

**आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI**  
**श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष**  
**BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT**  
**AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**आयकर अपीलसं./I.T.A.Nos.3547 to 3550/Chny/2018**

(निर्धारणवर्ष / Assessment Years: 2012-13 to 2015-16)

Deputy Commissioner of Income Tax (Exemptions), Chennai Circle Chennai-600 034.	Vs	M/s. Vels Institute of Science, Technology and Advanced Studies, 521/2, Anna Salai, Nandanam, Chennai-600 035.
		PAN: AAATV 9804F
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mrs. Ann L. Kabathuama, CIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. R.Sivaraman, Advocate

सुनवाईकीतारीख/Date of hearing	:	08.12.2021
घोषणाकीतारीख /Date of Pronouncement	:	22.12.2021

**आदेश / ORDER**

**PER G.MANJUNATHA, AM:**

These four appeals filed by the Revenue are directed against separate, but identical orders passed by the learned Commissioner of Income Tax (Appeals)-17, Chennai, all dated 12.10.2018 and pertain to assessment years 2012-13 to 2015-16. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

**ITA Nos.3547 & 3548/Chny/2018 (AY: 2012-13 & 2013-14):**

2. The Revenue has more or less raised common grounds of appeal for all these assessment years, therefore, for the

sake of brevity, grounds of appeal filed for assessment year 2012-13 are reproduced as under:-

*"1. The order of the learned CIT(A) is contrary to the law and facts of the case.*

*2. The Ld CIT(A) erred in holding that the Trust is eligible for exemption u/s.11 of the Income-tax Act, 1961 and there was no violation u/s.13(1)(c) of the Income-tax Act, 1961 in respect of amount paid to Managing Trustee for purchase of land at Manjakaranai.*

*3. The Ld CIT(A) erred in holding that advances made by the Trust to the concerns in which the trustees are substantially interested are not attracted by the provisions of Sec. 13(1)(d) r.w. Sec. 11(5) of the Income-tax Act, 1961*

*4. The Ld CIT(A) erred in holding that the assessee would be eligible for exemption u/s 11(1)(d) in respect of the corpus donations received of Rs.4.23 crore when the provisions of Sec. 13(1)(c) and 13(1)(d) are violated.*

*5. The Ld CIT(A) erred in giving relief to the assessee without confirming receipt of interest at the rate of 14% for the advance of Rs.2 crore paid to VGS Estates (P) Ltd; in which the trustee is having substantial interest within the meaning of sec 13(3) of Income-tax Act, 1961.*

*6. The Ld CIT(A) erred in allowing interest of Rs.2.02 crore on the term loan taken from ICICI Bank as application of income even though such loan was advanced to specified persons without charging interest and the CIT(A) merely followed the predecessor CIT(A) order dated 08.07.2016 which was set aside by the Hon'ble ITAT with a direction to examine the commercial expediency in advancing interest free loan to such specified persons.*

*7. The Ld CIT(A) erred in holding that there is no violation of provisions of sec.13 of Income-tax Act, 1961, even though the property with the guideline value of Rs.4 crore was purchased for Rs. 13.57 crore from VGS Estate (P) Ltd in which the trustee is having a substantial interest.*

*8. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned*

*CIT(Appeals) may be set aside and that of the Assessing Officer may be restored.”*

3. Brief facts of the case are that the assessee trust is registered u/s.12AA of the Income Tax Act, 1961 and claimed exemption u/s.11 of the Act for the year under consideration. The assessee trust is engaged in charitable activities by imparting education. The assessment for assessment year 2012-13 & 2013-14 has been completed u/s.143(3) of the Income Tax Act, 1961, on 30.03.2015 and 31.03.2016 respectively, where the Assessing Officer has denied exemption claimed by the assessee u/s.11 of the Income Tax Act, 1961, on the ground that there is violation referred to u/s. 13(1)(c) r.w.s 13(3) of the Act in respect of loans and advances given to related parties. The assessee carried matter in appeal before the first appellate authority. The learned CIT(A) allowed appeal filed by the assessee for both assessment years and held that trust is eligible for exemption u/s.11 of the Income Tax Act, 1961, because there was no violation referred to in section 13(1)(c) of the Act, in respect of amount paid to Managing Director for purchase of land at Manjekarani and also advances paid to M/s. VGS Estates Pvt. Ltd. and thus, allowed exemption claimed by the assessee. The

Revenue challenged order of the learned CIT(A) before the ITAT., Chennai. The Tribunal vide its order dated 17.08.2017 in ITA No.2857 & 2858/Mds/2016 for assessment years 2012-13 & 2013-14 has set aside order of the learned CIT(A) and restored appeals with direction to consider certain issues which were not there for assessment year 2010-11 and 2011-12, because the learned CIT(A) has primarily relied upon his predecessor CIT(A) order for earlier years while giving relief to the assessee. The learned CIT(A) during course of proceedings before him in pursuant to the direction of the Tribunal has set out issues needs to be adjudicated for both assessment years. The relevant issues set out by learned CIT(A) are as under:-

*"3. As stated earlier, the CIT(A) orders for AYs.2012-13 & 2013-14 have been set-aside by the Hon'ble ITAT, vide order in ITA Nos.2857 & 2858 /Mds/2016 dated 17.08.2017 for reconsideration of certain issues. As per the directions of the Hon'ble ITAT, the matters pertaining to A.Ys.2012-13 & 2013-14 that are to be decided by the CIT(A) are as under:*

*(A) May Fair Land at Zamin Pallavaram purchased from VGS Estates (P) Ltd. : Amount involved : Rs.14 crores -- not adjudicated by CIT(A) remitted back by ITAT to consider afresh : A.Y. 2012-13.*

*(B) Advance of Rs.2 crores paid to JGS Estates (P) Ltd. for purchase of property - Thalambur Property : Cancellation of agreement by the Trust and forfeiture of Interest*

*amount by VGS Estates (P) Ltd. -- remitted back to CIT(A) by ITAT to consider afresh A.Y. 2012-13*

- (C) *Manjekarani Property : Calculation of Interest to be considered by the AO : Issue party allowed : To be decided by CIT(A) : AY. 2012-13*
- (D) *Advances made by the Trust to related parties — Interest received or not by the Trust to be verified w.r.t. books of accounts : To be decided by CIT(A) : A.Y. 2012-13*
- (E) *Interest paid of Rs.2.02 crores on Term Loan availed from ICICI Bank: Disallowance of interest since used for advancing interest free loans to interested parties : To be decided by CIT(A) : A.Y. 2012-13.*
- (F) *Corpus Donation received of Rs.4.23 crores : Confirmation from parties : confronted to AO : To be decided by CIT(A) : A.Y. 2012-13*
- (G) *Violation of provisions of Sec.13(1)(c) : Amount paid to Managing Trustee for purchase of land : Manjekarani Property: To be decided by CIT(A) : A.Y. 2013-14*
- (H) *Payment made to Vinayaka Education Trust : To be decided by CIT(A):AY. 2013-14*
- (I) *Total Advance paid of Rs.25 crores (Rs.2 crores in A.Y. 2012-13 & Rs.50 lakhs in A.Y.2013-14) returned by VGS Estates (P) Ltd. towards purchase of property - Thalambur Property : Cancellation of agreement by the Trust and forfeiture of Interest amount by VGS Estates (P) Ltd. -- remitted back by ITAT to consider afresh : AY. 2013-14.*
- (J) *Violation of Sec. 13(i)(d) r.w.s. 11(5) Advances made by the Trust to related parties : remitted back by ITAT to consider afresh : AY. 2013-14.”*

4. The learned CIT(A) during the course of appellate proceedings, in pursuant to directions of the Tribunal, had considered all issues and after taking remand report from the Assessing Officer has decided issue of loans and advances paid to Managing Trustee Dr.Ishari K.Ganesh for Manjakarani property, and advances made by the trust to related parties in light of provisions of section 13(1)(c) of the Act, and held that issue involved in present appeal is squarely covered by the decision of ITAT., Chennai in assessee's own case for assessment year 2010-11 & 2011-12, where identical issue has been considered by the Tribunal regarding advances given to related parties for purchase of land and held that when trust has given advance to related parties for purchase of land, then it cannot be said that there is a benefit to the interested parties as referred to u/s.13(1)(c) r.w.s 13(3) of the Act, and thus, the Assessing Officer has erred in denying exemption claimed by the assessee. Similarly, the learned CIT(A) has also considered issue of corpus donation received by the trust from certain parties with specific direction in light of remand report of the Assessing Officer and held that the Assessing Officer has denied exemption to corpus donation only on the ground that

trust is not entitled for exemption u/s.11 of the Act, because of violation referred to u/s.13(1)(c) of the Act, otherwise has not made any observation regarding entitlement of the trust for exemption on said corpus donation, therefore, deleted additions made by the Assessing Officer. Similarly, the learned CIT(A) has also considered disallowance of interest paid on term loan availed from ICICI bank in light of arguments of the assessee and observed that when the assessee has availed loan from bank to give advances for purchase of property, then it cannot be said that there is violation of section 13(1)(c) of the Act, merely because, said advance was given to related parties, when the assessee has demonstrated with evidences to prove that trust has purchased land to pursue its objects of imparting education. The learned CIT(A) had also considered one more issue of rent payments to M/s.Vinayaga Educational Trust, in light of observations of the Assessing Officer that rent paid by the assessee to related party is excessive and unreasonable and observed that when provisions of section 13(1)(c) is not applicable to trust registered u/s.12A with similar objects, then the Assessing Officer has erred in making ad-hoc disallowance of rent payment of other trust for availing premises

for the purpose of trust merely for reason that said trust was under same management. The learned CIT(A) has also considered one more issue of purchase of May Fair land at Zamin Pallavaram from M/s. VGS Estates Pvt.Ltd. in light of advance paid to managing trustee and held that when the assessee trust has purchased land for the purpose of trust, the Assessing Officer cannot doubt genuineness to argue that there is violation of provisions of 13(1)(c) of the Act, just because said transaction was between interested parties and further, guideline value of the property is less than consideration paid by the assessee for purchase of land. To sum up, the learned CIT(A) has considered all issues set aside by the Tribunal in light of various arguments made by the assessee and also remand report of the Assessing Officer and opined that there is no violation referred to under section 13(1)(c) r.w.s 13(3) of the Act, and thus, the assessee is entitled to benefit of exemption u/s.11 of the Income Tax Act, 1961, and accordingly, directed the Assessing Officer to allow exemption as claimed by the assessee. Aggrieved by the learned CIT(A) order, the revenue is in appeal before us.

5. The first issue that came up for our consideration for assessment years 2012-13 & 2013-14 from revenue appeal is loans and advances given to related parties for purchase of landed property as violation referred to u/s.13(1)(c) r.w.s 13(3) of the Income Tax Act, 1961, and consequently, denial of exemption u/s.11 of the Act. The assessee trust had given advances to Dr.Ishari K. Ganesh, founder and managing trustee of assessee trust for purchase of land, and said advance has been adjusted against consideration paid for purchase of land in the subsequent financial year. The Assessing Officer has treated advance given to founder & managing trustee as violation referred to u/s.13(1)(c) r.w.s 13(3) of the Act, on the ground that although, the assessee has paid advances for purchase of property, but if you compare guideline value of property purchased by the trust and consideration paid for acquiring said land, then there is huge difference and thus, opined that excess amount paid over and above guideline value of property purchased by the assessee has been treated as amount given to interested persons as referred to u/s.13(3) in violation of section 13(1)(c) of the Act and thus, rejected exemption claimed by the assessee. The

learned CIT(A) after considering relevant facts and also by following decision of ITAT., Chennai in assessee's own case for assessment years 2010-11 & 2011-12 held that loans & advances given to founder and managing trustee for purchase of land for purpose of trust cannot be treated as benefits to interested persons as referred to u/s.13(3) of the Act, in violation of section 13(1)(c) of the Act, and thus, benefit of exemption u/s.11 cannot be denied to the assessee trust.

6. The learned A.R for the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of the ITAT., Chennai in assessee's own case for earlier assessment year 2010-11 & 2011-12 including assessment year 2012-13 & 2013-14 in first round of litigation, where the Tribunal under identical set of facts held that loans & advances given by the trust to interested persons referred to u/s.13(3) of the Act, has been held as normal transactions between parties which does not attract provisions of section 13(1)(c) of the Act and consequently, exemption u/s.11 cannot be denied to the trust.

7. The learned DR, on the other hand, fairly agreed that this issue is squarely covered by the decision of ITAT., Chennai in assessee's own case for earlier assessment years. However, supported order of the Assessing Officer.

8. We have heard both the sides, perused material available on record and gone through orders of the authorities below. The issue of loans and advances given to Dr. Ishari K.Ganesh and also another related concern M/s.VGS Estates Pvt.Ltd. for purchase of property is in violation of section 13(1)(c) r.w.s.13(3) of the Act or not has been considered by the Tribunal in assessee's own case for assessment year 2011-12 in ITA No.1548/Mds/2015 vide order dated 19.12.2016, where under identical set of facts and also on similar loans and advances given to founder and managing trustee for purchase of land has held loans and advances given to interested parties for purchase of property is in the nature of commercial transaction between the parties and thus, same cannot be treated as benefit allowed to interested persons as referred to u/s.13(3) in violation of section 13(1)(c) of the Act, and consequently, exemption u/s.11 of the Act cannot be denied to

the trust. The relevant findings of the Tribunal in ITA No.1548/Mds/2015 dated 19.12.2016 are as under:-

*“4. We have heard both the parties and perused the material on record. Similar issues came for consideration before this Tribunal for the AY 2010-11 in ITA No.1759/Mds/2013 and CO 15/Mds/2014. The Tribunal vide its order dated 28.10.2015 held as follows:*

*7. We have considered the rival submissions on either side and perused the relevant material on record. It is not in dispute that the assessee-Trust is registered under Section 12AA of the Act. It is also not in dispute that there was an agreement for sale of the land belonging to the Managing Trustee to the assessee-Trust. The only objection of the Revenue appears to be that the sale of the land is not on par with the market value. From the order of the Assessing Officer it appears that the market value of the land is very less than what was agreed to be sold to the assessee-Trust. The fact remains that there was an agreement for sale of the property and the assessee-Trust advanced the funds. There is no fixed price for sale of land. The price of a land is flexible, depending upon various factors. The urgency of the vendor to sell the property, the necessity of the purchaser to purchase the property, the location of the land, the area of the land, infrastructures available nearer to the land and future prosperity for development of the land, etc. need to be considered while determining the market value of a land. Apart from that, it's well settled principles of law that market value is nothing but a price agreed between the willing seller and willing purchaser. Therefore, we cannot say that a particular land has to be sold by a particular person for a particular rate, If two willing persons agreed to sell and purchase the property for a particular price, then the Assessing Officer may not have any role to dismiss the agreed price unless there are some evidences found that the agreed price disclosed is not actually the agreed price. In the case before us, it is nobody's case that the price agreed between the Managing Trustee and the Trust is not actually the agreed price. Therefore, the*

*observation of the Assessing Officer in the assessment order that the value of the land is much less than what was agreed between the parties cannot stand in the eye of law. When the assessee-Trust intended to establish a medical college for which it requires minimum 25 acres of land and the Managing Trustee has such vast area of land, nothing wrong in purchasing the land from the Managing Trustee by paying the market value. Subsequently, the assessee-Trust could not establish medical college. Therefore, the agreement was cancelled. In fact, the Managing Trustee repaid the part amount along with interest. It is not the case of the Revenue that the interest paid by the Managing Trustee is not in market rate.*

*8. We have carefully gone through the provisions of Section 13 of the Act. Section 13(1)(a) says that if any part of the property or income of the Trust is given to the interested person without either adequate security or adequate interest, for the benefit of the person interested, then there shall be a diversion of funds for the interested person. Section 13(1)(c) says that if the amount paid is excess of what was reasonably paid for the service rendered has to be considered as used or applied for the benefit of person interested. In the case before us, the Managing Trustee has not rendered any service. In fact, there was an agreement for purchase of property. Therefore, the question arises for consideration is whether the money advanced by the assessee to the extent of Rs.15,76,00,000/- is without adequate security and after cancelling the agreement, whether the assessee has received the adequate interest from the Managing Trustee. We have carefully gone through the order of the CIT(Appeals). From the order of the CIT(Appeals) it appears that the assessee has received 4,06,92,078/- being the interest from the Managing Trustee, in addition to the principal amount after cancellation of agreement. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly found that after cancellation of agreement, the assessee-Trust was returned and compensated by way of interest. Therefore, the transaction between the assessee-Trust and the*

*Managing Trustee cannot be construed as without any adequate security or without any adequate interest. Therefore, this Tribunal is of the considered opinion that the money was in fact advanced in pursuance of the agreement for sale. After cancellation of agreement, the money was returned in its entirety. Since there was delay in repayment of money received as advance for sale of the land, the Managing Trustee has also paid interest to the extent of Rs.4,06,92,078/-. Therefore, at any stretch of imagination, it cannot be said that the money was diverted for interest of the Managing Trustee. Therefore, this Tribunal is of the considered opinion that there is no violation of Section 13 of the Act.*

*9. Now coming to the receipt of donation from Sri Balaji Charitable and Educational Trust, what was received by the assessee is capital asset by way of three institutions and its infrastructures. It is nobody's case that the assessee's funds were diverted to any other Trust. When the assessee received three institutions for carrying out its charitable activity, it cannot be said that there was a violation of any other provisions of Income-tax Act. In fact, the Assessing Officer himself disallowed the claim of the assessee on the ground that the money was advanced to the Managing Trustee. Since this Tribunal found that there was no violation of Section 13(1)(c) of the Act in respect of the agreement entered between the assessee-Trust and the Managing Trustee for purchase of property and it is not in dispute that the Managing Trustee returned entire amount with interest of Rs. 4,06,92,078/-, the assessee is entitled for exemption under Section 11 of the Act. Therefore, this Tribunal do not find any infirmity in the order of the CIT(Appeals) and accordingly, confirmed.*

*5. Since the issue relating to the money advanced to Mr. Isari K. Ganesh and other parties was subject matter of appeal before this Tribunal for assessment year 2010-11 vide order dated 28.10.2015 taking the consistent view on the facts of the case and by placing reliance on the judgement of jurisdictional High Court in the case of CIT Vs. L. G. Ramamurthi in {1977} 110 ITR 453 (Mad) wherein held that Tribunal is not right in taking altogether different view in later year on same set of facts, when*

*there is no fresh material brought before it, we are inclined to decide the issue in favour of assessee by holding that there is no violation of provisions of the section 13(1)(c) read with section 13(3) of the Act and the assessee cannot be denied exemption u/s.11 of the Act on this count.”*

9. In this view of the matter, and consistent with the view taken by the co-ordinate Bench, we are of the considered view that there is no error in findings recorded by the learned CIT(A) to arrive at conclusion that loans & advances given to interested persons as referred to u/s.13(3) of the Act is not a violation referred to u/s.13(1)(c) of the Act, and consequently, benefit of exemption u/s.11 cannot be denied to the assessee trust for its income. Hence, we are inclined to uphold findings of the learned CIT(A) and reject grounds taken by the revenue.

10. The next issue that came up for our consideration for assessment year 2012-13 from ground No.4 of revenue appeal is corpus donation received by the trust of Rs.4.23 crores and treatment of said corpus donation as income of the assessee. The Assessing Officer has treated corpus donation as income of the assessee solely on the ground that trust itself is disentitled for benefit of exemption u/s.11 of the Act, because

of violations referred to under section 13(1)(c) r.w.s 13(3) of the Act, in respect of loans & advances given to interested persons. The learned CIT(A) held that corpus donation received by the assessee with specific direction is part of corpus fund of the trust and same cannot be treated as income of the assessee, when the trust is entitled for benefit of exemption u/s.11 of the Act.

11. The learned A.R for the assessee submitted that this issue is also covered in favour of the assessee by decision of the ITAT., Chennai in assessee's own case for assessment year 2011-12 in ITA No.1548/Chny/2015, where under identical set of facts, the Tribunal held that when the assessee is entitled for benefit of exemption u/s.11 of the Act, by virtue of recognition of trust u/s.12AA of the Act, corpus donation cannot be treated as income u/s.12 r.w.s 2(24)(iia) of the Income Tax Act, 1961.

12. The learned DR, on the other hand, fairly agreed that this issue is also covered in favour of the assessee by decision of the Tribunal in assessee's own case for assessment year 2011-12.

13. We have heard both the sides, perused material available on record and gone through orders of the authorities below. We find that the Tribunal had considered an identical issue in assessee's own case for assessment year 2011-12 in ITA No.1548/Chny/2015, and after considering relevant facts, the Tribunal held that corpus donation received by the assessee for specific purpose cannot be treated as revenue receipt and thus, is not liable to be taxed. The relevant findings of the Tribunal in ITA No.1548/Mds/2017 dated 19.12.2016 are as under:-

*"6.1 Regarding treatment of contributions made with the specific direction to the assessee as income of assessee in terms of sec.12 of the Act, the Ld.CIT(A) observed that once there is a violation of provisions of the section 13(3) r.w.s.13(1)(c), the provisions of the section 11 & 12 shall not operate so as to exclude the income of the trust from the total income of the previous year. According to sections 11 & 12 of the Act, the voluntary contribution made with specific direction that they shall form part of the corpus of the trust or institution, shall not be included in the total income of the previous year of the trust. But once, the exemption u/s.11 and 12 is denied, the assessee would not get any protection from sec.11 & 12 and the voluntary contribution would be treated as income, as per the definition of income given in sec.2(24)(iia) of the Act, according to which income includes the voluntary contribution receipts by a trust thereby once the exemption u/s 11& 12 of the Act is withdrawn all the receipts of the trust either by voluntary contribution or income derived from the property would be income of the Trust in a normal course and is chargeable to tax. Accordingly, the Ld.CIT(A) held that the corpus donation is chargeable to tax. Now, aggrieved, the assessee is in appeal before us.*

*7. We have heard both the parties and perused the material on record. According to the Authorised Representative these funds are contributed to the trust for the specific purpose and it being a capital receipt, it cannot be taxed and this is not collected from students so as to treat the same as income of assessee u/s.2(24)(iia) of the Act in view of the Amendment to this Section with effect from 01.04.1989. According to the AR these funds are contributed to the trust for specific purpose and it being capital receipt it cannot be taxed and this is not collected from the students so as to treat the same as income of the assessee u/s 2(24)(iia) of the Act in view of the amendment to this section w.e.f. 1.4.1989. The assessee contended that this amount was collected towards "Corpus fund" with a specific direction for capital expenditure and the amount so received was spent for specific purpose for which it was collected. According to the AR it cannot be treated as income of the assessee as it is a specific grant. According to the AR the entire receipts received towards specific purpose cannot be taxed.*

*7.1 The issue for our consideration is whether the amounts received by the assessee were in the nature of voluntary donations received for specific purpose. If yes, whether the same could be considered towards corpus of the trust. Alternatively, if the donations are not voluntarily made, then whether such donations could be considered as income chargeable to tax. The assessee has taken a plea before us that these donations are received for a specific purpose, it is a tied up grant. Sections 11, 12 and 2(24)(iia) of the Act speak of voluntary contributions. Therefore, firstly, it has to be seen whether such donations are voluntary or not. According to the dictionary meaning, an act can be said to be voluntary if it is done by free choice of one's own accord, without compulsion or obligation, without valuable consideration, gratuitous, etc. There is no material on record to suggest that such donations are given against the will of the donors or by any compulsion or under any obligation. In that sense, it can be said that the donations are voluntary. If the donations are not voluntarily made, the same fall outside the ambit of sections 11, 12 and 2(24)(iia) of the Act. Consequently, general provisions of Income-tax Act would become applicable. According to the general provisions of the Act, all receipts are not income. Donations received for specific object are to be considered as*

*tied up fund and it is capital receipt. If the donations are made voluntarily for specific purpose, the same cannot be held as income of the assessee, since the donations were, in our opinion, given for specific purpose as tied up grant and it cannot be taxed as income.*

*7.2 As far as section 2(24)(iia) is concerned, this section has to be read in the context of introduction of section 12. It is significant that section 2(24)(iia) was inserted with effect from 1.4.1973 simultaneously with the present section 12, both of which were introduced from the said date by Finance Act, 1972. Section 12 makes it clear by the words appearing in parenthesis that contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall not be considered as income of the trust. The Board circular No. 108 dated 20.3.1973 is extracted at page 1754 of Volume-I of Sampathlyengar Law of Income-tax (10th Edition), in which the interrelation between sections 12 and 2(24) has been brought out. Gifts made with clear direction that they shall form part of the corpus of the religious endowment can never be considered as income. In the case of R.B. Shreeram Religious and Charitable Trust v. CIT (172 ITR 373) (Bom) the Hon'ble High Court held that even ignoring the amendment to section 12, which means that even before the words appearing in parenthesis in the present section 12, it cannot be held that voluntary contributions specifically received towards corpus of the trust may be brought to tax. The aforesaid decision was followed by the Bombay High Court in the case of CIT vs. Trustees of KasturbalScindia Commission Trust (189 ITR 5) (Bom). In the present case donations being received for specific purpose, towards corpus of the trust, cannot be assessed as income of the assessee.*

*7.3 Being so, as seen from the above judgment, the amount received by the assessee for specific purpose would only mean that the assessee agreed to act as a trustee of a special fund received by assessee from various persons. As a result, it need not be pooled or integrated with the assessee's normal income. The assessee is acting as an independent trustee for that amount received from various persons just as some trustee can act as a trust for more than one trust. Tied up or specific grant need not, therefore, be treated as amounts which are required*

*to be considered for assessment. In other words, tied up grant received from donors for a specific purpose cannot form part of assessee's income. In view of the above discussion, voluntary contributions in the nature of corpus fund received by the assessee cannot be brought to tax. The tied up grant or corpus fund received by the assessee should not be taxable as income of the assessee, if it is used for specific purpose for which it has been given and it cannot be considered as revenue receipts so as to tax the same.*

*7.4 In view of the above, we are inclined to hold corpus donation received by the assessee for the specific purpose cannot be treated as revenue receipt and same be considered as capital receipt and not liable to be taxed. Accordingly, the appeal of the assessee is allowed.”*

14. In this view of the matter and consistent with the view taken by the co-ordinate Bench in assessee's own case for assessment year 2011-12, we are of the considered view that there is no error in the reasoning given by the learned CIT(A) to delete additions made towards corpus donation as income of the assessee. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue for assessment year 2012-13.

15. The next issue that came up for our consideration for assessment year 2012-13 and 2013-14 from ground no.5 if revenue appeal is denial of exemption on account of advances made for purchase of land to related parties. We find that an

identical issue has been considered by us in assessee's own case for very same assessment year with reference to loans and advances given to founder and managing trustee for purchase of land and held that loans & advances given for purchase of land, even if, such advance is given to persons specified under section 13(3) is not in contravention of provisions of section 13(1)(c) of the Act, and thus, benefit of exemption u/s.11 cannot be denied to the assessee. The reasons given by us in preceding paragraph no.9 for very same assessment years shall equally apply to this ground, as well. Therefore, for similar reasons, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue.

16. The next issue that came up for our consideration from ground no. 6 of revenue appeal for assessment year 2012-13 is disallowance of interest paid on term loan availed from ICICI bank amounting to Rs.2.2 crores. The Assessing Officer has disallowed interest paid on term loan availed from ICICI bank on the ground that the assessee has diverted entire term loan to related parties and thus, interest paid on said loan is not

allowable as deduction. It was explanation of the assessee before the lower authorities that loans borrowed from ICICI bank has been utilized for purchase of landed property for purpose of trust and thus, even if, advance given to related parties out of term loan availed from bank, since advance is for the purpose of objects of the trust, interest paid on said loan cannot be disallowed. The learned CIT(A) after considering relevant facts has deleted additions made by the Assessing Officer.

17. The learned DR submitted that the learned CIT(A) has erred in deleting additions made towards disallowance of interest paid on term loan availed from ICICI bank as application of income even though such loan was used for giving advances without any interest to specified persons referred to u/s.13(3) of the Act.

18. The learned AR for the assessee, on the other hand, submitted that when loan borrowed from bank is utilized for purpose of objects of the trust, even if such loan is used to give advance to interested persons specified under section 13(3) of

the Act, no interest can be disallowed as long as such loans and advance is for the purpose of objects of the trust.

19. We have heard both the sides, perused material available on record and gone through orders of the authorities below. The learned CIT(A) has recorded categorical finding that the assessee trust was in the process of establishing medical college and deemed university and for this purpose, it has availed term loan from ICICI bank for purchase of lands. The said loan has been utilized for giving advances to various persons including interested persons as referred to u/s.13(3) of the Act, for purchase of land. The learned CIT(A) has recorded further factual finding that trust has subsequently purchased land from persons to whom loans and advances was given. It was further noted that said property itself was taken as collateral security for the trust to avail loan from the bank. Therefore, he opined that there is no diversion of funds to interested persons without charging any interest. In fact, term loan availed from ICICI bank has been utilized for objects of the trust of imparting education and thus, there is clear error in the findings of the Assessing Officer that term loan availed from ICICI bank has been diverted to give loans & advances to

specified persons without charging interest. The facts remained unchanged. The revenue fails to bring on record any evidence to disprove findings of fact recorded by the learned CIT(A). Hence, there is no diversion of interest bearing funds to related persons without charging interest. Therefore, we are of the considered view that there is no error or infirmity in the reasons given by the learned CIT(A) to delete additions made by the Assessing Officer towards disallowance of interest paid on term loan availed from ICICI bank. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue.

20. The next issue that came up for our consideration from ground no.5 of revenue appeal for assessment year 2013-14 is ad-hoc disallowance of rent paid M/s. Vinayaka Educational Trust, a specified person referred to u/s.13(3) of the Income Tax Act, 1961. The Assessing Officer has made ad-hoc disallowance of Rs.3.53 crores being 10% rental payments made to M/s. Vinayaka Educational Trust, a trust under same management on the ground that rent payment made to specified persons is excessive and unreasonable. The learned

CIT(A) has deleted additions made by the Assessing Officer on the ground that rent payment made to another trust registered u/s.12AA of the Act, is neither directly or indirectly benefitted person as specified u/s.13(3) of the Act, and therefore, there is no justification or rational for invoking provisions of section 13(1)(c) of the Act. Therefore, the learned CIT(A) by considering relevant facts and also by following decision of the Tribunal in assessee's own case for assessment year 2011-12 deleted additions made by the Assessing Officer.

21. The learned DR submitted that the learned CIT(A) has erred in allowing rent payment to M/s.Vinayaka Educational Trust, a specified person by merely following predecessor CIT(A)'s order dated 08.07.2016, which was set aside by the Tribunal with a direction to give finding whether any interest or security was provided for transaction. The learned DR further submitted that the assessee has paid huge rent and deposits to related parties for taking premises on rent and such rent and deposit is excessive and thus, the Assessing Officer has recorded categorical finding that it is in violation of provisions of

section 13(1)(c) of the Act, and accordingly, additions made by the Assessing Officer should be upheld.

22. The learned A.R for the assessee, on the other hand, submitted that the assessee has taken premises on rent from M/s. Vinayaka Educational Trust and such building is admeasuring 1,09,640 sq.ft along with appurtenant land approximately 3 acres. If we compare rent paid by the assessee to the prevailing rent, rent paid by the assessee is very reasonable and thus, the Assessing Officer has erred in making ad-hoc disallowance of rent payment merely for the reason that said transaction is between two related persons. The learned A.R further referring to rent paid to Mrs. Arthi Ganesh and M/s.Arthi Associates submitted that the assessee has taken guest house on rent in Injambakkam and said premises is fully furnished and thus, rent paid by the assessee is reasonable when compared to prevailing market rent. The Assessing Officer without assigning any reason has made ad-hoc disallowance of 10% rent paid to Arthi Associates and 20% on rent paid to Mrs.Arthi Ganesh. The learned A.R further referring to rental advance paid to M/s.Samudra Resorts Pvt.

Ltd. submitted that the assessee had paid rental advance Rs.2 crores and monthly rent of Rs.8,25,000/- for land admeasuring 10 acres which works to a sum of Rs.82,500/- per acre and hence, the Assessing Officer has clearly erred in disallowing 10% rent paid to Samudra Resorts Pvt.Ltd. without bringing on record any comparable cases of similar nature.

23. We have heard both the sides, perused material available on record and gone through orders of the authorities below. The assessee has taken a building on rent from M/s.Vinayaka Educational Trust admeasuring 1,09,640 sq.ft with appurtenant land approximately admeasuring 3 acres. The said land is situated in a prime location. The assessee has taken building on rent and running its entire University in the said premises at Pallavaram. The Assessing Officer has made ad-hoc disallowance of 10% of rent paid to above parties on the ground that the assessee has paid excessive and unreasonable rent to related parties. It was explanation of the assessee that when you compare prevailing market rent in the locality where premises are situated, then rent paid by the assessee is reasonable and thus, the Assessing Officer has erred in making

ad-hoc disallowance of rent only for reason that said transaction is between related parties.

24. We have gone through reasons given by the Assessing Officer in light of arguments advanced by the learned AR for the assessee and we ourselves do not subscribe to reasons given by the Assessing Officer for simple reason that unless the Assessing Officer brings on record any comparable case of similar nature, to compare rent paid by the assessee to above parties, no ad-hoc disallowance can be made only for reason that said transaction was between related parties. The Assessing Officer neither given any reason why rental payment and security deposit paid by the assessee to above parties is excessive and unreasonable, nor brought on record any comparable cases of similar nature. In absence of any evidence to disprove claim of the assessee on rent and deposit paid to the above parties, no ad-hoc disallowance can be made on rental payment, because said transaction was between related parties. Therefore, we are of the considered view that the Assessing Officer has clearly erred in making ad-hoc disallowance of rent payment to above parties. The learned CIT(A), after considering relevant facts has rightly deleted

additions made by the Assessing Officer. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue.

25. In the result, appeals filed by the Revenue for assessment years 2012-13 and 2013-14 are dismissed.

**ITA Nos . 3549 & 3550/Chny/2018 (AY 2014-15 & 2015-16):**

26. The only issue that came up for our consideration from these two appeals filed by the Revenue for assessment years 2014-15 & 2015-16 is payment of rent and security deposit to M/s. Vinayaka Educational Trust, rent paid to Mrs. Arthi Ganesh & M/s.Arthi Associates and rental advance paid to M/s. Samudra Resorts Pvt. Ltd. as violations referred to u/s.13(1)(c) and 13(1)(d) of the Income Tax Act, 1961 and consequent denial of exemption u/s.11 of the Act.

27. We find that an identical issue has been considered by us in assessee's own case for assessment year 2012-13 & 2013-14 in ITA No.3547 & 3548/Chny/2018 in light of rent paid by the assessee to M/s.Vinayaka Educational Trust, Mrs. Arthi Ganesh & M/s. Arthi Associates and further, rental advances

paid to M/s. Samudra Resorts Pvt. Ltd and after considering relevant facts, we held that rent payment and rental advance paid to the specific persons as referred to u/s.13(3) is not in violation of section 13(1)(c) and 13(1)(d) of the Act, and consequently, benefit of exemption cannot be denied to the assessee u/s.11 of the Act. The relevant findings of the Tribunal are as under:-

*“24. We have gone through reasons given by the Assessing Officer in light of arguments advanced by the learned AR for the assessee and we ourselves do not subscribe to reasons given by the Assessing Officer for simple reason that unless the Assessing Officer brings on record any comparable case of similar nature, to compare rent paid by the assessee to above parties, no ad-hoc disallowance can be made only for reason that said transaction was between related parties. The Assessing Officer neither given any reason why rental payment and security deposit paid by the assessee to above parties is excessive and unreasonable, nor brought on record any comparable cases of similar nature. In absence of any evidence to disprove claim of the assessee on rent and deposit paid to the above parties, no ad-hoc disallowance can be made on rental payment, because said transaction was between related parties. Therefore, we are of the considered view that the Assessing Officer has clearly erred in making ad-hoc disallowance of rent payment to above parties. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer. Hence, we are*

*inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue.”*

28. In this view of the matter and consistent with the view taken by co-ordinate Bench in assessee's own case for assessment year 2012-13 & 2013-14, we are of the considered view that the Assessing Officer has erred in holding that rent payment to M/s.Vinayaka Educational Trust, Mrs. Arthi Ganesh & M/s. Arthi Associates and rental advance paid to M/s. Samudra Resorts Pvt. Ltd. is in contravention of provisions section 13(1)(c) and 13(1)(d) of the Act, and consequently, the Assessing Officer has clearly erred in denial of exemption claimed by the assessee u/s.11 of the Income Tax Act, 1961. The learned CIT(A), after considering relevant facts and also by following predecessor CIT(A)'s order for earlier assessment year has rightly held that rent payment made by the assessee to above parties is not in violation of section 13(1)(c) of the Act. Hence, we are inclined to uphold findings of the learned CIT(A) and direct the Assessing Officer to allow exemption claimed by the assessee u/s.11 of the Income Tax Act, 1961 for both assessment years.

29. In the result, appeals filed by the revenue for assessment years 2014-15 and 2015-16 are dismissed.

30. As a result, these appeals filed by the revenue for all four assessment years are dismissed.

Order pronounced in the open court on 22nd December, 2021

Sd/-  
(महावीर सिंह)  
(Mahavir Singh)  
उपाध्यक्ष/ Vice-President

Sd/-  
(जी. मंजुनाथ)  
(G. Manjunatha )  
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,  
दिनांक/Dated 22<sup>nd</sup> December, 2021

DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.