category of charity that is "any other object of general public utility. In support of this submission, a reference is made by the Ld. AR to paragraph numbers 62 and 63 of the order dated 18/9/2015 in the case of HLI vs. ACIT in WP (C) 3599/2012 and batch of cases.

31. In the above case, the Hon'ble jurisdictional High Court dealt with the aspect of the objects of the assessee and vide paragraph numbers 62 and 63 observed, thus,-

"62. Turning now, to examine the nature of HNF's objects, this Court finds that they are identical to those of Hamdard, and the Revenue's contention to the contrary is without any merit. Textually, HNF's objects and "functions" would indicate that HNF only has the additional objective of receiving, controlling and supervising the income received from Hamdard and any other body and applying it for the purposes enumerated thereafter, which are identical to clauses 44 to 47 of Hamdard's Trust Deed. The fact that they have been classified under two different heads, viz. "objects" and "functions" is immaterial, as it is only a matter of form and does not alter the manner of application of donations received by HNF.

63. The DGIT(E) in the impugned order dated 21.08.2013 as well as in the affidavit on record admits that HNF's main activity is donation to Jamia Hamdard University - which qualifies under "education" in Section 2(15). Further, it was noted that HNF is

making “relatively small donations” to HES, BEB and AIUTC. It was held that HES is carrying out charitable activities falling in the first three categories as well as the residual category, whereas BEB and AIUTC are carrying out charitable activities under the residual category. This Court does not deem it necessary to examine the activities of HES, BEB and AIUTC in detail, for it has already found that Hamdard’s and HNF’s objects fall within the first three categories of “charitable purpose” under Section 2(15), and the fact that HNF’s charitable activity carried out through Jamia Hamdard University - admittedly comprising of bulk of HNF’s charity - also falls under one of the first three categories (“education”). Further, the DGIT(E) itself has held that 36% of HNF’s direct charity falls within the first three heads of “charitable purpose”. As regards the balance 64%, the DGIT(E) erroneously classified scholarship schemes under the head “object of general public utility”. However, this Court holds that since scholarship schemes are directed towards incentivising students to pursue education, it must fall under the category of “education” as opposed the residual category. This determination sufficiently establish that Hamdard’s objects fall within the head of “education”, “medical relief” and “relief of the poor”, and not the residual category under Section 2(15).”

Above observations of the Hon’ble High Court in the case of HLI in respect of the nature of assessee’s objects do not admit of any other view as taken by the learned Assessing Officer. As rightly contended by the Ld. AR the proviso to section 2(15) applies only to the category “any other object of general public utility” and the above observations of the Hon’ble High Court clearly takes away the case from out of the purview of the proviso to section 2(15) of the Act. We accordingly answer this issue in favour of the assessee and dismiss the ground of appeal of Revenue.

32. Second ground in this appeal is relating to the denial of the exemption under section 11 of the Act to the assessee by invoking the

provisions under section 13(2)(b) of the Act read with section 13(3) of the Act and such an issue has been dealt with in extenso in ITA 1640/Del/2019 and it was held in favour of the assessee. Following the same, we uphold the findings of the Ld. CIT(A) and dismiss this ground of appeal.

33. The third ground of this appeal relates to the addition of Rs. 24 crores being the “corpus donations” received by the assessee from HLI by subjecting the same to tax. Ld. CIT(A) deleted the same as consequent to the grant of exemption under section 11 of the Act. While placing reliance on the decision of a coordinate Bench of this Tribunal in the case of Patanjali Yogpeeth (Nyas) vs. ADIT (2017) 185 TTJ 1, it is argued by the Ld. AR that the donations received by the assessee towards corpus fund are not liable to tax.

34. We have gone through the record in the light of the submissions made on either side. Facts of this case are quite similar to the facts involved in the case of Patanjali Yogpeeth (Nyas) (supra) wherein it is held that in the absence of any allegation or proof as to the assessee undertaking any activities in the nature of trade, commerce or business, donations received by the assessee forms part of the corpus of trust and thus capital receipt are not liable to tax. The objects of the assessee as discussed above clearly established that they are in the nature of providing education, medical relief and relief to the poor and no evidence is available on record to say that the assessee has been providing services in the nature of business. We, therefore, are of the considered opinion that the corpus donation is a capital receipt irrespective of whether the

institution enjoys the benefit of Section 11 or not, but particularly in this case, it is consistently held in the preceding paragraphs that the assessee is entitled to exemption under section 11 of the Act and, therefore, the question of subjecting the corpus donations to tax does not arise. We accordingly direct the assessing officer to delete the addition made on this account.

ITA No. 1845/Del/2016.

35. Besides the issue relating to the levy of tax, effectively there are two grounds to be decided in this issue. First one relating to the denial of exemption under section 11 of the ACT by invoking the provisions under section 13(2)(b) of the Act read with section 13(3) of the Act and the second one relates to the application of provisions of section 13(1)(b) of the Act on the ground that majority of the candidates who were benefitted from the assessee belonged to a particular religious community.

36. Insofar as the issue relating to the application of section 13(2)(b) of the Act read with section 13(3) of the Act, is concerned such an issue has been dealt with in extenso in the preceding paragraphs in ITA 1640/Del/2019 and it was held in favour of the assessee. Following the same, we dismiss this ground of appeal.

37. As far as the question of scholarship is concerned, in the Assessment Year 2010-11 itself, the assessee had challenged the same and the Ld. CIT(A) in his order dated 6/3/2014 held that the benefit of scholarship to the poor and needy student was not confined to the

students of a particular community and a perusal of the list submitted by the assessee shows that the benefit is granted to the students from all the communities without any discrimination. Such a finding of Ld. CIT(A) was accepted by the Revenue and while preferring ITA No. 3403/Del/2014 in respect of the Assessment Year 2010-11, the Revenue did not challenge this finding of the Ld. CIT(A).

38. When a similar question had arisen for the Assessment Year 2011-12 before the Ld. CIT(A), Ld. CIT(A) observed that the facts are identical to the Assessment Year 2010-11 in which a factual finding was given to the effect that the scholarships were not restricted to a particular religious community and there is no violation of the provisions of section 13(1)(b) of the Act in this year also.

39. When a factual finding of Ld. CIT(A) was accepted for the Assessment Year 2010-11, and such a finding was confirmed by the Ld. CIT(A) on similar set of facts and circumstances for the Assessment year 2011-12, we find every force in the argument of the Ld. AR that it is not open for the Assessing Officer to raise such an issue selectively for few years and accept the findings of the first appellate authority for some years. Further, Revenue failed to establish before us as to how the findings of the Ld. CIT(A) on this factual aspect are incorrect for this Assessment Year 2011-12 by placing the material that was available before the Assessing Officer to reach a conclusion that the provisions under section 13(1)(b) of the Act are applicable to the facts of the case. In the absence of any such collaborative piece of material, we find it difficult to disturb the factual finding written by the Ld. CIT(A). We, therefore,

while confirming the findings of the Ld. CIT(A), dismiss this ground of appeal.

40. Insofar as third ground of this appeal is concerned it relates to the interest under section 234B, 234C and 234D, which is consequential to the result of the other grounds. Since the benefit of section 11 being accorded to the assessee, this ground does not survive and is dismissed.

ITA 4260/Del/ 2016 (2012-13).

41. Insofar as the first ground of appeal is concerned, it relates to the denial of the exemption under section 11 of the Act to the assessee by invoking the provisions under section 13(2)(b) of the Act read with section 13(3) of the Act and such an issue has been dealt with in extenso in ITA 1640/Del/2019 (supra) and it was held in favour of the assessee. Following the same, we dismiss this ground of appeal.

42. Second ground relates to the scholarships and consequent invocation of Section 13(1)(b) of the Act. Impugned order clearly shows that the Ld. CIT(A) followed the decision of his predecessor for the Assessment Year 2010-11, in which year a similar question had arisen. Ld. CIT(A) observed that there is no difference in facts for these years and as a matter of fact he written a finding that there is no violation of provisions of section 13(1)(b) of the Act on the part of the assessee. In the preceding paragraphs, we held that the Revenue failed to establish before us as to how the findings of the Ld. CIT(A) on this factual aspect are incorrect for this assessment year 2011-12 by placing the material that was available before the Assessing Officer to reach a conclusion that the provisions under section 13(1)(b) of the Act are applicable to the facts

of the case. In the absence of any such collaborative piece of material, we find it difficult to disturb the factual finding written by the Ld. CIT(A). We, therefore, while confirming the findings of the Ld. CIT(A), dismiss this ground of appeal.

43. Third issue relates to the denial of benefit of exemption under section 11 of the Act and AO subjecting the corpus donations to the tune of Rs. 30 crores to tax. This issue is covered by ground No.3 in ITA No. 3403/Del/2014 wherein this clearly held that in view of the decision of a coordinate Bench of this Tribunal in Patanjali Yogapeeth (supra) wherein the entire case law on this aspect was summarised, the corpus donations cannot be brought to tax because they are in the nature of capital receipts. By following the same, we dismiss this ground of appeal.

ITA No. 1642/Del/2019.

44. Grounds No. 1 to 5 of this appeal relate to the denial of the exemption under section 11 of the Act to the assessee by invoking the provisions under section 13(2)(b) of the Act read with section 13(3) of the Act and such an issue has been dealt with in extenso in ITA 1640/Del/2019 (supra) and it was held in favour of the assessee. Following the same, we allow these grounds of appeal.

45. Ground No. 6 relates to the issue of taxing the corpus donations. This issue is covered by ground No. 3 in ITA No. 3403/Del/2014 (supra) and ground No. 3 in ITA No.4260 /Del/ 2016 (supra), wherein by placing reliance on the decision of a coordinate Bench of this Tribunal in the case of Patanjali Yogapeeth (supra), we held that the corpus donations cannot

be brought to tax because they are in the nature of capital receipts. Since the facts and questions of law are similar, we follow the same and allow this ground of appeal of the assessee.

46. Ground No. 7 relating to the non-adjudication of grounds No. 2 and 4 by the Ld. CIT(A) and such grounds related to exemption under section 11 and the applicability of the proviso to section 2 (15) of the Act and the invocation of the proviso to section 13(1)(b) of the Act. However, we dealt with such issues in the preceding paragraphs and held them in favour of the assessee. Following the same, we hold that the proviso to section 2(15) of the Act has no application to the facts of the case, so also in view of our factual finding that the scholarship benefit is extended to all the eligible persons irrespective of a particular community, section 13(1)(b) of the Act also cannot be invoked. We hold these two issues in favour of the assessee.

47. In the result, appeals of the assessee in ITA No.1640/Del/2019 is partly allowed, ITA Nos.5411/Del/2012 & 1642/Del/2019 are allowed and Cross Objection No.464/Del/2012 is dismissed. Revenue's appeal in ITA Nos.4789/Del/2012, 3403/Del/2014, 1845 & 4260/Del/2016 are dismissed.

Order pronounced in the Open Court on 1st November, 2019.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**sd/-
(K.NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 1st November, 2019.

VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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