

IN THE INCOME TAX APPELLATE TRIBUNAL
 "A" Bench, Mumbai
 Before Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)
 ITA Nos.6221 & 6222 /Mum/2019
 (Assessment Years: 2012-13 & 2014-15)

Anusandhan Trust Sai Ashray, Aaram Society Road Vakola, Santacruz(E) Mumbai-40 055	Vs.	ITO (E)-1(1) Piramal Chambers, Lalbaug Parel, Mumbai-400 012
PAN/GIR No. AAATA0089R		
(Revenue)	:	(Assessee)

&
 ITA Nos.6424 & 6425 /Mum/2019
 (Assessment Years: 2012-13 & 2014-15)

ITO (E)-1(1) Piramal Chambers, Lalbaug Parel, Mumbai-400 012	Vs.	Anusandhan Trust Sai Ashray, Aaram Society Road Vakola, Santacruz(E) Mumbai-40 055
PAN/GIR No. AAATA0089R		
(Assessee)	:	(Revenue)

Assessee by	:	Shri Ronak Doshi
Revenue by	:	Shri Brajendra Kumar

Date of Hearing	:	11.08.2021
Date of Pronouncement	:	27.10.2021

ORDER

Per Shamim Yahya, A. M.:

These cross appeals by the Revenue and the Assessee are directed against the respective orders of the learned Commissioner of Income Tax (Appeals), Mumbai ('ld.CIT(A) for short) for the respective assessment years.

2. Since, the issues are common and connected and the appeals were heard together, these have been consolidated and disposed of by this common order.

ITA Nos.6424 & 6425/Mum/2019 (Revenue appeals):-

3. Common grounds are raised in revenue's appeal, as lead case, we are referring to grounds of appeal from ITA No. 6425/Mum/2019 for AY 2012-13 which read as under:-

1. "Whether, on the facts and in circumstances of the case and in law the Ld.CIT(A), Mumbai was justified in deleting the disallowance of claim of deficit of Rs.3,92,62,164/- (Rs.1,43,40,656/- of previous year and balance deficit of Rs. 2,49,21,508/- brought forward deficit of earlier years) relying upon the decision of the Hon'ble Bombay High Court in the case of CIT v/s. Institute of Banking Personnel Selection(IBPS)(264 ITR 110).
2. "Whether, on the facts and in circumstances of the case and in law the Ld.CIT(A), Mumbai was justified in deleting the disallowance of claim of deficit of Rs.1,43,40,656/- of previous year relying upon the decision of the Hon'ble Bombay High Court in the case of CIT v/s. Institute of Banking Personnel Selection(IBPS)(264 ITR 110) when there was no actual deficit as per the commercial principles, therefore the ratio of this decision is not applicable.
3. "Whether, on the facts and in circumstances of the case and in law the Ld.CIT(A), Mumbai was justified in deleting the disallowance of claim of deficit of Rs.1,43,40,656/- of previous year arising from claim 15% deduction u/s.11(1)(a) of the IT Act, 1961 despite the fact that the assessee trust has already applied 100% of income for charitable purpose in the previous year hence trust is not entitled to accumulate a notional deficit of 15% as has been upheld in Dawat Institute of Dawoodi Bohra us ITO (2008) 22 SOP 359 Mumbai Tribunal"
4. "Whether, on the facts and in circumstances of the case and in law the Ld.CIT(A), Mumbai was justified in deleting the disallowance of claim of brought forward deficit of Rs.2,49,21,508/- of earlier years relying upon the decision of the Hon'ble Bombay High Court in the case of CIT v/s. Institute of Banking Personnel Selection(IBPS)(264 ITR 110) without verification as there was any actual deficit as per the commercial principles ?.
5. "Whether, on the facts and in circumstances of the case and in law the Ld.CIT(A), Mumbai as justified in deleting the disallowance of claim of brought forward deficit of Rs.2,49,21,508/- of earlier years which is arising from claim 15% deduction u/s.11(1)(a) of the IT Act, 1961 despite the fact that the assessee trust has already applied more than 85% of income for charitable purpose in the earlier years hence trust is not entitled to accumulate a notional deficit of 15% as has been upheld in Dawat Institute of Dawoodi Bohra us ITO (2008) 22 SOP 359 Mumbai Tribunal."

6. "Whether, on the facts and in circumstances of the case and in law the Ld.CIT(A), Mumbai was justified in deleting the addition of Rs.3,98,007/-made on account of interest earned on earmarked grants."

7. "The appellant prays that the order of the Commissioner of Income Tax (Appeals)-3, Mumbai be set aside and that of the Assessing Officer be restored."

ITA Nos.6221 & 6222/Mum/2019 (Assessee appeals):-

4. Common grounds are raised in assessee's appeal, as lead case, we are referring to grounds of appeal from ITA No. 6221/Mum/2019 for AY 2012-13 which read as under:-

GROUND NO. 1: GRANTS RECEIVED FROM AGENCIES TO BE CONSIDERED AS ELIGIBLE INCOME FOR SECTION 11 OF THE INCOME-TAX ACT, 1961 (*the Act):

1. On the facts and circumstances of the case, the Ld. Commissioner of Income-tax (Appeals)-3 ['CIT(A)'] erred in confirming the action of the Income-tax Officer (E)-1(1) ('the AO') of treating the grants received by the Appellant from different organizations as specific grants and thus, treating it as a capital receipt.

2. The Ld. CIT(A) failed to appreciate and ought to have held that;

(a) Earmarked grants are in the nature of voluntary contributions and accordingly, the same should be treated as income under section 12 of the Act.

(b) The Appellant has shown the entire amount received on account of grants from specified agencies as income in the computation of income and claimed expenditure against the same.

(c) The Appellant is consistently following the practice of considering the grants received from various organizations as income and claiming expenditure against it.

(d) The above stand taken by the Appellant has been accepted by the AO in the previous assessment years.

3. The Appellant prays that earmarked grants be treated as income of the Appellant and the corresponding expenditure against the same be allowed.

GROUND 11: WITHOUT PREJUDICE TO GROUND 1, INTEREST INCOME EARNED ON EARMARKED FUNDS SHOULD BE EXCLUDED:

1. The CIT(A) erred in confirming the action of the AO in not excluding the interest income of Rs. 3,98,007/- from income of the Appellant after excluding the income from earmarked grants from the income and corresponding expenditure thereto.

2. The Appellant therefore prays that if earmarked funds are held to be excluded from income, then the interest earned thereon be also held to be excluded from income of the Appellant.

GROUND 111: WITHOUT PREJUDICE TO GROUND 1, DEPRECIATION SHOULD BE EXCLUDED WHILE COMPUTING

DISALLOWANCE OF EXPENSES RELATING TO EARMARKED GRANTS:

1. The CIT(A) erred in confirming the action of the AO in not excluding the amount of depreciation which was already considered by the AO in denying the claim of total expenditure of Rs. 4,92,07,6727- corresponding to the earmarked grants.

2. The Appellant therefore prays that if expenditure corresponding to the earmarked funds is to be excluded, then the amount of depreciation should also be excluded from the said expenditure.

5. As regards, the issues in this appeal, it is the contention of the Ld. Counsel of the assessee that the ground relating to grants received from agencies to be considered as eligible income for section 11 of the I.T.Act, 1961 is covered by the following case laws:-

- i) CIT v. Gem & Jewellery Export Promotion Council (1983) (143 ITR 579) (Bom HC)
- ii) Little Tradition v. DDIT(E) (2009) (119 ITD 127) (Tdel)

6. It is further pleaded that other ground relating to interest income and depreciation Are consequential to the ground No.1 in assessee appeal.

7. As regards, the issue of deletion of disallowance of claim of deficit of Rs. 3,92,62,164/- (Rs.1,43,40,656/- of previous year plus Rs. 2,49,21,508/- brought forward from earlier years). It is the claim of the same is covered by following case laws:-

- i) CIT(E) v. Subros Educational Society (2018) (303 CTR 1) (SC)
- ii) Lalji Velji Charitable Trust v. ITO (E)(ITA No.5322-5323 /M/16, order dated 28.02.2018) (TMum) (Relevant page 19-20)
- iii) Iris Knowledge Foundation v. ITO (E) (ITA No.3408/M/18, order dated 10.12.2020)(TMum)(Relevant page 24-33)
- iv) ITO v. Utthan Sewa Sansthan (ITA No.2017/Ahd/16, order dated 24.01.2019) (TAhd) (Relevant page 40-42)

8. As regards, the issue of deletion of addition of Rs. 3,98,007/- towards interest on earmarked grants. It is the claim of the assessee's counsel that the issues covered by the following case law:-

i) CIT v. Punjab Energy Development Agency (2009) (184) Taxman 273) (P&H HC) (Relevant page 44-45)

9. It is further pleaded that this is consequential to assessee's ground No.1

10. We have heard both parties and perused the record. As regards, the issues raised in revenue's appeal, the same are duly covered in assessee's favour by Hon'ble Bombay High Court decision referred in ground of appeal itself. Further, we note that Ld.CIT(A) has allowed this issue in favour of assessee by observing as under:-

"I have considered the facts and circumstances of the case, gone through the assessment order of the A.O and the submissions of the appellant and also discussed the case with the AR of the appellant. The issue before me is a purely legal issue which is as under:

"Can any deficit of any assessment year in case of a Trust is registered u/s 12A of the Act can be carried forward to for setting off against income of any subsequent assessment year?"

I find that this issue came up before the Hon'ble Bombay High Court in the case of CIT v. Institute of Banking Personnel Selection (264 ITR 110). In that case, the Hon'ble Bombay High Court held that deficit of any assessment year in case of a trust is registered u/s 12A of the Act can be carried forward for setting off against income of any subsequent assessment year. The decision of the Hon'ble Bombay High Court has been upheld by the Hon'ble Supreme Court in the case of CIT(E) New Delhi v. Subros Educational Society (MA no.941/2018 in Civil appeal no. 5171/2016.).

In view of the above, AO is directed to allow the deficit of the current assessment year and preceding assessment years to carry forward to be set-off in subsequent years."

11. We are in full agreement that the issue is covered in favour of assessee. Hence, we uphold the order of Ld.CIT(A).

12. Hence, the revenue's appeal stand dismissed.

13. As regards, the issue in assessee's appeal grants to be considered as eligible income for section 11 of the I.T.Act, the brief facts are as under:-

“The AO noted from the Income & Expenditure account that the assessee has received grants of Rs. 3,76,58,808/-. AO asked the assessee trust to explain as to why the Govt. grant is considered as income even though it is granted for specific purposes. In response to this notice, the assessee's representative vide its letter dated 01.02.2015 which has been produced vide para 6.1 of assessment order.

AO after considering the submissions observed that judgments relied by the assessee's representative is not relevant to the facts of the case and totally distinguishable. As the assessee trust has received the grant of Rs. 3,76,58,807/- for specific purposes for disbursement of salary, it has no discretion to utilize the fund as per own requirements. The grants received by the assessee do not belong to the assessee trust. It is also found that in case of non-utilization, the funds are to be refunded to the Funding Agency. Moreover, the assessee itself accepted that trust has not treated the above grants as income and trust has maintained a separate Bank Account for obtaining and maintaining the grants. The grants do not form corpus of the assessee nor it is income of the assessee as per section 11 of the Act. Such grants are not the donation or voluntary contributions under section 12 of the Act, Thus, the grants received by the assessee trust should not be considered either as income or for ascertaining the amount expended or amount to be accumulated. Provisions of sec. 11 & 12 of the Act are not applicable for grants received by the assessee under the schemes for specific purpose. Hence, the accounting standard cannot override the Income Tax Act.

The AO further observed that the assessee has shown the entire grant as its income which is routed through income and expenditure account is not determinative of nature as the mere entries in the Income & Expenditure account do not decide the nature of receipt and its taxability. The assessee trust has to keep funds in separate accounts. Since, the grants have been received by the assessee trust for disbursement and keeping in view of the fact that the same cannot be utilized for any other purpose other than payment of salary, it cannot be treated as income of the assessee.

Based on above, the AO observed that detailed provisions are made for the allotment of fund to the assessee trust, it is a scheme envisaged for implementation of disbursement of salary etc. in particular manner. Though exact words may not have been used that funds made available are directed to form the corpus of the trust and to be used for such purpose, the entire purport of scheme has to be gathered from the reading of the scheme as a whole. If so, done, it leaves no doubt that funds were made available to the assessee for implementing the scheme in a particular manner. Hence,

the earmarked fund with the specific direction (i.e. Grants) received from different organization cannot be considered as its income of the assessee trust. As the assessee trust must be used/applied only for specific purpose or if it is not used / applied, the specific fund is to be returned to the Funding Agency. As the assessee trust must be used / applied only for specific purpose, hence question of 85% applied for the above specific fund does not arise as per provision u/s. 11(1)(a) of the I, T. Act. Therefore, the question of allowability of 15% of income allowed to be set apart / accumulated in terms of clause (a) of sub-section (1) of section 11 do not arise on account of specific fund granted for a specific purpose. The AO also observed that this view has been upheld by the Hon'ble Punjab & Haryana High Court in the case of CIT v/s. M/s State Urban Development Society, dated 19.10.2011 ITA No. 210 of 2011 (Punjab & Haryana High Court), the Hon'ble Court held that :

"Grants received by the assessee trust cannot be treated as its income when the same has been received by the assessee for disbursement and keeping in view of the fact that the same cannot be utilized in furtherance to the object of the trust, even if the same is credited to Income & Expenditure Account. The entries in the books of accounts do not decide the nature of receipts."

The AO also relied upon the judgement in the case of CIT v/s. Gujarat State Disaster Management Authority-2014 (2) TMI 789-Gujarat High Court-The grants are sanctioned the assessee only for the project under Rehabilitation Program and same cannot be treated as assessee's income. The decision in Gujarat Municipal Finance Board v/s DCIT (1996) (5) TMI 71-Gujarat High Court followed.

The AO also mentioned that in the case of CIT v/s Gujrat Safai Kamdar Vikas Nigam (2011) (5) TMI 015-Hon'ble Gujarat High Court held that grant received from the Government of Gujarat for implementation of certain Government programmes cannot be treated as income of the trust, even though it is received by the trust without any direction that it should from corpus fund.

In view of the above, AO held that any grant received for specific purpose whether (Capital expenditure or Revenue expenditure) does not constitute income. Hence, the grant received by the assessee trust for the specific purpose does not constitute income. Therefore, the question of application of income in the form of disbursement of grant for specific purpose does not arise because the source of fund itself is not considered as income. Therefore, the grants received for specific purpose is neither treated as income nor the corresponding payment out of grant received for specific purposes is treated as application of income u/s, 11(1)(a) of the I. T. Act. Hence, while computing the income, grants received of Rs. 3,76,58,807/- and corresponding expenditure of Rs. 4,92,07,672/-was not considered as income as well as application of income respectively."

14. Upon assessee's appeal Ld.CIT(A) confirmed the same holding as under:-

"I have considered the facts and circumstances of the case, gone through the assessment order of the AO and the submissions of the appellant and also discussed

the case with the AR of the appellant. It has been submitted by the appellant that the Grants received from different organization were for specific purpose and it has no discretion to utilise this fund for any other purposes and in case of its non-utilisation for the said purpose, these grants are to be refunded to the funding agency. Since, it is granted for specific purpose and, cannot be considered as income available for deduction u/s 11(1)(a) of the Act.

This view has been upheld by the Hon'ble Punjab & Haryana High Court in the case of CIT v/s M/s State Urban Development Society, dated, 19.10.2011 ITA No. 210 of 2011 (Punjab & Haryana High Court), the Hon'ble Court held that

"Grants received by the assessee trust cannot be treated as its income when the same has been received by the assessee for disbursement and keeping in view of the fact that the same cannot be utilized in furtherance to the object of the trust, even if the same is credited to Income & Expenditure Account. The entries in the books of accounts do not decide the nature of receipts"

AO also relied on the decision of the Hon'ble Delhi High Court ITA NOS.12/2012&18/2012 in the case of Society for Development v/s DIT dated 13/01/2012. Reliance is also placed in the case of CIT v/s Gujarat State Disaster Management Authority 2014 (2) TMI 789, Gujarat High Court, The grants are sanctioned for the assessee only for the project under Rehabilitation Program and same cannot be treated as assessee's income. The decision in Gujarat Municipal Finance Board v/s DCIT (1996) (5) TMI 71, Gujarat High Court followed.

Also in the case of CIT v/s Gujrat Safai Kamdar Vikas Nigam (2011) (5) TMI 015, Hon'ble Gujarat High Court held that grant received from the Government of Gujarat for implementation of certain Government programmes cannot be treated as income of the trust, even though it is received by the trust without any direction that it should form corpus fund.

The Hon'ble Supreme Court has in all the above cases held that grants in aid cannot be treated as income of the assessee trust even if the same is not accompanied with a specific letter stating it to be corpus and SLP was dismissed by the Hon'ble Supreme Court in the above mentioned case of Gujarat State Disaster Management Authority on 21/02/2012 and in the case of Gujarat Safai Kamdar Vikas Nigam by 02/01/2012.

In view of the above, it is clarified that any grant received for specific purpose (whether Capital expenditure or Revenue expenditure) do not constitute income. Hence, the grant received by the assessee trust for the specific purpose do not constitute income. Therefore, the question of application of income in the form of disbursement of grant for specific purpose does not arise because the source of fund itself is not considered as income. Therefore, the grants received from Govt. for specific purpose is neither treated as income nor the corresponding payment out of grant received for specific purposes i.e. disbursement of salary is treated as application of income u/s 11(1)(a) of the Act. Hence, while computing the income,

grants received of Rs.6,78,46,911/- and corresponding expenditure of Rs.6,78,46,911/- is not considered as income as well as application of income respectively.

Therefore, the question of allowability of 15% of income allowed to be set apart / accumulated in terms of clause (a) of sub-section (1) of section 11 do not arise. Hence, notional accumulation @ 15% u/s 11(1)(a) on grant of Rs. 6,78,46,911/- is not allowable to the appellant. There is a merit in the argument of the AO and no interference is caused in the order of the AO.”

15. We have heard both the parties and perused the record. It may be gainful to refer to the assessee’s written submission before the Ld.CIT(A) in paper book at page No.128 to 131 submitted before us.

1. Earmarked grants received from various organisations are in the nature of voluntary contributions.
2. The conditions attached to the grants would not alter the voluntary nature of contributions. The said conditions and restrictions are merely intended to facilitate utilisation of grants towards the fulfillment of specific and intended purpose.
3. As submitted by the Appellant during the course of assessment proceedings and as reproduced by the AO in the assessment order at page no 5 and 6, the Appellant is required to incur expenditure out of the grants received towards the specific purpose and various conditions attached thereto.
4. In case the Appellant fails to fulfill the conditions attached to the grants, the same is required to be refunded back to the donor organization. However, the attached conditions and probable refund of grant back to the donors does not, rather cannot alter the nature of the grants/contributions made by these organization as 'voluntary contributions'.
5. Needless to state that the donor organizations tabulated above are the ones which have expanse at national as well as international level. Donations/grants from these organisations flow to the organisations like the Appellant which are initially received as donations from various contributors of the society. As a result, the monitoring of the actual activities/spendings is a must. These conditions are attached only to ensure smooth and timely functioning of the activities of the Appellant.
6. Further, the Appellant does not and need not pay any consideration whatsoever in any form to the donor organisations since the work carried out by the Appellant is necessarily towards the public at large i.e. the society and therefore the grants received by the Appellant cannot be said to be 'for any consideration' and as a result the 'voluntary' nature of the grants remains unchanged.
7. Hence, the AO's contention that since these grants are conditional, the same are not the income of the Appellant cannot be sustained.
8. **The Hon'ble Jurisdiction;!] Bombay High Court** in the case of **CIT v. Gem & Jewellery Export Promotion Council** (143 ITR 579)(Refer page no 18-20 of the **LPB**) has on similar facts held that none of the conditions attached to the grant affected the voluntary nature of the contribution and accordingly they would be

exempt under section 12 of the Act. The relevant extract of the decision is reproduced hereunder for ease of reference:

"6.....

As already pointed out, it is not in dispute that the company in question is one established for charitable purposes. Now it is well known that grants-in-aid are made by the Government to provide certain institutions with sufficient funds to carry on their charitable activities. The institutions or associations to which the grant is made have no right to ask for the grant. It is solely within the discretion of the Government to make grants to institutions of a charitable nature. The Government does not expect any return for the grants given by it to such institutions. There is nothing which is required to be done by these institutions for the Government, which can be considered as consideration for the grant. To borrow the language of the Lord President, in *Society of Writers to the Signet v. CIR* 2 TC 257, who was considering the meaning of the words 'voluntarily contributed', in the context of an exemption for property acquired by or with funds voluntarily contributed to anybody, corporate or unincorporate, within a period of 30 years immediately preceding, in section II of the Customs and Inland Revenue Act, 1885, the meaning of the word 'voluntary' is 'money gifted voluntarily contributed in the sense of being gratuitously given'. While dealing with the meaning of the words 'voluntarily contributed', the learned Lord President observed as follows:

"In one sense, all money paid willingly, without compulsion, is voluntarily contributed; but that certainly cannot be the meaning of this section. When a man pays his debts, if he is an honourable man, he pays them quite willingly, and not as a matter of obligation only, but as a matter of honour. At all events, he does it quite voluntarily; and everything that is paid under a contract is paid voluntarily, unless some dispute arises about the meaning or effect of the contract. But surely that is not the meaning of the word 'voluntarily' in this clause of exemption. There is another meaning of the word which seems much more appropriate, and that is, money gifted—voluntarily contributed in the sense of being gratuitously given. Which, then, of these, meanings are we to take in the present case? I think the meaning of the statute undoubtedly is that, if money be given, presented to the society in any form, without consideration by anybody, any property purchased with that money, if it be given within a certain period, shall be exempt from liability. "

7. It is difficult to see how any of the conditions attached to the grant affects in the instant case, the voluntary nature of the contribution. The conditions referred to above and relied upon by the learned counsel for the revenue are merely intended to see that the amounts are properly utilised. These conditions did not, therefore, detract from the voluntary nature of the grant

11. The conditions in the instant case, as already pointed out, are merely to see that the funds are properly applied and accounted for. There is no element of any consideration anywhere for the grant. It is clear, therefore, that the finding recorded by the AAC and the Tribunal that the grants in aid were voluntary contributions was clearly justified in law.."

9. As regards the decisions relied upon by the AO, viz. CIT v. State Urban Development Society (ITA No 210/2011, order dated 19-10-2011)(P&H HC), CIT v. Gujarat State Disaster Management Authority - 2014 (2) TMI 789 (Guj HC) and CIT v. Gujarat Safai Kamdar Vikas Nigam (2011)(5) TMI 015 (Guj HC), the Appellant most humbly submits that these decisions are distinguishable for the following reasons: a) Firstly, in all these decisions, the concerned assessee trust/organization was an entity either set up under an Act of the concerned State Government or set up by the State Government with a specific purpose. To be precise,

- i. the State Urban Development Society was set up by the Government of Haryana as per the regulations of Government of India for implementation and monitoring of 'Poverty Eradication Programmes' in the urban areas of Haryana; ii. the Gujarat State Disaster Management Authority was set up under Gujarat State Disaster Management Act;
- iii. Gujarat Safai Kamdar Vikas Nigam Ltd. was set up for the upliftment of 'Safai Kamdars' through various schemes in collaboration with the Government bodies and with National Safai Karmcharis Finance and Development Corporation and acting as channelizing agency, and for examining the problems of safai kamdars.

b) The respective entity was duty bound to follow the provisions of the concerned legislature under which the same was set up.

c) The ratio of all these decisions is that since these entities were operating on behalf of the respective State Government, the receipts of these entities could not be held to be their income but was of the respective State Governments only. This analogy is based on the theory of 'Agent of State' which is well settled now.

d) However, in the instant case of the Appellant, it is not set up by the State/Central Government under any legislature. It is an independent body set up for the activities in the fields of medicine, art, education, culture etc. The Appellant cannot ask for grants from the Government as also the other donor organisations. Therefore grants voluntarily issued by the organisations to the Appellant cannot be held to be the income of these organisations but of the Appellant only.

e) Since the facts of the Appellant are distinct from those in the decisions relied upon by the AO, the same cannot be applied as it is for the case on hand.

f) Without prejudice to above, it is most humbly submitted that since the Jurisdictional High Court in Gem and Jewellery (supra) (as stated in para 8 above) has already held that the conditional grants do not alter the nature of the grants, the same being the judicial precedent of the Jurisdictional High Court, the same is binding on the AO.

10. Without prejudice to above, even on the principle of consistency, the treatment followed by the Appellant and accepted by the department in earlier years deserves to be followed in the absence of any change in facts. Reliance is placed on a. Radhasaomi Satsang v. CIT (1 93 ITR 32 1)(SC) b. H.A. Shah & Co. v. CIT 30 ITR 618)(Bom HC) c. Jivat Lal Purtapshi v. CIT (65 ITR 261)(Bom HC) d. CIT v. Godavari Corporation Ltd. (156 ITR 835)(MP HC)

11. In view of the foregoing facts and submissions and various judicial pronouncements of the Jurisdictional High Court, the Appellant most humbly submits

that it be held that the earmarked grants be allowed to be treated as income of the trust and expenditure against the same be allowed as per the provisions of the Act.

16. We note that the issue involved has rightly been claimed to be covered by Hon'ble jurisdictional High Court order in case of CIT v Gem & Jewellery Export Promotion Council (143 ITR 579). Despite the same being before Ld.CIT(A), he has not followed the same. Not only not follow, he has not bothered to refer or distinguish the same. Despite that he has referred to non jurisdictional High Court decision and rejected assessee's plea. This is absolute violation of judicial discipline. It is settled law that decision of Hon'ble jurisdictional High Court is binding upon subordinate Tribunal and courts. Hence, in our considered opinion, this decision of Hon'ble High Court is applicable fully in the facts of this case. Nothing has been provided before us to show that this decision is not applicable. Hence, respectfully following the said decision, we set aside the order of authorities below and decide the issue in favour of assessee.

17. Other issues being raised are consequential and without prejudice to the above ground. Since, we have already decided ground No.1 in favour of the assessee, other grounds are treated as academic.

18. In the result, assessee's appeals are partly allowed.

Order pronounced in the open court on 27 .10.2021

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER
Mumbai; Dated :. 27 .10.2021
Thirumalesh, Sr. PS

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant

2. The Respondent
3. The CIT(A)
4. CIT- concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai