

IN THE INCOME TAX APPELLATE TRIBUNAL  
"H" BENCH, MUMBAI  
Before Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 7502/Mum/2019 (Assessment Year : 2014-15)

ITO(E)-1(3) Room No. 511 5 <sup>th</sup> Floor Piramal Chambers Lalbaug, Lower Parel Mumbai-400 012.	Vs.	Hinduja Foundation 171, Hinduja House Dr. Annie Besant Road Worli, Mumbai-400018.  PAN : AAATH0124L
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Present for Appellant	Shri Percy Pardiwalla
Present for Respondent	Shri Asif Karmali
Date of hearing	15.11.2021
Date of Pronouncement	07.02.2022

O R D E R

Per Shamim Yahya (AM)

This appeal by the Revenue is directed against the order of ld. CIT(A) dated 11.9.2019 and pertains to assessment year 2014-15.

2. The grounds of appeal read as under :-

1. "Whether, on the facts and in circumstances of the case and in law, the Ld. CIT(A), Mumbai has erred in holding that there is no violation u/s. 13(c) of the I. T. Act and erred in allowing relief u/s. 11(1)(a) & 11(2) r.w.s. 12 of the I. T. Act, which is contrary to the law."

2. "Whether, on the facts and in circumstances of the case and in law, the Ld. CIT(A), Mumbai has erred in deleting addition of Rs. 1,98,71,842/- and erred in allowing that there is no violation u/s. 13(1)(c) & 13(2)(g) r.w.s. 13(3) of the I. T. Act. Ld. CIT(A), Mumbai has erred in allowing relief u/s. 11(1)(a) &, 11(2) r.w.s. 12 of the I. T. Act, which is contrary to the law."

3. "Whether, on the facts and in circumstances of the case and in law, the Ld. CIT(A), Mumbai has erred in allowing relief of Rs. 3,58,200/- without appreciating fact that the assessee trust is charitable trust and given donation to religious trust."

4. "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."

3. Brief facts of the case are as under :-

The assessee-trust had e-filed return of income on 29.09.2014 declaring total income at NIL income. The trust is registered with the Director of Income Tax (Exemption), Mumbai u/s.12A under registration No.TR/H(a)/33/74-758 of the Income Tax Act, 1961. The trust is also registered with the Charity Commissioner, Mumbai. The main object of the trust is:

- i) Operating, Running, Continuing educational and vocational school
- ii) Establishment & support of Professorships, Instructorships, Fellowships, Lectureships, Scholarships and prizes at any schools, colleges or other educational institutions.
- iii) Establishment & Maintenance of hostels and/or boarding houses to students and those connected with the institutions.
- iv) Grant of monetary assistance to schools, colleges, etc
- v) Grant of monetary assistance, scholarships, tuition fees, free ships/loans to poor students
- vi) Supply of books, food & clothes, school/college fees, monetary assistance to poor students
- vii) Promotion of education & learning in all its branches,
- viii) Establishment & maintenance & support of dispensaries
- ix) Grant of subscriptions and donations to hospitals, dispensaries, convalescent homes, asylums, nursing homes, orphanages, etc.
- x) Distribution of free food and clothing to the poor, xi) Grant of relief to the maimed, impotent & poor. Sinking of wells and/or setting up parabars wherever there may be scarcity of water.
- xii) Establishment & maintenance & support of sanatoria, Ashrams, Dharamshalas, etc.
- xiii) Establishment of cheap or low rent chawls/buildings/housing for the poor.
- xiv) Subscriptions, contributions and/or donations to any public funds devoted to public charitable objects.
- xv) Relief to destitute, blind/maimed, old by way of donations/subscriptions, assistance/encouragement in matters of education, assistance for funeral, advancement of education, construction & maintenance of & support to public works such as highways, bridges, wells, etc., establishment & maintenance & support of library, museum, garden for the public, relief to animals, birds in distress, etc. .

4. During the course of assessment proceedings, the AO held that there was violation of section 13(3) r.w.s. 13(1)(c) and 13(2) of the Act and hence the

assessee is not eligible for exemption under section 11 of the Act. Aggrieved, the assessee has preferred this appeal.

5. In assessment order the preliminary observation of the Assessing Officer are as under :-

“It is observed from submission filed by the assessee, assessee trust has leased its hospital to M/s. Hinduja Healthcare Pvt Ltd (HHPL) for 66 years. The lease rental for hospital building was Rs. 1.50 Cr per annum and 0.5% of turnover of M/s. Hinduja Healthcare Pvt Ltd. It is pointed out here that M/s. Hinduja Healthcare Pvt Ltd. is a related concern of Hinduja Group wherein trustees and their relatives are substantially interested. Further, M/s. Hinduja Healthcare Pvt Ltd. is a profit making concern. Therefore, Hinduja Healthcare Pvt Ltd has an incentive to increase its profits by paying lower lease rental value to the assessee. Through this, assessee foundation will have lower income at its disposal for charitable activities and the Lessee would increase its profit thereby increase its net worth. The Return on investment for HHPL will be much quicker with lower lease rentals. The Lessee (HHPL) also claims depreciation on the assets invested and it has the facility of utilizing the hospital building at a lower than market value.”

6. The Assessing Officer sought assessee’s response in this regard. However he was not satisfied with it. He observed as under :

“The assessee has leased the property of the trust to M/s. Hinduja Healthcare Pvt. Ltd., and the confirming party of the lease agreement is M/s. Hinduja Realty Ventures Ltd (HRVL). It is also pertinent to mention that Charity Commissioner has given permission of leasing property of the trust to M/s.Hinduja Realty Ventures ltd. However, the assessee has given the property on lease to M/s. Hinduja Healthcare Pvt. Ltd.

6.6.2 Names of the Trustee of the trust are as under:

- 1) Srichand P. Hinduja
- 2) Sareeta S. Hinduja
- 3) Gopichand P. Hinduja
- 4) Prakash P. Hinduja
- 5) Ashok P. Hinduja
- 6) Harsha A. Hinduja

6.6.2 Shareholding pattern of Hinduja Healthcare Pvt. Ltd 31/03/2014 is as under:

Shareholders Name	Type of shares	No. of shares	% of share holding
Hinduja Realty Ventures Ltd.	Equity	2,50,00,000	79.37%
Amas Mauritius Ltd	Equity	65,00,000	20.63%
Total		3,15,00,000	100%

- (ii) As on 31/3/2014 Hinduja Group Ltd. is holding 96.99% shares of M/s. Hinduja Realty Ventures Ltd.
- (iii) Shareholding pattern of Hinduja Group Ltd as on 31/3/2014 is as under :

Shareholders Name	Type of shares	No. of shares	% of share holding
Mr. A. P. Hinduja/ Mrs. H. A. Hinduja	Equity	49,995	49.99%
Mrs.H.A.Hinduja /Mr. A.P. Hinduja	Equity	50,000	50.00%
Total		99,995	99.99%

- (iv) Mr. A.P. Hinduja & Mrs. H. A. Hinduja are trustee of the assessee trust.

6.6.4 From the above it is clear that the trustee Mr. Ashok P. Hinduja and Mrs. Harsha A. Hinduja, holds more than 20% share of M/s.Hinduja Realty Ventures Ltd and M/s. Hinduja Healthcare Pvt. Ltd. Therefore the trustees, singly & jointly holds substantial interest in both the companies. Hence the contention of the assessee that none of the sub-clauses of (a) to (e) of Sec 13(3) are not applicable in its case, is not accepted.

6.7 It is also observed from the lease agreement that when the assessee has taken the lease agreement for registration before the Registrar, the Registrar has taken the value of the property at three times against, what was taken by assessee through a Registered Valuer, taking value of which assessee has prepared the Lease Agreement. The stamp duty was charged almost three times the value taken by the assessee.

7. The Assessing Officer sought reply of the assessee to the above also. He elaborately reproduced the submission of the assessee. However he rejected the same. He observed as under :-

“6.11 After going through the trust deed, the list of trustees and the shareholding pattern of M/s. Hinduja Healthcare Pvt. Ltd clearly indicate that the lease transaction is a transaction between related concerns as per provision of section 13(3) of the IT Act. Shri. Ashok Premanand Hinduja is the Managing

Trustee of the assessee trust. And Smt. Harsha Hinduja is also one of the trustee. And other trustees, namely, Shri. Srichand P. Hinduja, Sareeta S. Hinduja, Gopichand P. Hinduja, Prakash P. Hinduja are the relatives of Shri. Ashok Hinduja 85 Smt. Harsha Ashok Hinduja. Therefore, Hinduja Healthcare Pvt.Ltd. and assessee trust are covered u/s. 13(3)(cc) 8& 13(3)(e) of the I.T. Act, 1961. Shri. Ashok Premanand Hinduja 8& Smt. Harsha Ashok Hinduja hold more than 70% stake in M/s.Hinduja Healthcare Pvt Ltd.

6.12 Therefore, the assessee has failed to disclosed fully and truly materials facts in respect of trustees and their family members that they are substantial shareholders in Hinduja Healthcare Pvt Ltd; either in the return of income or Tax Audit report/notes to accounts necessary for assessment in the context of lease rent payment to HHPL as per provision of section 13(3) of the IT Act.

6.13 The fact that Charity Commissioner, Greater Mumbai has approved the lease deed is not of much relevance here as the mandate of the Charity Commissioner is not to evaluate the scheme over tax planning but is only to see whether the funds of the charity are not utilized otherwise. The order of the Jt. Charity Commissioner is as per section 36(l)(b) of the Bombay Public' Trust Act, 1950 and not as per the Indian Income Tax Act, 1961. So, one does not preclude other and both operate parallely for achieving diverse objects. Therefore, the order of Charity Commissioner does not prevent this office from investigating the transactions.

6.14 The land on which the hospital of the assessee is situated was donated to the assessee by **BawaBaldeodasBeragi**. It shows that this land is donated to the assessee because it is a charitable trust indulged in public charity. Therefore, there is no cost to the assessee for the land.

6.15 The assessee has violated the above conditions and its properties given by the assessee to M/s HHPL (Group Concern) which is a commercial entity and cannot be called an activity charitable in nature. As the assessee has not conducted its activities in a charitable nature and has leased the hospital on commercial lines and has not utilized property held under trust on its main objects and, therefore, is not entitled to exemption under Section 11 of the Act.

6.16 The issue before me is whether the assessee is conducting its affairs in a charitable manner or whether on commercial lines. The contention of the assessee that Hinduja Group is not connected to the assessee is also of no consequence, **since the assessee, a charitable trust, could not make charity to a commercial organization. It was found during the course of assessment proceedings that Hinduja Healthcare Pvt Ltd were in full control of the hospital established by the assessee.** The assessee trust has entrusted the construction of the hospital building, and leased the hospital project to HHPL, which is admittedly a profit making concern and not u charitable institution. All the agreements entered into by the assessee with the HHPL were highly tilted to give due and undue benefits to the Hinduja Group. The Hospital Building was indirectly transferred by way of Lease Agreement for 66 Years to HHPL almost free of cost. A bare reading of the above agreements entered into by the assessee with HHPL shows that the agreements were drafted in, a way to give maximum benefit to the commercial Hinduja Group of

companies and could not be said to be in advancement of any charitable activity of the assessee.”

8. Thereafter the Assessing Officer observed that the assessee is not running its affairs on charitable lines, therefore, the assessee-trust is not entitled to the benefit of exemption under Section 11 of the Act. He referred to the decision of Bangalore Tribunal in D.R. Ranka Charitable Trust Vs. DIT(E) (3 ITR 151) and Chennai Bench of the ITAT in Aurolab Trust Vs. CIT (46 SOT 125). He made a general observation that the assessee is not following the main objects. That the hospital is virtually running by the HHPL which are corporate bodies established with the clear intention of profit motive. After giving general theory about the charitable trust and what is not charitable the AO rejected the assessee’s argument that the assessee is registered under section 12A and hence, it is eligible for exemption under section 11 of the Act. He referred to the decision of Honourable supreme court in the case of Queen’s Education Society Vs. CIT (2015-TIOL-20-SC-IT) for the proposition that the assessing authority must continuously monitor from assessment to assessment year whether such institution continues to apply their income and invest or deposit their funds in accordance with the law laid down and if the activities of the institution are found not to be genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. He held that the annual lettable value is to be taken at Rs. 4.50 crores instead of Rs. 1.50 crores as shown in the return of income. He referred to the decision of the ITAT which has been upheld by Hon’ble High Court in the case of ITO Vs. Goverdhan Dass & Sons (20 ITD 681). He also referred to the decision of Hon’ble SC in the case of CIT Vs. Distributors (Baroda) (P) Ltd. for the proposition that to perpetuate an error is no heroism. Thereafter he further elaborated section 50C, 50C(1), 56(2)(vii)(b) of the Act. He held that the plain reading of the three sections indicate and assertively highlights the intention of the legislature that valuation of any property should be at least what is

decided by any State Government authority for doing so. Thereafter he held as under :-

“In this case the registrar of stamp duty has valued the property at three time than what was taken by the assessee. Therefore, the annual rent value of the property of the trust is taken at Rs.4.50 crores and 0.5% of Gross receipt of HHPL which comes to Rs.27,13,774/- instead of Rs.1.50 crores and 0.5% of Gross receipt of HHPL which comes to Rs.27,13,774/-as taken by the assessee.

In view of the above discussion, the fair rental value of the property leased out by the assessee to Hinduja Healthcare Pvt. Ltd., comes to Rs.4.77 instead of Rs. 1.77 crores as shown by the assessee.”

9. Thereafter he further elaborate upon the provisions of section 13(1)(c) and 13(2)(a) & (b) of the I.T. Act and held that the assessee has violated the provisions of section 13(1)(c) and 13(2)(a) & (b) of the Act by making lease rent to HHPL, wherein Trustees are substantially interested which resulted the assessee's claim of exemption of total income is hit by provisions of section 13(1)(c) and 13(2)(a) & (b) of the Act and denial of exemption under section 11 of the Act. He held that in the present case the assessee has leased out hospital buildings for a period of 66 years without security deposits which clearly indicate that the undue benefit taken by HHPL by way of lesser lease rent/inadequate rent payment and without providing the adequate security deposit to the assessee trust due to trustees and their relatives are substantially interested in the concern HHPL. Hence, he held that the assessee is not eligible for exemption under section 11 of the Act. In this regard he referred to the decision of Hon'ble Delhi High Court in the case of Pt. Kanahyalal Punj Charitable Trust Vs. DIT(E). Thereafter the Assessing Officer further observed upon the genuineness of the activities. He noted that the assessee trust got the land free of cost as donation from Bawa Baldeodas Beragi. That thereafter the assessee trust has taken corpus donation from group concerns. He observed that if the assessee has taken corpus fund it mean public money is invested by way of corpus and the company's claim 80G deductions on that corpus amount. He proceeded to hold that after completing the hospital building the assessee trust has made the application to charitable

commissioner for leasing out of the hospital building due to the trust has not required expertise to run such a huge hospital. That this is nothing but only tax planning to dubious method for colourable devices. He held that the fact that Charity Commissioner, Greater Mumbai has approved the lease deed is not of much relevance here as the mandate of the Charity Commissioner is not to evaluate the scheme over tax planning but is only to see whether the funds of the charity are not utilized otherwise. Thereafter the AO observed as under:-

“Considering these facts the assessee trust is not carrying out activity in accordance with the objects of trust as well as activity of the Assessee Trust is not genuine.

(1) Prima facie it is observed that, public money in the form of Corpus received by the assessee trust and constructed the hospital building which is ultimately transferred to group concerned, i.e. ultimate benefit-M/s. Hinduja Healthcare Pvt. Ltd.

(2) Now coming to the financials of HHPL, despite having a turnover of Rs.59 crores, HHPL's liability towards lease rental is only Rs.1.50. Prima facie it appears that the lease rentals are not commensurate to the gross receipts of HHPL. The question is whether the lease rentals are commensurate with not only the profits of HHPL but whether the assessee trust is compensated towards the cost of building etc. as per the market value of the assets.

(3) In this year, assessee received Rs.1.50 Crores by way of rent and Rs.5.14Crores by way of interest on investment and Rs.2.91 crore lakhs by way of donation. The total income for charitable purposes in this year is Rs.6,71,92,852/-. As against this assessee had spent on the objects of the trust a sum of Rs.2.20 crores. It is evident that the amount actually spent on charities viz. Rs.2.20 crores forms only 32% of the total gross receipts.

(4) As the assessee has leased out the hospital building to Hinduja. Healthcare Pvt. Ltd for the period of 66 years, it means Hinduja Healthcare Pvt. Ltd. (HHPL) is the deemed owner of Hospital Building. A lease is a transfer within the meaning of section 2(47), as it is a transaction which has the effect of transferring or enabling the enjoyment of immovable property. The explanation to section 2(47) provides that for the purposes of sub-clauses (v) and (vi) thereof, immovable property shall have the same meaning as in section 269UA(d). Section 269UA(f)(i) defines immovable property inter-alia to mean any land or building or part of a building and the explanation thereto provides that the land, building, part of a building include any right therein. Then there is a question, whether the assessee trust is owner of property or M/s. Hinduja Healthcare Pvt Ltd. As per provision u/s. 11(1) of the I.T. Act. The income derived from property held under trust but in the instant case, property is actually transferred to M/s. Hinduja Healthcare Pvt Limited (HHPL) by way of lease deed.”

(5) Firstly, it was that the assessee trust has given the lease hold right of the space for a period of 66 years. Therefore, held that if the transaction is held to be a real lease, the assessee would be entitled to receive the lease rent but same is not applicable in the instant case as the here assessee has indirectly transfer the lease rights in the form of Hospital Building.

(6) The transactions also constitute a transfer of a capital asset in view of section 2(47)(vi) read with section 269UA(d) and (f) of the Act is also well founded.

10. In this regard after referring to section as above. He held as under :-

“7.5 Considering the facts of the case, the assessee has transferred the hospital building by way of lease rent for dubious method. As the assessee has received the lease rent measure of Rs.1.50 crores and other misc. expenses which resultant that assessee has nothing in the hand on account of lease rent. It indicates that the assessee has transferred the hospital building is almost free of cost.

*7.6 The general objective in doing all this was to conceal the true and fair nature of the transactions by entering into lease agreements by the assessee trust & its group companies. If we look at the broader picture, the whole agreement has been created to siphon off the profit/gain from the hands of the Assessee trust to Hinduja Healthcare Pvt. Ltd.*

Considering the above facts and circumstances of the case, the activity of the assessee trust is not genuine and is not carried out in accordance with objects of trust.”

11. Thereafter the AO referred to the violation of provision under section 13 of the Act. He held as under :-

#### 8. Violation of provision u/s 13 of the ACT

8.1 During the course of assessment proceedings, it is observed that the assessee has leased its hospital building to M/s. Hinduja Healthcare Pvt Ltd. (HHPL) for 66 years. The lease rental for hospital building was Rs. 1.77 crores per annum. After taking into account the valuation done by Registrar of Stamp Duty, rent of hospital building, leased out by the assessee to M/s. Hinduja Health care Pvt. Ltd wherein the trustees and their relatives are substantially interested, is taken at Rs.4.50 crores + 0.5% turnover of M/s. Hinduja Healthcare Pvt. Ltd. instead of Rs. 1.50 crores shown by the assessee. After taking into consideration the valuation of property done by stamp duty department for the purpose of registration, rent is three times of what is done by assessee after taking report of registered valuer.

8.2 Section 13(2)(b) clearly provides for a situation where the land, building or other property of the trust is made available for use of any person u/s. 13(3) for a period without charging adequate rent or Security deposits/other

compensation, shall be treated as includible in the total income of such trust/institution. As the assessee has violated the provision of section 13(2)(b) r.w.s 13(3) of the I.T. Act, therefore the exemption claimed u/s. 11 of the I. T. Act is denied to the assessee. The sub-par exploitation of its assets results in lower realization of income and hence lower income for the purposes of charity.

8.3 Considering the above facts and circumstances of the case, the activity of the assessee trust is not genuine and is not carried out in accordance with objects of trust. Hence, the assessee trust is not entitled to claim exemption u/s. 11 of the I. T. Act.

8.4 In view of the above, exemption under section 11 is not allowed to the assessee and rent income chargeable to tax at maximum Marginal rate under section 164(2) of the I.T. Act.”

12. Thereafter the Assessing Officer noted that the assessee has made donation to certain religious trust to the tune of Rs. 4,24,481/-. The Assessing Officer was of the opinion that such donation to the charitable trust is not objective of the assessee trust. He was not satisfied the assessee’s response and disallowed the same holding that the donation given by the assessee is not corpus in nature with specific direction. These directions are normal donations given by the assessee to these trust.

13. Thereafter the Assessing Officer referred to the reimbursement expenses. He observed that the assessee was asked to explain nature and details of reimbursement from PD Hinduja National Hospital & Research Centre (PDHNMRC) and how and where these receipts were taken into account. The Assessing Officer reproduced the assessee’s submission and found it to be not acceptable. He noted that no documents were furnished regarding agreement with PD Hinduja National Hospital & Research Centre. He referred to the definition of income in section 2(24)(iii) of the Act and held that as per the definition of section 2(24)(iii) transfer of fund to the assessee is income of the assessee. He further observed as under :-

“Here PD Hinduja National Hospital is covered under section 13(3)(b) of the I.T. Act, 1961 as it has donated/given Rs. 1,98,71,842/- to the assessee. Here assessee become 'Special Purpose Vehicle' (SPV) of Hinduja Group. Assessee is making payment to three senior functionaries of PDHNMRC, who are working with PDHNMRC.

What assessee has stated that it is entered into agreement for provide senior functionaries.

11.4 If the senior functionaries are working with PDHNMRC, then why PDHNMRC is not able to pay these functionaries directly, is not divulged by assessee. The question arises that why PDHNMRC is using assessee as a tool to make payment to these functionaries. When it can reimburse it then it can pay them directly also.

11.5 The transaction is observed as follows:-

11.5.1 Whatever nomenclature used by assessee, here assessee has received a fund/donation for its object is utilized by assessee for the person who is donating it.

11.5.2 Here donation given by PDHNMRC is more than Rs.50,000/-. Therefore PDHNMRC is covered u/s.13(3)(b) of the I.T. Act, 1961.

11.6 After looking into the Annexure 'B' of assessee letter dated 07/10/2016. The assessee has made for Chief Expenditure officer(CEO) & two directors remuneration. As PDHNMRC is itself a trust and all three persons are covered u/s.13(3) of title I.T. Act, 1961 and therefore, PDHNMRC is using the assessee trust as a tool so that there should not be any objection regarding-denial of section 11 of PDHNMRC.

Here the assessee is only a tool in the hands of PDHNMRC and the payment which has should have been paid by itself. It has used assessee as a tool to distinguish its transaction.

Thereafter he held that as per the provision of section 13(3)(b) and 13(1)(c) and 13(2)(g) of the Act and held that transaction of the assessee with PDHNMRC is covered under section 13(1)(c) and 13(2)(g) r.w.s. 13(3) of the I.T. Act and assessee's transaction with the concern is not genuine. Hence, he held that the benefit of section 11 & 12 will not be available to the assessee. Also the reimbursement expenses to the tune of Rs. 1,98,71,842/- is denied.

Against this order the assessee's appeal before Id CIT(A).

Ld CIT(A) dealt with various aspects of the appeal and finally partly allowed by holding as under.

14. As regards, the AO's adverse inference on lease rent. Ld.CIT(A) concluded as under:-

The above findings lead to a conclusion that:-

a) The lease is not a transfer u/s.2(47) of the Income Tax Act, as there is no involvement of salami / premium.

b) The lease agreement is approved by the Charity Commissioner u/s.36(1)(b) per his orders dtd. 31.03.2010 and 15.12.2010, The approval conferred by the charity commissioner per the said orders is also in respect of adequacy of the lease rent, interest free refundable security deposit obtained by the assessee and other terms & conditions as contained in the tripartite lease agreement dtd. 21.12.2010 entered into by the appellant with Hinduja Healthcare Pvt. Ltd. and Hinduja Realty Ventures Ltd. The AO has also not brought anything on records to challenge the lease rent as confirmed by the Govt. approved registered valuer with comprehensive analysis contained in his report dtd.20.09.2009. The said rent is found to be at Arm's Length by the Charity Commissioner after considering open offers per his order dtd. 31.03.2010 & 15.12.2010. Moreover, the appellant has also had floated public tender by giving advertisement in newspapers and the highest bidder has also quoted Rs.1.5 crore per annum as the lease rent which is also the value of the transaction. Thus, having considered all the corroborative evidence and as per the findings given by me above, there is no element of tax planning/evasion involved, either in the trust case or HHPL's case. In these circumstances, I have no hesitation to hold that the lease rent and the tripartite lease agreement and its conditions as approved by the charity commissioner in his order dtd.31.03.2010 r.w. Corrigendum Order dtd. 15.12.2010 are found to be at Arm's Length, thereby holding that HHPL, HRVL, HGL or any of the trustees of the assessee trust have not derived any benefit from the same for the purposes of section 13(1)(c) of the Income Tax Act.

c) My view stands strengthened by the Bombay High Court decision rendered in the matter of Virendra v. Appropriate Authority - 327 ITR 185 (Bom), where the Bombay High Court has held as under.

"2. After complying with all the formalities being a trust and property being a trust property, as required under the BPT Act, based upon the proper valuation of the property considered and decided and sanctioned by the competent authority just cannot be overlooked without any contra material to justify to challenge the said valuation, in a case like this, where the sanction is granted by the authority under the BPT Act. In Om Shri Jigar Associations. Union of India T19941 2Q9 ITR 608 (Gujarat Bench of the Gujarat High Court considering similar provisions of the Income-tax Act, as well as, the BPT Act has observed as under (page 613):

"In the light of the aforesaid facts, it is apparent that there was no reason for the Appropriate Authority to resort to the provisions of Chapter XX-C of the Income-tax Act. It would be difficult to arrive at a conclusion that there is significant undervaluation of property to the extent of 15 per cent, or more in the agreement of sale as evidenced by the apparent consideration being lower than the fair market

value by 15 per cent, or more. Further, the property was sold after inviting offers from the public at large by giving advertisement in the newspaper and that too after proper -verification by the statutory authority under the Bombay Public Trusts Act. Even after executing the agreement to sell, objections are invited as provided under rule 24. Hence, in such types of cases, even if some lower amount is received, it would not mean that power to purchase the said property under section 269UD of the Income-tax Act can be exercised by the authorities under Chapter XX-C as it would be difficult to draw a presumption that there was an attempt to evade tax. This is made abundantly clear by the Supreme Court in the case of C.B. Gautam v. Union of India [1993] 199 ITR 530 .

Now I come to the issue as to whether the trustees of Hinduja Foundation, namely, Mr. Ashok P. Hinduja & Mrs. Harsha A. Hinduja, who are fiduciary shareholders of HGL have derived any benefit from the above lease to HGL's step down subsidiary HHPL. In this background, one has to refer to the provisions of section 13(2)(b) which read as under.

"(b) if any /and, building or other property of the trust or institution is, or continues o be made available for the use of any person referred to in sub section (3), for any period during the previous year without charging adequate rent or other compensation;

Since, I have held that the lease rent is at arm's length with the discussion and analysis hereinabove, reference to section 13(3) in this case is not warranted. I also hold that in this case the provisions of section 13(3) are not violated The section 13(3)(e) speaks about direct holding. From the chart furnished in the written submission by the assesses, it will be seen that none of the Trustees or their family members were on the board of directors / shareholders of HHPL with whom the Trust had entered into a lease of 66 years during the F.Y. 2010-11. Further, Mr. Ashok P. Hinduja & Mrs. Harsha Hinduja are not at all shareholders of Aasia Management Consultancy Pvt. Ltd. (AMCPL), [now known as Hinduja Group Ltd. (HGL)] in their individual capacity & therefore, they are not beneficial shareholders of Aasia Management & Consultancy Pvt. Ltd. (now Hinduja Group Ltd.), as may be seen from the declaration filed in Form 22 with the Ministry of Corporate Affairs. The AO's findings at Para 6.11 that HHPL and the assessee Trust are covered on the grounds u/s.13(3)(cc) and 13(3)(e) of the Income Tax Act (1961) is therefore, completely far from the facts, entirely based on false assumptions & legally completely untenable. The finding of the AO that Mr. Ashok Parmanand Hinduja & Mrs. Harsha Ashok Hinduja hold more than 70% stake in HHPL, when compared to above factual analysis, which is also demonstrated in the decision of jurisdictional high court, in the matter of HDFC Bank Ltd. - 410 ITR 247 (Bom) does not hold good under the provisions of law. In this decision, the Bombay High Court held as under:

"30. In the facts before us it may be true that HDFC Ltd. may indirectly have 20% of the voting power in the Petitioner because HDFC Investments Ltd. is a wholly owned subsidiary of HDFC Ltd. However, that by itself would not mean that HDFC

Ltd. has a substantial interest in the Petitioner as required and stipulated in explanation (a) to section 40A(2)(b). As mentioned earlier, for a person to have a substantial interest as contemplated under explanation (a), two conditions have to be fulfilled, namely (i) that the person has to be the beneficial owner of the shares and (ii) those very shares have to carry not less than 20% of the voting power. It is only when these two conditions are fulfilled that explanation (a) can be pressed into service. In the facts before us, if we were to accept the submission of the Revenue, then we would have to hold that HDFC Ltd. is the beneficial owner of the 6.25% shareholding that HDFC Investments Ltd. has in the Petitioner. This 6.25% shareholding of HDFC Investments Ltd in the Petitioner is the movable property and an asset of HDFC Investment Ltd. That would mean that HDFC Ltd. holding 100% shares of HDFC Investments Ltd., would have to be construed as the beneficial owner of the properties/assets of HDFC Investments Ltd- This can never be the case because that would be contrary to all canons of company law as well as the decisions of the Supreme Court in the case of *Guzderand Vodafone International Holdings BV* (supra). This being the case, HDFC Ltd., by no stretch of the imagination can be said to be the beneficial owner of the shares that HDFC Investments Ltd. holds in the Petitioner. This is simply because the shares that HDFC Investments Ltd. holds in the Petitioner is its asset, and HDFC Ltd., though being a 100% shareholder of HDFC Investments Ltd., cannot be termed as the owner (beneficial or otherwise) of the assets and properties of HDFC Investments Ltd. In these circumstances, therefore, the shareholding of HDFC Ltd. and HDFC Investments Ltd. cannot be clubbed together to cross the threshold of 20% as required under explanation (a). This being the position, we have no hesitation in holding that the HDFC Ltd. does not have a substantial interest in the Petitioner, and therefore, is not a person as contemplated under section 40A(2)(b)(iv) for the present transaction to fall within the meaning of a SDT as set out in section 92BA (i) of the I. T. Act.

31 There is another reason for coming to this conclusion. If we were to interpret this provision as is sought to be contended by the Revenue, it would lead to an absurd situation, as correctly contended by Mr. Mistri. It is undisputed that there cannot be more than one beneficial owner of the same shares. If we were to take the example that was given by Mr. Mistri during arguments, it would effectively lead to a completely absurd result. Take for example Company 'A' has a wholly owned subsidiary Company 'B'. In turn, the shares of Company 'Care held 90% by Company 'B' and 10% by Company 'A'. If one was to give the interpretation as sought for by the Revenue, then it would, mean that Company 'A' beneficially owns 100% of Company 'C' which would, lead to an absurd situation that Company 'B'; though owning 90% of the shareholding in Company 'C', would not be regarded as having a substantial interest in Company 'C' as Company 'B' cannot be said to be the beneficial owner of its 90% shareholding in Company 'C'. Further, if the interpretation of the Revenue was to be held as correct then one will not have to not stop there and then also see the shareholders of Company 'A' as the beneficial owner of the shares of Company 'C'. This would then lead to absurd results, namely, that then even Company 'A' also would not have a substantial interest in Company 'C' and it would

be the shareholders of Company 'A' that would have a substantial interest in Company 'C'. This would lead to startling results. It is now well settled that whilst interpreting a statutory provision, an interpretation which would lead to an absurdity, should always be avoided. This is yet another reason why we are unable to accept the submission of the Revenue that this particular transaction would fall within the meaning of a SDT as understood and set out in section 92BA (i) of the I. T.Act."

Even otherwise, following the above decision, the beneficiaries of Param Jamuna Trust and Aasia Trust cannot be said to have any substantial interest in HHPL. Under the circumstances, the contentions of the AO fail & therefore, the parties herein are not covered as related parties for the purposes of section 13(3) of the Income Tax Act and therefore, even on this count addition on account of lease rent made cannot be sustained. The AO is directed to delete the said addition.

Coming to the issue of genuineness of activity, the AO has erred in giving a finding that the accumulated income has not been spent for the objects of the trust. One of the objects for giving charitable institution the laxity of spending accumulated income within the period of 5 years is essentially for this purpose that it has to properly spend the amount accumulated u/s.11(2) of the Income Tax Act, It may be seen from the data filed before me that the assessee has been spending funds accumulated for specified objects as under:

F.Y.	Amount accumulated	Period of 5 years	Amount applied	Unspent
12-13	3.02	31.03.18	3.02	0
13-14	2.66	31.03.19	2.66	0
14-15	5.25	31.03.20	3.85	1.40
15-16	7.56	31.03.21	3.28	4.28
16-17	8.65	31.03.22	5.32	3.33
17-18	5.36	31.03.23	0.74	4.62

Moreover, as may be seen from the assessment order itself that though the AO has held that the assessee has not carried out any charitable activities the order grants the assessee deduction of Rs.2.37 Crores on account of amount spent on the objects of the trust. Therefore, the argument of the AO that the assessee trust is not carrying out any charitable activity is rejected. The assessee in its return of income has shown a rental income at Rs.1,77,13,744/-, which is as per the charity commissioner's orders. Thus, the addition made of Rs.3,00,00,030/- to the rental

income is deleted. Accordingly, as I have held that there is no violation u/s.13(c) of the Income Tax Act, the assessee is entitled for relief u/s.11(1)(a) & 11(2) r.w.s.12 of the Income Tax Act. The assessee accordingly succeeds in Ground No.(II) taken in this appeal. Ground no.2 is allowed.

15. As regards, the AO's disallowances of reimbursement of Rs. 1.98 crores, he held as under:-

I have carefully considered the facts of the case, AO's contentions as well as appellant's submissions. After perusal of the above submissions made by the appellant and the AO's contention made in the assessment order, my decision in respect of the above ground is as under:

The AO has alleged that these are donations in nature and not in the nature of reimbursement expenses as propagated by the assessee. The AO states that no documents were furnished with respect to the agreement between PDNHRC and assessee trust in respect of these reimbursement. The AO is factually incorrect in respect of these observations

The assessee in its communication dtd. 11.08.2016, which was filed before the AO during the course of the assessment proceeding had demonstrated that the amount received of Rs.1.98 Crores was reimbursement of expenses for providing services of senior functionaries. Along with this the assessee had also furnished ledger accounts and debit notes raised by it on PDNHRC towards reimbursement of these expenses. The amounts so reimbursed were credited to the head of the respective expenditure incurred. In the said communication, the assessee had also mentioned that it has an.MOU with PDNHRC in respect of the above arrangement for reimbursement.

The appellant has also furnished a detailed analysis of the debit notes raised for reimbursement along with the costs incurred by it, as referred in the appellant's submissions. The analysis will reveal that this is a case of reimbursement of actual cost incurred by the assessee. This is as per Memorandum of Understanding dtd.16.03.1994 r.w. the another document dtd.01.10.1986.

During the course of the appellate proceeding the appellant has also drawn my attention to the fact that PDHNMRC was subject matter of survey action u/s.133A of the Income Tax Act on 04.10.2010 for verification of proper TDS compliance. In this survey undertaken by the TDS Wing of the Income Tax Department, one of the transactions was pertaining to the reimbursement of executive salaries by PDHNMRC to the appellant. During the course of appellate proceedings, the appellant has filed written submissions on 07.03.2019 pointing out that after being rejected by both the CIT(A) and the Tribunal, the Department's appeal in the matter of PDHNMRC travelled to the High Court. As per the copy produced the Hon'ble Bombay High Court in the above case in ITA Nos.: 105, 116, 112, 115,121 & 128 of

2016 vide order dated 22.02.2019 rejected the appeals filed by the Department and held that these are reimbursement of expenses hence not liable for TDS. The operative portion of the Hon'ble Bombay High Court order is reproduced as under:

"21. Question (d) basically relates to payments made to Hinduja Foundation for its employees who had rendered services to the assessee in key managerial positions. It was the case of the assessee that these payments are to be treated as a reimbursement and not as payment towards professional fees which would require TDS to be deducted under section 194J of the I.T.Act. The CIT (Appeals) noted that the Hinduja Foundation charges the salaries (and other allowances) to the assessee on actual basis and there is no further markup (either as a percentage of such charges or otherwise) paid by the assessee to the Hinduja Foundation. The personnel deputed by the Hinduja Foundation to the assessee are all highly qualified persons who are deputed to man senior management positions of the assessee - hospital. These highly qualified persons are paid by the Hinduja Foundation and it is to reimburse the Foundation that payment is made by the assessee - hospital. The fact that the Hinduja Foundation charges only the actuals from the assessee can be appreciated because Hinduja Foundation is also a trust. Looking to these facts, the CIT (Appeals) came to the conclusion that the payments made by the assessee to the Hinduja Foundation in respect of the persons deputed by it to the assessee - hospital, are not in the nature of 'fees for professional services' but was in the nature of pure reimbursement. On this issue, the ITAT also agreed with the findings given by the CIT (Appeals). The IT AT noted that the CIT (Appeals) after considering the order passed by the Assessing Officer, the submissions of the assessee and the nature of services carried out by the service providers, held that payments made to the Hinduja Foundation was towards reimbursing the salaries of Senior Management Personnel deputed by Hinduja Foundation to the assessee - hospital. All these personnel were on the pay-roll of the Hinduja Foundation and they got all the benefits from the Foundation. In turn, the Foundation raised a debit note towards actual cost of employment and accordingly the assessee made the payments to the said Foundation and which was therefore clearly in the nature of reimbursement. It was in these circumstances, and after hearing the parties and perusing the material on record, the ITAT concurred with the findings of the CIT(Appeals). In these circumstances, the ITAT opined that the payments made by the assessee to the Foundation were not in the nature of fees for technical services and therefore confirmed the order passed by the CIT(Appeals).

23. On going through the findings given by the CIT (Appeals) as well as the ITAT on this issue, we find that both the authorities below have given their findings on the basis of facts presented before them- We find that the authorities below are fully justified in coming to the conclusions that they did, namely, that the payments made by the assessee to the Foundation was in the nature of reimbursement and not in the nature of any technical or professional services which required deduction of TDS under section 194J of the I. T.Act. This being the case, Question (d) also does not give rise to any substantial question of law that would require our consideration."

Following the above decision of Hon'ble Bombay High Court, the addition of Rs. 1.98,71,842/-made by-the AO is deleted, as this is a case of mere reimbursement of expenditure by one Charitable Trust another. Thus, there are no violation of

provisions of Section 13(1)(c) & 13(2)(g) r.w.s.13(3) of the Income Tax Act, as made out by the AO, the assessee is entitled for relief u/s.11(1)(a) & 11(2) r.w.s.12 of the Income Tax Act. The addition is therefore, deleted and the appellant gets relief of Rs.1,98,71,842/.

16. As regards, disallowance of expenditure of Rs. 4.24 crores account of religious expenditure, he held as under:-

I have carefully considered the facts of the case, AO's contentions as well as submissions of the appellant. In the submission dtd.18.07.2019 specifically pertaining to donations given of Rs.3,58,200/- the assessee has submitted as under:

Donation made of Rs.3,58,200/- to ISKCON (Juhu) for philanthropic activities and feeding the poor. It may be observed from the assessment order that the donations in question have been made on the following dates:

Sr. No.	Name	Date	Amount in Rs.
1.	ISKCON	16.05.2013	50,000
		13.06.2013	6,200
		19.08.2013	41,000
		09 102013	50,000
		04.12.2013	50,000
		18 122013	11,000
		18.02.2014	1,00,000
		06.03.2014	50,000
	<i>Total</i>		<i>3,58,200</i>

The above donations on various dates have been primarily given to ISKCON for philanthropic activities and feeding the poor.

A perusal of ISKCON activities on the public domain will reveal that ISKCON is running a programme called as Food Relief Programme ISKCON - The Hare Krishna Movement.

- a) Sri/a Prabhupada, ISKCON's Founder-acharya, is the inspiration behind Food for Life. He stated in 1972 that "No one within ten miles of an ISKCON temple should go hungry.' Since that time ISKCON devotees have expanded a global network of free food restaurants, mobile services and relief programs establishing daily delivery routes in many large cities around the world

- b) Currently, Food for Life's largest programs are in India. More than 1.2 million school children are served a multi-course hot, healthy, and tasty lunch six days a week in cities throughout the sub-continent, through a partnership with the Indian government for the 'Mid-day Meal' scheme. Education administrators have stated that the ISKCON Food for Life program, known locally as Annamhta, actually facilitates many poor children to attend school. Otherwise, they explain, without the program the children would be forced to work as child laborers to earn enough to eat for the day. Midday Meal is a strategic program of the Government of India, and is being implemented by ISKCON Food Relief Foundation (IFRF) under the brand name -"annamhta" in select schools across the country. The aim of this project is to liberate children from the vicious cycle of Malnourishment and Illiteracy. Annamrita serves 1.2 million meals every single day, through its 20 kitchens across India. ISKCON have a presence in 7 states namely - Andhra Pradesh, Delhi, Haryana, Jharkhand, Maharashtra, Rajasthan and West Bengal.
- c) Even the former President of India - Hon'ble Mr. Pranab Mukherjee, lauded the above movement by stating as under:  
(ISKCON) movement, just imagine ..... within a short span of time .... Today I am told ISKCON movement runs more than 600 centres all over the world, everyday in India it provides food to over one million children ..... healthy food . And the message of love, compassion, which is inherent in Indian civilization."

It may be seen from the above submission made by the appellant, the purpose for which the donations have been given to ISKCON cannot be doubted. The AO has not brought any evidence on records to prove that the above donations given by the appellant were not for the food programme but were for religious purposes, In these circumstances, the addition made of Rs.3,58,200/- stands deleted.

The other donations given are as under:

Sr. No.	Name of the Trust	Donation in Rs.
i.	Shri Ramniwas Ram Mandir Trust (for philanthropic activities)	30.000/-
ii.	Donation (cash) for poor at Balaji Temple, Phanaswadi, Mumbai.	23,081/-
iii.	Donation of Vastras to poor at Balaji Temple, Phanaswadi, Mumbai, (purchased by cash).	13.200/-
	Total	66.281/-

In respect of the above donations of Rs.66,281/-, there are no evidences brought on record by the appellant. In these circumstances, I uphold the disallowance made by the AO in respect of donations given to these trusts aggregating to Rs.66,281/- as utilized for religious purposes and not for charitable purposes.

Accordingly, out of a total disallowance made of Rs.4,24,481/-, the appellant gets relief of Rs3,58,200/- on account of donations given to food programmes run by

ISKCON,, Thus, the disallowance of Rs.66,281/- in respect of donation made to Balaji Temple, Phanaswadi and Ram Niwas RamMandir Trust stands confirmed.

17. Against the above order, revenue is in appeal before us.

18. We have heard both the parties and perused the records. Ld. DR, Shri Asif Karmali relied upon the orders of the AO. He submitted that the AO has given proper finding regarding violation of the provision of law by the assessee. He submitted that the lease rent being received by the assessee is very low as compared to the valuation fixed by the stamp valuation authority. Furthermore, he submitted that the property has been leased to the concern in which trustees are interested. Hence, it is submitted that AO was correct in his observation that there is violation of law. He further relied upon the order of AO regarding the other aspect of AO finding and observations.

19. On the other hand, Ld. Senior counsel for the assessee Shri Percy Pardiwala submitted that the order of Ld.CIT(A) is appropriate. He submitted that assessee's transactions have all along been accepted and on the basis of same transactions in earlier assessment years no adverse inference was taken by the AO. He submitted that there is no change in facts and laws in this year. Hence, he submitted that AO cannot take a divergent stand on the same facts in this year. In this regard, the place last upon following case laws.

1. The Apex Court Judgement in case of Parashuram Pottery Works Co. Ltd. Vs ITO [1977] 106 ITR 1 (SC)
2. The Apex court decision in case of Radhaswami Satsang [1992] 193 ITR 321 (SC)

20. He further submitted that as regards, the AO observation that lease charge is not appropriate, he submitted that the same was duly approved by the charity commissioner. Further, he submitted the lease rent was arrived at after proper bidding. Hence, he submitted that when the appropriate authority has duly approved the rent and the agreement, the AO cannot now sit in

judgment and take an opposite stand. In this regard, he placed reliance upon following case laws.

1. Jurisdictional Bombay High Court decision in case of Virendra Vs. Appropriate Authority [2010] 327 ITR 185 (Bom).
2. Gujarat High Court decision in the case of Om Shri Jigar Association Vs. UOI [1994] 209 ITR 608 (Guj) assessment order for AY 2011-12
3. Delhi High Court Judgement in case of Shriram Pistons & Rings Ltd.[1990] 181 ITR 230 (Del)

21. He further submitted that adequate security deposit has also been received by the assessee from the lease. He further submitted that in Id. CIT(A) has given a clear finding that the trustees are not related to the concern to whom lease has been given. As regards, the issue of reimbursement of expenses to PDNHRC, he submitted that these are proper reimbursement. That this matter has already reached Hon'ble Bombay High Court in the case of PDNHRC. Wherein Hon'ble Bombay High Court had duly held that these are reimbursement and no TDS requirement is there. Furthermore, in this regard, Id. Counsel placed reliance upon the following case laws.

1. The Jurisdictional Bombay High Court decision in case of National Health & Education Society [2019] 412 ITR 404 (BOM).

22. Upon careful consideration, we note that AO's adverse inference on the assessee is based upon three disallowances. Firstly, he has made addition on account lease rent holding that the rent received is very low as compared to lease registration document. Hence, he held that lease rent should be three times than what has been offered i.e. Rs. 4.77 crores instead of Rs. 1.77 crores offered.

23. In this regard, we note that the lease agreement was duly approved by the charity commissioner and bids for the lease have been obtained after due advertisement. On the touchstone of Hon'ble Bombay High court decision in

the case of Verendra Vs. Appropriate authority (supra) this now cannot be disputed by revenue. We may gainfully refer to the order of Hon'ble Bombay High Court in this regard as under :-

"2. After complying with all the formalities being a trust and property being a trust property, as required under the BPT Act, based upon the proper valuation of the property considered and decided and sanction by the competent authority just cannot be overlooked without any contra material to justify to challenge the said valuation, in a case like this, where the sanction is granted by the authority under the BPT Act. In Om Shri Jigar Associations. Union of India T19941 2Q9 ITR 608 (Guhati Bench of the Gujarat High Court considering similar provisions of the Income-tax -Act, as well as, the BPT Act has observed as under (page 613):

"In the light of the aforesaid facts, it is apparent that there was no reason for the Appropriate Authority to resort to the provisions of Chapter XX-C of the Income-tax Act. It would be difficult to arrive at a conclusion that there is significant undervaluation of property to the extent of 15 per cent, or more in the agreement of sale as evidenced by the apparent consideration being lower than the fair market value by 15 per cent, or more. Further, the property was sold after inviting offers from the public at large by giving advertisement in the newspaper and that too after proper -verification by the statutory authority under the Bombay Public Trusts Act. Even after executing the agreement to sell, objections are invited as provided under rule 24. Hence, in such types of cases, even if some lower amount is received, it would not mean that power to purchase the said property under section 269UD of the Income-tax Act can be exercised by the authorities under Chapter XX-C as it would be difficult to draw a presumption that there was an attempt to evade tax. This is made abundantly clear by the Supreme Court in the case of C.B. Gautam v. Union of India [1993] 199 ITR 530 .

24. Hence, if the expenditure has been approved by appropriate authority, the AO cannot take the divergent view. Moreover, we also note that Id. CIT(A) has given the finding that the bid for the lease was obtained by due advertisement in news papers. There is also due provision for security deposit of Rs. 5 crores. In this regard assessee has also submitted valuation by a Government approved valuer report in this regard. Hence, these factors duly corroborate that the lease rent in this case is not only approved by the charity commissioner, but also supported by the other facts, which show that the lease was awarded after due advertisement and making provision for appropriate security deposit. Hence, in the background of aforesaid decision and the facts of the case, we do not find any infirmity in the order of Id.CIT(A) in this regard.

25. As regards, the other related aspect in this regard that the trustees are related to the party to whom lease has been awarded, we note that this issue will not arise once, it is held that it cannot be said that lease rent is undervalued. In any case, Id.CIT(A) has given the detailed finding, how the AO's finding in this regard is not correct. The revenue has not brought any cogent material to rebut these findings.

26. As regards, the issue of disallowance of reimbursement of expenses to/from PDNHRC we note that similar issue has already travelled to the Hon'ble Bombay High court in the case of PDNHRC. In the said case of Hon'ble High Court has held that these reimbursements do not attract TDS. Once, the payment has been subject matter of examination by the Hon'ble Bombay High Court, AO has no jurisdiction to make any comment whatsoever. Moreover, the CIT(A) has given due finding that these are due reimbursement. This fact is also arising out of the detailed observation of the Hon'ble Bombay High court referred in the order of Ld.CIT(A) above. We may gainfully refer to decision of Hon'ble Bombay High Court in ITA Nos. 105,116,112,115,121 & 128 of 2016 vide order dated 22.2.2019 which read as under:-

"21. Question (d) basically relates to payments made to Hinduja Foundation for its employees who had rendered services to the assessee in key managerial positions. It was the case of the assessee that these payments are to be treated as a reimbursement and not as payment towards professional fees which would require TDS to be deducted under section 194J of the I.T.Act. The CIT (Appeals) noted that the Hinduja Foundation charges the salaries (and other allowances) to the assessee on actual basis and there is no further markup (either as a percentage of such charges or otherwise) paid by the assessee to the Hinduja Foundation. The personnel deputed by the Hinduja Foundation to the assessee are all highly qualified persons who are deputed to man senior management positions of the assessee - hospital. These highly qualified persons are paid by the Hinduja Foundation and it is to reimburse the Foundation that payment is made by the assessee - hospital. The fact that the Hinduja Foundation charges only the actuals from the assessee can be appreciated because Hinduja Foundation is also a trust. Looking to these facts, the CIT (Appeals) came to the conclusion that the payments made by the assessee to the Hinduja Foundation in respect of the persons deputed by it to the assessee - hospital, are not in the nature of 'fees for professional services' but was in the nature of pure reimbursement. On this issue, the ITAT also agreed with the findings given by the CIT (Appeals). The ITAT noted that the CIT (Appeals) after considering the order passed by the Assessing

Officer, the submissions of the assessee and the nature of services carried out by the service providers, held that payments made to the Hinduja Foundation was towards reimbursing the salaries of Senior Management Personnel deputed by Hinduja Foundation to the assessee - hospital. All these personnel were on the pay-roll of the Hinduja Foundation and they got all the benefits from the Foundation. In turn, the Foundation raised a debit note towards actual cost of employment and accordingly the assessee made the payments to the said Foundation and which was therefore clearly in the nature of reimbursement. It was in these circumstances, and after hearing the parties and perusing the material on record, the ITAT concurred with the findings of the CIT(Appeals). In these circumstances, the ITAT opined that the payments made by the assessee to the Foundation were not in the nature of fees for technical services and therefore confirmed the order passed by the CIT(Appeals).

23. On going through the findings given by the CIT (Appeals) as well as the ITAT on this issue, we find that both the authorities below have given their findings on the basis of facts presented before them- We find that the authorities below are fully justified in coming to the conclusions that they did, namely, that the payments made by the assessee to the Foundation was in the nature of reimbursement and not in the nature of any technical or professional services which required deduction of TDS under section 194J of the I. T.Act. This being the case, Question (d) also does not give rise to any substantial question of law that would require our consideration."

In view of the precedence and discussion, we do not find any infirmity in the order of Ld.CIT(A) in this regard.

27. As regards, disallowance of Rs. 4.24 crores on account of religious expenditure , we note that it also comprised of Rs. 3,58,200/- given to ISKON. Ld. CIT(A) has given the detailed finding as to how these expenditures were for food programme and not meant for religious activity. No cogent material was brought to our notice rebutting the same. Hence, we do not find any infirmity in the order of ld.CIT(A) in this regard.

28. Furthermore, we note that on the basis of same transactions for a long time from earlier years, AO has not taken any adverse inference against the assessee. Without change in facts on law the AO is not justified to take a divergent view as held by various courts including the Hon'ble Supreme court as referred above.

29. Apart from the above three expenditures, the other aspect of AO's observation that the assessee is involved in profit motive is not at all sustainable and correct. These are only surmise and conjectures of the AO dehorse facts. In fact, Ld. Counsel of the assessee has pointed out that there is no element of suppression of profits as the assessee has actually incurred losses for the past several years. Further, the ld.CIT(A) has given due finding that assessee is duly utilizing the fund for the objects of the trust. No cogent rebuttal was made by the revenue in this regard.

30. Accordingly, in the background of aforesaid discussion and precedent, we do not find any infirmity in the well reasoned and elaborate order of Ld.CIT(A). Hence, we uphold the same.

31. In the result, this appeal by the revenue stands dismissed.

Order pronounced on this 07.02.2022

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 07/02/2022

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS