

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.945/Bang/2017
Assessment year: 2011-12

M/s. Gokula Education Foundation, MSRIT Post, MSR Nagar, Bangalore – 560 054. PAN: AAATG 1781E	Vs.	The Additional Director of Income Tax, Range 17, Bangalore.
ASSEESSEE		RESPONDENT

Assessee by	:	Shri Narendra Sharma, Advocate
Respondent by	:	Shri Dev Ratan Kumar, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	10.08.2022
Date of Pronouncement	:	18.08.2022

ORDER

Per Padmavathy S., Accountant Member

This appeal by the assessee is directed against the order of the CIT(Appeals)-14, LTU, Bangalore dated 30.1.2017 for the assessment year 2011-12.

2. The brief facts of the case are that the assessee is a public charitable trust registered u/s.12A of the Income Tax Act, vide registration order No. Trust/12A/1/CIT(C)/84-85 dated 20.03.1985 running several education institutions and hospitals. The assessee during the impugned assessment year 2011-12 had filed return of

income u/s.139(1) of the Income-tax Act, 1961 [the Act] on 30.09.2011 declaring a NIL income. The return was processed u/s. 143(1) resulting in a refund of Rs.13,51,160/-.

3. The case of assessee was taken up for scrutiny assessment and notice u/s.142(1) was issued on the assessee on 03.04.2013. The AO concluded the scrutiny assessment and passed the assessment order u/s.143(3) of Act on 28.03.2014 and made the following additions:

- a. Computed the accumulation u/s.11(1)(a) of the Act, on net receipt basis instead on gross receipts.
- b. Advance fees received from students as income to the extent of Rs.3,29,81,192/-.
- c. Unutilized grants as income to the extent of Rs.7,65,008/-
- d. Reduced the cost of building materials from capital expenditure to the extent of Rs.3,25,00,000/-.
- e. Expenditure incurred in foreign currency to the extent of Rs.3,77,882/-
- f. Outstanding liabilities as application of income to the extent of Rs.4,21,43,721/-.
- g. Restricting the accumulation u/s.11(2) of the Act, to the extent of Rs.23,65,77,268.

4. On appeal, the CIT(Appeals) confirmed all the additions made by the AO. Aggrieved, the assessee is in appeal before the Tribunal. The assessee raised 14 grounds of which Ground No.1, 2, 8, 13 and 14 are general and Ground No 12 is consequential. Hence these grounds

do not warrant separate adjudication. The rest of the grounds are adjudicated in the following paragraphs.

5. The relevant ground raised by the assessee with regard to advance fees treated as income of assessee is as follows:-

“3. The learned CIT[A] failed to appreciate the fact that the assessee follows the accrual basis of accounting and is not justified in considering the Rs.3,29,81,192/- as advance fee received as income under the facts and circumstances of the case”

6. During the assessment proceedings, the AO noticed that the assessee has received total fee to the tune of Rs.3,29,81,192. The assessee submitted before the AO that tuition fees was received in advance at the time of admission of students to medical college and furnished details with respect to name and address of the students along with ledger account. The AO, however, considered the entire receipt as income for the reason that advance fee was not deposited in a separate bank account earmarked for the intended purpose. The AO also stated that funds received are actually merged with assessee's other revenue and utilized for the purpose of meeting regular expenditure as well as capital expenditure which are claimed as application of income. He therefore concluded that advance fee should also form part of income of the assessee and made addition accordingly.

7. On appeal, the CIT(Appeals) confirmed the order of the AO by holding as follows:-

“3.4 Coming to the accounting method followed by the assessee, i find from the Audit Report in Form no.10B that the Trust follows accrual system of accounting except for 'income' which is accounted on cash basis. The relevant page of the audit report is scanned and shown below :

GOKULA EDUCATION FOUNDATION (ENGINEERING)
M S RAMAIAH NAGAR, MSRIT POST, BANGALORE -560054

Notes Forming Part of Accounts for the Year Ended on March 31st, 2011
Accounting Policies:

1. **Method of Accounting:**
Method of Accounting followed by the concern is Mercantile, except for Income, which are accounted on cash basis.
2. **Fixed Assets:**
Fixed Assets are stated at cost of acquisition inclusive of duties, taxes, incidental expenses and other directly attributable costs of bringing the assets to their working condition.
3. **Depreciation:**
Depreciation is provided on written down value method at the rates mentioned in the Fixed Assets Schedule. Depreciation is being charged on the assets for the whole year irrespective of their date of acquisition. No depreciation is charged on assets sold.
4. **Investment:**
Investments are stated at cost of acquisition.
5. **Other Notes:**
Balance of Loans and Advances as on March 31st, 2011 are subject to confirmation.


For B.N.Subramanya & Co.,
Chartered Accountants
FRN: 0041425

[Signature]
B.N.Subramanya
Partner
M.No.22138

Place: Bangalore
Date: September 19th, 2011

For Gokula Education Foundation
(Engineering)

[Signature]
M.R.Jayaram
Trustee



4.5 The assessee's arguments, therefore, contradict its own audit report. The AO's arguments that the advance fees has not been deposited in a separate bank account carries merit. When the assessee has used the amount towards application for revenue and capital expenditures it cannot then turn around and consider the receipts as not being income. Sec. 11(1)(a) clearly prescribes for exemption out of 'income' when the same is applied for charitable purposes in India whether in revenue account or in capital account. When the application is accepted the 'income' cannot be rejected as not having accrued. This ground, therefore, fails.”

8. Before us, the Id. AR submitted that the issue is covered by the decision of the coordinate bench of the Tribunal in the case of *M/s. Gokula Education Foundation – Medical vs ADIT (ITA No.946/Bang/2017) dated 25.07.2022*. The Id AR also submitted that the assessee is a sister concern of M/s.Gokula Education Foundation – Medical and the facts in assessee's case are identical. The Id AR therefore submitted that assessee's case is squarely covered by the above decision of the Tribunal.

9. The Id. DR relied on the order of the lower authorities and reiterated that the amount is not kept in a separate bank account and the whole amount which is spent for capital purposes is claimed as application of income and correspondingly entire income has to be offered to tax.

10. We notice that the coordinate bench of the Tribunal in the case of *M/s.Gokula Education Foundation – Medical* has considered a similar issues and held that :-

“17. We have considered the rival submissions and perused the material on record. The assessee receives full amount of fees for the entire course duration from students admitted under NRI/IP quota and the said income is recognized proportionately in the books of account to the extent of fees in the given academic year and the balance amount is treated as advance fees. According to the assessee, the proportionate amount is recognized as income from fees collected in earlier financial year and recognized as advance fees and that the said method of accounting is consistently followed for several years. We notice that the coordinate Bench in *Moogambigai Charitable and Educational Trust in ITA No.1224/Bang/2015 dated 13.7.2016* on a similar issue held as follows:-

“12.4 We have considered the rival submissions as well as the relevant material on record. The Assessing Officer has made the addition of this amount as income of the year on the ground that the assessee has used this amount for revenue as well as capital expenditure during the year. Further the Assessing Officer has placed reliance on the statement recorded under Section 133A of the Act. It is pertinent to note that neither the Assessing Officer nor the CIT (Appeals) has disputed this fact that this amount has been duly recorded in the books of accounts as advance tuition fees. The assessee filed the ledger account wherein the details of the opening balance, the advance tuition fees received during the year as well as closing balance has been shown. The correctness of the accounts has not been examined or disputed by the Assessing Officer or the CIT (Appeals). It is pertinent to note that if an advance fees is received by the assessee for a particular academic year spread over more than one financial year then the part of the fees received by the assessee which relates to the academic year falling in next financial year cannot be treated as income of the assessee for the year under consideration. It is well settled law that the statement recorded under Section 133A cannot be sole basis for making an addition or disallowance without corroborating evidence. In this case, the authorities below have not shown in their findings that any corroborating evidence was found to support this statement recorded under Section 133A of the Act. In view of the above facts and circumstances, we find that the addition made by the Assessing Officer based on the statement recorded under Section 133A and further by giving a reason that the assessee has used the advance fees received for revenue as well as capital expenditure is not justified and accordingly we set aside the orders of authorities below qua this issue and remit the same to the record of the Assessing Officer to re-examine the issue from the record produced by the assessee and then decide the same as per law.”

(emphasis supplied)

18. Similar view was taken in the decision in the case of *Akshaya Patra Foundation (supra)*.

19. In the assessee's case, it is submitted that the assessee is following accrual system of accounting for recognizing the income and that fees collected from the students is refundable in case the student leaves the course in between the duration of the course. This fact needs to be verified factually as per the terms of the agreement entered into by the assessee with the students at the time of admission. Therefore, following the decision of the Tribunal in the case of *Moogambigai Charitable and Educational Trust (supra)*, we remand the issue back to the AO to examine the facts from the record produced by the assessee and decide the issue in accordance with law, after giving reasonable opportunity of being heard to the assessee. This ground is allowed for statistical purposes.”

11. Respectfully following the above decision of the Tribunal, we remit the issue back to the AO in order to examine the facts with regard to the period for which fees is collected and whether the fees collected is refundable or not, based on the records produced by the assessee and decide the allowability in accordance with law after giving reasonable opportunity of being heard to the assessee.

12. The ground raised by the assessee with regard to unutilized grants being treated as income regard reads follows:-

“4. The learned CIT[A] is not justified in confirming the addition made by the learned assessing officer a sum of Rs.7,675,008/- being unutilised balance of grants received as income of the assessee without appreciating the fact that the grants that have been received have all been utilized for the purpose for which the same has been received and surplus if any is recognized as income in subsequent years.”

13. During the year under consideration, the assessee in its financial statements has shown an amount of Rs. 7,65,008 as grants received from various Govt. agencies towards conducting research work by the

assessee. The AO added this amount as income of the assessee on the ground that assessee has not maintained a separate bank account to keep the funds, but has mixed up the said fund with the regular income of the assessee to meet various expenses. The AO further justified the addition stating that there is no nexus between the grants received and utilization for the intended purposes and therefore they lose the identity as specified purpose funds within the meaning of section 11(1)(d).

14. Before the CIT(Appeals), the assessee submitted that the requirement of a separate bank account existed for some of the grants and utilization of each of the grants for the specified purpose is tracked by the assessee in the books of accounts. In this regard, the assessee submitted that utilization certificate with respect to 3 grants to substantiate the claim. The assessee also furnished the ledger account extract of the grants. The CIT(A) after analysing the evidence furnished by the assessee held as under:-

“4.2 Vide order sheet noting of 05.01.2017, the appellant was required to furnish evidence of utilization of the grant amounts and their sanction letter. The appellant furnished a sample of grant-in-aid received from the All India Council for Technical Education (AICTE) under the Entrepreneurship Development Cell (EDC) scheme for FY 2008-09. As the following scan of the 1st page of the sanction letter for Rs.7 lakh shows the approved duration of the grant was for 3 years. The appellant furnished its ledger account of EDC grant showing utilization of this amount which was received in the appellant's bank on 23.05.2009. Instead of the grant period of 3 years, the amount has been expended over 9 years with a small balance of Rs.35,488 shown as still available on 31.03.2017. This is completely contrary to the terms of the grant. No utilization certificate submitted to the grant making body was furnished before me.

4.3 In the case of the appellant's sister concern M/s. Gokula Education Foundation (Medical) where some sample utilization certificates were examined by me, it was clearly seen that the entries in the appellant's books are not consonant with the utilization reported to the grant giving authorities. In the absence of details in respect of the appellant, this verification is not even possible. The appellant has claimed that at the end of the grant period it offers the unutilized amount as income. If this is indeed correct the remaining amount from the AICTE grant should have been offered as income in 2012-13 which has not been done. The AO's treatment of the unutilized grants is aligned with the law as well as accounting. I, therefore, find no reason to interfere with the AO's conclusions. This ground, accordingly, fails.”

15. Aggrieved by the order of the CIT(Appeals), the assessee is in appeal before the Tribunal.

16. The ld. AR submitted that the grants received from the Government and other bodies are towards conducting research work and the amount is spent as per the sanction terms & conditions stipulated by the grant sanctioning authority. These grants will be utilized both for capital as well as revenue expenditure. The ld. AR also submitted that if the grant sanction authority stipulates a pre-condition for maintaining a separate bank account towards receipts and utilisation, then the assessee would open a separate bank account for the same. The ld. AR also submitted that according to the provisions of section 11(1)(d), donations shall be treated as income only when such voluntary contributions are received with a specific direction that they shall form part of corpus of the trust and that in assessee's case, grants received does not carry any tag that the grant shall be treated as corpus of the trust. He therefore submitted that when the grants are

applied for the intended purposes, the same shall not be treated as income of the trust.

17. The Id. DR submitted that when the grants are received for specific purposes, utilization also needs to be recorded separately for the purpose of ensuring that the grants are utilized for the intended purpose. He submitted that in the assessee's case this fact has not been appropriately evidenced as can be inferred from the order of the CIT(Appeals). He therefore supported the orders of the lower authorities.

18. We notice that the coordinate bench of the Tribunal has considered a similar issue in the case of *M/s.Gokula Education Foundation – Medical (supra)* and held that :-

26. We have considered the rival submissions and perused the material on record. The key reasons for treating the unutilized grants as income of the assessee by the lower authorities are :-

- (i) Assessee has not maintained a separate bank account and therefore the grant loses its identity as a specific purpose fund within the meaning of section 11(1)(d).
- (ii) Copies of ledger accounts and utilization certificate submitted before the CIT(A) are not reconciling.

27. The contention of the assessee is that the grants sanction are tracked separately to ensure that the grants are applied for intended purposes as per the conditions stipulated by the grants sanctioning authority. Considering the arguments of both the parties, we are of the view that the issue needs to be factually verified to ascertain whether the grants are utilized for the intended purposes. We therefore remit this issue to the Assessing Officer to examine the evidence submitted by the assessee in terms of ledger copies and utilization certificate and decide the

issue in accordance with law, after reasonable opportunity of hearing to the assessee. This ground is allowed for statistical purposes.”

19. Respectfully following the above decision of the Tribunal, we remit the issue back to the AO with similar directions.

20. Ground No.5 raised by the assessee for reduction of 50% of expenditure incurred towards construction activities from application of income reads as follows:-

“5. The learned CIT [A] is not justified in confirming the reduction of 50% of expenditure of Rs.3,25,00,000/- as incurred towards construction activities from application of without any logical basis. Without prejudice the addition is highly extreme and required to be substantially reduced.”

21. The AO noticed that the assessee had incurred huge amount of expenditure towards purchase of building materials. He called upon the assessee to furnish the details of expenditure incurred along with the supporting documentary evidence. The assessee furnished the required details. From a scrutiny of the details furnished by the assessee for purchase of building materials such as brick, sand and jelly, the AO noticed that address and identity of the persons, copy of invoice or bill issued by them and the mode of payment for those purchases were not given. The AO therefore proposed to add a sum of Rs.6.5 Crores which was the expenditure incurred on building materials for which details were not available to the total income of the Assessee.

22. The assessee, in reply to the proposal of the AO, submitted that building materials were purchased from unorganized sector. The payments were made to them after obtaining signature on the vouchers. Some of the payments were made by bearer cheques. Considering the nature of payments and the practical difficulties, the assessee submitted that no disallowances on expenses should be made. The assessee also pointed out that the total expenses incurred and capitalized in the books of accounts towards building was Rs.21Crores and the materials such as sand, bricks, etc., were only 6.5Crores. Assessee submitted that it was not possible to construct buildings without incurring these expenses and therefore the expenditure should not be disallowed.

23. The AO however disallowed 50% of the expenses claimed observing as follows:-

“11.4 I have considered the submissions filed by the assessee and analysed the same in the light of the facts and circumstances of the case. It is an admitted fact that the assessee has failed to furnish requisite information along with documentary evidence to identify the persons to whom the amount was paid. At the same time, I can't dispute the fact that the assessee had incurred the expenditure towards building materials. Otherwise, it would not be possible to construct the buildings. In view of this, I am of the considered opinion that 50% of the expenditure claimed towards building materials can be disallowed. Accordingly, 50% of the expenditure claimed towards building materials is disallowed i.e., Rs.3,25,00,000.”

24. On appeal by the assessee, the CIT(A) confirmed the action of the AO. Aggrieved by the order of the CIT(A), the assessee is in before the Tribunal.

25. The learned Counsel for the assessee brought to our notice the decision of the Hon'ble ITAT, Bengaluru Bench, in the case of *Sri Srinivasa Educational and Charitable Trust Vs. ACIT 182 ITD 554 (Bang)* wherein identical issue on disallowance of expenses incurred in cash had come up for consideration. The Tribunal held that the disallowance cannot be sustained for the following reasons:-

“40. We have noticed earlier that, under the provisions of sec.11 of the Act, the income derived from property held under the trust is exempt to the extent of the amount applied for such purposes. Further the assessee is also entitled to accumulate 15% of the income u/s 11(1)(a) of the Act. The Explanation given under sec.11 allows postponement of application of income and the provisions of sec.11(2) provide methodology for accumulating income, if the same could not applied during the year in which the income was derived. The provisions of sec. 13 provides for compliance of certain conditions and violation of the same would result in forfeiture of exemption granted u/s 11 of the Act. Thus, it can be noticed that the method of computation of total income of a Charitable Trust is different from the method of computation total income of a business concern. It is pertinent to note that, for the purpose of determining the quantum of income applied for objects of the trust, no distinction shall be made between Capital expenditure and Revenue expenditure, i.e., even capital expenditure is also treated as application of income. In the case of a business concern, the assessee would not be entitled for deduction of capital expenditure. Of course, depreciation is allowed thereon at prescribed rates. The focus in respect of a charitable trust is that it should apply its income for charitable purposes only. Only in case of violation of provisions of sec.13, then the charitable trust shall be liable to lose exemption u/s 11 of the Act and would be liable to pay tax on its total income as computed u/s 11 to 13 of the Act.

41. In the instant case, there is no dispute that the assessee was constructing buildings for its medical college during the years relevant to AY 2010-11 onwards. We have noticed that the amount spent on construction is treated as application of income

for the objects of the trust and hence would qualify for exemption u/s 11 of the Act. We have noticed that the assessee has spent its income derived from property held under the trust on construction of buildings and accordingly claimed the same as application of income. The case of the assessing officer is that, during the course of search proceedings, several instances of payments made in cash to contractors, other related concerns, to promoters etc., were found. The AO has taken the view that the cash payments so made represent income applied for non-specified purposes. Accordingly he has proceeded to add Rs 58.02 crores to the total income in AY 2012-13 to 2014-15. However, as observed by Ld CIT(A), the assessing officer has not listed out the details of such payments, which were given for non-specified purposes. Even though, the assessing officer has stated that the payments have been made to contractors, other related concerns, to promoters etc., the Ld CIT(A) has concluded that the impugned amount of Rs 58.02 crores was spent on the construction activity only.

42. There should not be any doubt that the payments made to contractors for construction activity cannot be considered as payment made towards "non-specified purposes". Even though it is stated that the payments have been made in cash, there is no bar for the trusts, as in the case of sec.40A(3), to make payments in cash for the years under consideration. The provisions of sec.40A(3) and 40A(3A) of the Act have been made applicable to charitable trusts only with effect from 01.04.2019 by the Finance Act, 2018. Accordingly, merely for the reason that the payments have been made to contractors in cash, we are of the view that the claim of application of income cannot be denied. We notice that the Ld CIT(A) has observed that the assessee has spent money for construction of buildings. He also noticed that the assessing officer has not attempted to make enquiries and obtain evidences by issuing notice u/s 142(1) of the Act. He has also observed that the AO seems to have relied upon the outcome of the search proceedings. The Ld CIT(A) has also observed that the addition made in AY 2013-14 is more than or disproportionate to the actual amount spent der construction during that year. He also observed that the assessing officer has not specified the basis on which the addition of Rs 9.93 crores, Rs 43.33 crores and Rs 4.76 crores respectively for AY 2012-13 to 2014-15 was quantified.

43. The AO has also stated that the assessee could not produce the bills, vouchers etc., in support of the expenditure incurred. However, the assessing officer has not rejected the books of accounts of the assessee. On the contrary, it is the submission of the assessee that all the expenses incurred on construction have been duly accounted for in the books of accounts. It was further stated that the books of accounts have been duly audited and the auditors have not found any deficiency in the maintenance of accounts and vouchers. We notice that the assessee has made above said submissions before the AO, but the AO could not controvert the same by bringing any material on record.

44. During the course of hearing, the Ld A.R submitted that it is not discernible as to how the AO has quantified the amount of Rs 9.93 crores, Rs 43.33 crores and Rs 4.76 crores. The Ld CIT(A) has also observed so. Hence the revenue was asked to furnish the details as to how the above said amounts were arrived. As noticed earlier, the revenue could not furnish the details.

45. Hence, we are of the view that the Ld CIT(A) was justified in holding that the addition of Rs 9.93 crores, Rs 43.33 crores and Rs 4.76 crores made in AY 2012-13 to 2014-15 respectively is without any basis and without pointing any particular violation in respect of any particular item of expenditure. We have also noticed that the assessing officer has not rejected the books of accounts. The submission of the assessee is that its books of accounts have been audited and the auditors have not found out any deficiency in the maintenance of books of accounts or vouchers. In our view, there is merit in the above said submissions and hence the AO was not justified in ignoring the books of accounts. Another important point we notice is that the assessing officer has accepted the fact of application of income towards construction of building, but chose to reject only a portion of expenses incurred on construction on the reasoning that the same has been incurred by way of cash. As observed by us earlier, the factum of incurring expenses by way of cash alone cannot be a ground to hold that those expenses are related to non-specified purposes. The AO should have brought any other material on record to show that the expenses incurred in cash for construction activities were not actually incurred for that purposes, but for some other purposes. Accordingly, the AO was

not justified in accepting the construction expenses in part and rejecting the balance amount.

46. We have noticed earlier that the method of computing income for a Charitable trust u/s 11 to 13 of the Act is different from the method adopted for a business concern u/s 28 of the Act. In the instant cases, there is no dispute with regard to the "income derived from property held under the trust". We noticed earlier that the above said income is exempt u/s 11 of the Act to the extent the same is applied for the objects of the trust and to the extent it is accumulated u/s 11(1)(a) of the Act not exceeding 15%. If such application falls short, then there are provisions which would enable the assessee to postpone the application and to accumulate income. It is relevant here to extract the provisions of sec.11(2) of the Act:-

"11(2) Where eighty five percent of the income referred to in clause (a) or sub-section (1) read with the Explanation to that sub-section is not applied, or it is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:-....."

Even if the view of the AO, that the money spent in cash is to be considered as amount spent for non-specified purposes, is accepted as correct for a moment, then the case of the assessing officer has to be considered as income not deemed to have been applied for charitable purposes. In that case, it is required to apply the provisions of Explanation given under sec. 11(1) and sec.11(2) of the Act while determining the total income of the assessee, i.e., the assessee should have been given an opportunity to avail the benefits given in the Explanation under sec.11(1) and sec.11(2), since it is the AO who has held that the payments made in cash should be considered as payment for "non-specified purposes." It is also pertinent to note that the provisions of sec. 13 of the Act are not applicable to the alleged application for

non-specified purposes". Accordingly, we are of the view that the AO was not justified in assessing the income so considered as spent for "nonspecified purposes", as it is against the scheme of taxation of Charitable trusts.

47. In the instant case, the AO has added the impugned amount of Rs 58.02 crores, as if it were undisclosed income of the assessee, which is not legally correct. In our view, the amount so applied for purposes other than the objects of the trust shall not represent "undisclosed income" of the assessee, since there is difference between "receipt of income" and "application of income". The former is generation of receipts and the later is spending of those receipts. In any case, we have held that there is no basis for making the addition of Rs 58.02 crores in AY 2012-13 to 2014-15. Accordingly, we are of the view that the Ld CIT(A) was justified in cancelling the above said addition made by the AO in AY 2012-13 to 2014-15 and accordingly, we uphold the same."

26. He also relied on the decision of the ITAT, Delhi Bench, in the case of *DDIT(E) VS. The Associated Chambers of Commerce and Industry of India in ITA No.6525/Del/2013, order dated 31.08.2015* and decision of ITAT, Bengaluru Bench, in the case of *Kamalam Handlooms Pvt. Ltd., Vs. ACIT, in ITA No.1034/Bang/2014, order dated 13.10.2017*.

27. The Learned DR relied on the order of the CIT(A).

28. We heard the rival submissions and perused the material on record. We notice that the similar issue is considered by the coordinate bench of the Tribunal in the case of *M/s.Gokula Education Foundation – Medical (supra)* where the Tribunal has held that :-

“35. After considering the rival submissions, we find that this Tribunal in the case of *Sri Srinivasa Educational and Charitable Trust (supra)* has taken a view that the method of computation of income for the Trust under section 11 to 13 of the Act is different from the method adopted for computation of income under the head “business” under section 28 of the Act. The Tribunal went on to hold that the assessee was constructing a building for medical college and the amount was spent for construction. The amount so spent for construction was to be treated as application of income. The Tribunal noticed that in the case of a charitable trust, all expenses are allowed irrespective of the fact whether they are capital expenditure or revenue expenditure. The Tribunal thereafter observed that under section 40A(3) of the Act, cash payments can be disallowed and those provisions were not applicable to charitable trust prior to 01.04.2019. The Tribunal also observed that the AO has not attempted to make any enquiry to obtain any evidence. The Tribunal also observed that the Revenue did not dispute the fact that the assessee put up for construction of building. The Tribunal observed that the AO accepted the fact that construction of the building was done by the assessee and part of the construction cost was accepted as application of income. The Tribunal held that the fact that the expenses are incurred in cash alone cannot be the ground to hold that those expenses are related to non-specific purposes. The AO should have brought material on record to show that the expenses incurred in cash for construction activities were not actually incurred for that purpose but for some other purposes. The Tribunal therefore held that the AO was not justified in accepting construction expenses in part and rejecting the balance amount. The aforesaid decision of the Tribunal in our view is applicable on all fours to the facts of the present case and following the ratio laid down therein, we hold that the disallowance on expenses as made by the Revenue authorities cannot be sustained and the same is directed to be deleted. This ground by the assessee is accordingly allowed.”

29. Following the above decision of the Tribunal, we direct that the disallowance made on expenses to be deleted.

30. Ground No.6 regarding the disallowance of expenditure in foreign currency read as follows:-

“6. The learned CIT[A] erred in not considering the expenditure of Rs.3,77,882/- in foreign currency towards application of income under facts and circumstances of the case.”

31. In the course of assessment proceedings, the AO noticed that the assessee had incurred expenditure to the tune of \$ 8,000 and 450 Canadian \$ and the expenditure incurred towards participation in foreign conference, purchase of equipment, etc. The AO was of the view that per the provisions of section 11(1)(a) of the Act, income derived from property held under trust shall not be included in total income to the extent to which **such income is applied to such purposes in India**. Since the expenses were not incurred in India, the AO was of the view that the aforesaid expenditure should be disallowed and not treated as application of income in India for charitable purpose. In doing so, the AO relied on the decision of the ITAT, Delhi Bench, and the Hon'ble Delhi High Court in the case of *India Brand Equity Vs. ACIT(E) 23 taxmann.com 232 and DIT Vs. Nasscom 21 taxmann.com 231*. The AO therefore disallowed a sum of Rs.3,77,882/-. The action of the AO was confirmed by the CIT(A) and hence the assessee is in appeal before the Tribunal.

32. The learned Counsel for the assessee brought to our notice the decision of ITAT, Bengaluru Bench, in the case of *ITO Vs. Foundation for Indian Sporting Talent (FIST) ITA Nos.1665, 1666, 1710 and 1711/Bang/2017, order dated 25.01.2019*, wherein identical issue came

up for consideration before this Tribunal and this Tribunal, after considering the decisions referred to by the AO in the Order of Assessment, held that the disallowance by treating these expenses as not application income cannot be sustained. The following were the relevant observations of the Tribunal:-

“21. We have heard the rival submissions. Identical issue was considered by the Hon'ble Delhi High Court in the case of CIT v. Associated Chambers of Commerce & Industry of India, [ITA No 343/2016, dated 24.05.2016] = [TS-5477-HC-2016(Delhi)-O]. In the aforesaid decision, the Hon'ble Delhi High Court upheld the order of the Tribunal that sending delegates to foreign countries cannot be held as outside the main objects of the assessee. Therefore, exemption cannot be denied on the ground that expenses were incurred outside India.

22. The Id. DR, however, placed reliance on the decision of the Hon'ble Delhi High Court in the case of CIT v. National Association of Software & Services Companies, [345 ITR 362 Del] = [TS-313-HC-2012(Delhi)-O], wherein a contrary view was taken.

23. The Id. counsel for the assessee brought to our notice the decision of the ITAT Delhi Tribunal rendered in the case of DDIT v. Associated Chamber of Commerce & Industry of India, [ITA No 6525/De1/2013, dated 31/68720- TS=-635"87ITAT-2015(Delhi)-0] wherein the decision cited by the Id. DR in the case of CIT v National Association of Software & Services Companies [345 ITR 362 Del] = [TS-313-HC-2012(Delhi)-O], was also considered and the Tribunal following the decision of the Hon'ble Supreme Court in the case of H.E.H. Nizam's Religious Endowment Trust v. CIT, [59 ITR 582 SC] = [TS-5039-SC-1965-0], held as follows:-

"7. On vigilant perusal of the judgment of Hon'ble Supreme Court in the case of H.E.H. Nizam's Religious Endowment Trust vs. Commissioner of Income Tax (supra), we are in agreement with the contention of the Id. Counsel of the assessee that the facts of the present case are distinguishable from that

case. On careful reading of said judgment of Hon'ble Supreme Court, it is amply clear that in that case, the assessee Nizam's Trust was denied exemption in regard to the application of income from property as per second part of clause (i) of section 4(3) of the Income Tax Act 1922 (as applicable at that time) which were applied or finally set apart for religious or charitable purposes outside taxable territories. In the present case, it is not the case of the revenue that the assessee association applied its income or receipts outside taxable territories because the issue before us only relates to expense towards foreign travelling of delegation sent by the assessee association for the purposes of promotion of trade and industry in India which is the main object of the assessee association. In view of above, we respectfully hold that the benefit of the ratio of the said decision of Hon'ble Supreme Court in the case of H.E.H. Nizam's Religious Endowment Trust vs. Commissioner of Income Tax (supra) is not available for the revenue as the facts and circumstances of the present case are distinguishable from that case.

8. Undisputedly and admittedly, the main objective of the assessee association is to promote trade and industry in India that in the present era of economic globalization, sending delegation to foreign countries cannot be held as outside the ambit of main objective of the assessee association. Per contra, from the Article of Association available at page 3 to 38 of the assessee's paper book, it is vivid that the main objects as contained in clause (3) of the Memorandum of Association, objectives cannot be fulfilled without sending foreign delegation and, therefore, foreign travelling expenses incurred by the assessee cannot be held as application of income outside taxable territories of the assessee. Therefore, we are inclined to agree with the conclusion of the CIT(A) and we are unable to see any infirmity, perversity or any other valid reason to interfere with the same. Accordingly, ground no. 1 and 2 of the revenue being devoid or merits are dismissed."

24. In the light of the aforesaid decision of the Tribunal which was confirmed by the Hon'ble Delhi High Court, we are of the view that the expenses incurred in foreign currency has to be considered as application for charitable purpose and incurred for the charitable purposes in India. We hold accordingly."

33. In the present case, the addition of a sum of Rs. 3,77,882 being expenditure incurred in foreign country or expenditure incurred outside India is concerned, we find from the statement of facts filed by the assessee before the CIT(A) that this sum was expenditure incurred by way of foreign travel for seminars and conferences for students studying in the assessee's college and the teaching faculty of the assessee in India and therefore they have a nexus with the objects of the assessee viz., providing medical aid and therefore have to be regarded as application of income. In the light of the law laid down in the decision referred to above, we are of the view that the disallowance made by treating the aforesaid expenses as not application of income cannot be sustained and the same is directed to be treated as application of income. This ground raised by the assessee is allowed.

34. Ground No.7 raised by the assessee reads as follows :-

“7. The learned CIT(A) has erred in not allowing the outstanding liability of Rs.4,21,43,721 as application of income for the object of the trust without appreciating the fact that the appellant is following accrual basis of accounting. Without prejudice the CIT(A) ought to have allowed Rs.2,03,33,596 being amounts paid out of the outstanding liability provided during the previous assessment year 2010-11.”

35. As far as this ground is concerned, the factual details are that by scrutinizing the books of accounts of the assessee, the AO noticed that a sum of Rs.421,43,721/- was shown as outstanding liability as on 31.03.2011. The particulars of the outstanding liability as submitted by the assessee is as follows:-

Detailed Break-up of Outstanding Liabilities for the A.Y.2011-12

Particulars	Amount
Alumni Association membership payable	24,66,400
Audit Fees Payable	55,150
Electricity Charges Payable	13,71,077
Examination Fees Payable	1,02,21,650
Faculty Development Program Expenses payable	2,11,136
Office Expenses payable	8,703
Professional Tax Payable	33,600
Project Expenses Payable	2,55,000
Provident Fund Payable	2,25,278
Salaries Payable	2,63,29,366
Scholarship Payable	8,88,696
Security Charges Payable	7,673
Training and Workshop expenses payable	70,042
TOTAL	4,21,43,721

36. The AO called upon the assessee to furnish liabilities pertaining to current year expenses which are embedded in the provision for liability. According to the AO, assessee did not furnish required details. According to the AO, if a liability remains outstanding then to that extent it can be said that the assessee has not applied income for charitable purpose. Accordingly, the AO treated the aforesaid some as non-application for charitable purpose and added to the total income of the assessee. The CIT(A) confirmed the order of the AO.

37. We heard both the parties. We notice that the similar issues is considered by the coordinate bench of the Tribunal in the case of M/s.Gokula Education Foundation – Medical (supra). The Hon'ble Tribunal has held that :-

45. Aggrieved by the order of the CIT(A), assessee has raised ground No.7 before the Tribunal. The learned Counsel for the assessee placed reliance on the decision of the Hon'ble Karnataka

High Court in the case of *CIT(E) Vs. Ohio University Christ College 408 ITR 352 (Karnataka)*. In the aforesaid decision, the question that arose for consideration was whether for the purpose of allowing exemption under section 11(1)(a) of the Act, the income has to be 'applied' or 'spent'. The Hon'ble High Court took the view that the word 'applied' has a wider connotation. In that case, the Hon'ble High Court held that provision for expenditure made in a particular year and spent in subsequent period has to be treated as amount applied for charitable purposes in that relevant Assessment Year. The Hon'ble High Court, after analyzing various decisions, ultimately concluded as follows:

“15. Thus, we are of the opinion that in view of the findings of fact recorded by the learned Tribunal that a provision was made to the Ohio University for charitable activity by way of education being imparted in India and the fact of the actual payment made to the Ohio University in the very next year and that too offered for taxation in India being undisputed, no such substantial question of law arises for our further consideration.”

46. In the light of the aforesaid decision of the Hon'ble High Court, we are of the view that the addition made by the Revenue authorities cannot be sustained. The same is directed to be deleted.”

38. Respectfully following the above decision, we delete the addition made by the revenue authorities.

39. The assessee has raised the following grounds with regard to accumulation u/s. 11(1)(a) of the Act:-

“9. The learned CIT [A] failed to appreciate that the deduction of 15% under section 11[1][a] is to be calculated on the gross receipts and not on amount left after application towards expenses incurred for the objects of the trust, under the facts and circumstances of the case.

10. The learned CIT [A] failed to appreciate that the issue whether the provisions of the gross receipts or on the net receipts has been decided by the Hon'ble Co-Ordinate Bench of decision of this Hon'ble Tribunal in the case of Jyothi Charitable Trust in 662/Bang/2015, order dated 14/08/2015, Capuchin Friar Services of Society [ITA No.367/Bang/2015], St.Charles Medical Society Nirmal Hospital [ITA No.364/Bang/2015] and Mary Immaculate Society [ITA No.240 & 241 /Bang /2015] which has held that the accumulation of 15% under section 11[1][a] of the Act has to be computed on the gross receipts and not on the net receipts, which is squarely covered in favour of the assessee and failed to apply a binding decision is not correct in law on the facts and circumstances of the case.”

40. During the year under consideration, the assessee arrived at accumulation u/s. 11(1)(a) of the Act on gross receipts. The AO arrived on the same on net receipt basis stating that in the absence of any definition of the term ‘income’ in sections 11 & 12, the same has to be understood in normal commercial parlance and accordingly the expenses incurred towards earning receipts and related establishment cost should be deducted from gross receipts/turnover to arrive at the income from the activities. In this regard, the AO relied upon the decision of *CIT v. Rao Bahadur Calavala Cunnan Chetty Charities*, 135 ITR 845 (Mad). He also distinguished the decision in *CIT v. Programme for Community Organisation*, 248 ITR 1 (SC). The CIT(Appeals) confirmed the order of the AO with elaborate discussion on the various judicial pronouncements relied upon by the assessee holding it not applicable to assessee’s case. Aggrieved, the assessee is in appeal before the Tribunal.

41. The Id. AR submitted that the assessee is solely and wholly engaged in providing charitable activities in the form of providing education and healthcare and not engaged in income generating activity and relied on the audited financial statements of the assessee. He also submitted that the coordinate Bench of the Tribunal in the case of *Jyothi Charitable Trust v. DCIT(E) in ITA No.652/Bang/2015 order dated 14.8.2015* has considered similar issue and held it in favour of the assessee.

42. The Id. DR relied on the order of the CIT(Appeals).

43. We have considered the rival submissions and perused the material on record. We notice that the coordinate Bench of the Tribunal in the case of *Jyothi Charitable Trust (supra)* has considered similar issue and held in favour of the assessee as follows:-

“17. The issue to be decided is therefore as to whether for the purpose of computing accumulation of income of 15% under Sec.11(1)(a) of the Act, one has to take the gross receipts or gross receipts after expenditure for charitable purpose i.e., the net receipts. This issue is no longer res integra and has been decided by the Special Bench Mumbai in the case of *Bai Sonabai Hirji Agiary Trust Vs. ITO 93 ITD 0070 (SB)*. The facts in the aforesaid case were that the assessee was a public charitable trust enjoying exemption under s. 11 of the IT Act. As per the requirement of s. 11(1) of the IT Act, as it prevailed at that point of time, the assessee had to apply 75 per cent of its income for the objects and purposes of the trust and the assessee was permitted to accumulate or set apart up to 25 per cent of its income, which was subject to fulfillment of other conditions. While calculating the aforesaid 25 per cent, the important question which arose was as to whether for this purpose, the gross income earned by the assessee is relevant or the income as computed in accordance with the provisions of IT Act. In other words, whether outgoings

from out of gross income which are in the nature of application of income, should be first deducted from the gross income and 25 per cent of only the remaining amount should be allowed to be accumulated or set apart. The Special Bench of the ITAT on the issue held as follows:-

“9. Coming to the merits of the issue, we are of the view that the same is clearly covered by the decision of the Hon’ble Supreme Court in the case of CIT vs. Programme for Community Organization (supra). In the decision, their Lordships, after taking note of provisions of s. 11(1)(a), have held as under :

"Having regard to the plain language of the above provision, it is clear that a charitable or religious trust is entitled to accumulate twenty-five per cent of its income derived from property held under trust. For the present purposes, the donations the assessee received, in the sum of Rs. 2,57,376, would constitute its property and it is entitled to accumulate twenty-five per cent thereof. It is unclear on what basis the Revenue contended that it was entitled to accumulate only twenty five per cent of Rs. 87,010.

For the aforesaid reasons, the civil appeal is dismissed."

It is clear from the above that deduction of twenty-five per cent was held to be allowable not on total income as computed under the IT Act. Any amount or expenditure, which was application of income, is not to be considered for determining twenty five per cent to be accumulated. Their Lordships, as noted earlier, affirmed the decision of Kerala High Court in (1997) 141 CTR (Ker) 502 : (1997) 228 ITR 620 (Ker) (supra) wherein it is held as under :

"At the outset, the statutory language of s. 11(1)(a) of the IT Act, 1961, relates to the income derived by the trust from property. The trust is required to be wholly for charitable or religious purposes, and the income is expected to have relation to the extent to which such income is applied to such purposes in India. It is thereafter the statutory provision proceeds further that such income is not to be understood to be in excess of

25 per cent of the income from such properties. In other words, the very language of the statutory provision under consideration sets apart 25 per cent of the income from the source of property with reference to the extent to which such income is applied for such purposes, charitable or religious. In other words, for the purpose of s. 11(1)(a) of the Act, the income in terms of relevance would be the income of the trust from and out of which 25 per cent is set apart in accordance with the spirit of the statutory provision."

This means that, when it is established that trust is entitled to full benefit of exemption under s. 11(1), the said trust is to get the benefit of twenty-five per cent and this twenty-five per cent has to be understood as income of the trust under the relevant head of s. 11(1). In other words, income that is not to be included for the purpose of computing the total income would be the amount expended for purposes of trust in India. Their Lordships in the above case have emphasized on the clear and unambiguous language of s. 11(1)(a) and decided the matter on the basis of the same. It has been held that as per the statutory language of the above section the income which is to be taken for purpose of accumulation is the income derived by the trust from property.

If both the decisions are carefully read, it becomes evident that any expenditure which is in the shape of application of income is not to be taken into account. Having found that trust is entitled to exemption under s. 11(1), we are to go to the stage of income before application thereof and take into account 25 per cent of such income. Their Lordships have pointed that the same has to be taken on "commercial" basis and not "total income" as computed under the IT Act. Their Lordships in the decided case rejected the contention of the Revenue that the sum of Rs 1,70,369 which was spent and applied by the assessee for charitable purposes was required to be excluded for purpose of taking amount to be accumulated.

Having regard to the clear pronouncement of their Lordships of the Supreme Court, it is difficult to accept that outgoings which are in the nature of application of income are to be excluded. The income available to the assessee before it was applied is directed to be taken and the same in the present case is Rs. 3,42,174. Twenty five per cent of the above income is to be

allowed as a deduction. Similar view has also been taken by the Hon'ble Madhya Pradesh High Court in *Parsi Zoroastrian Anjuman Trust vs. CIT* (supra). No reason whatsoever has been given by the Revenue authorities for deducting Rs. 2,17,126 in this case for purposes of s. 11(1)(a). The decision cited on behalf of the Revenue did not take into account the decision of the Supreme Court referred to above. The circular of CBDT has also been considered by the Hon'ble Kerala High Court in its decision referred to above. Accordingly the question referred to is answered in the affirmative and in favour of the assessee.”

18. The aforesaid decision clearly supports the plea of the Assessee. Following the same, we hold that the accumulation u/s.11(1)(a) of the Act should be allowed as claimed by the Assessee. Ground No.4 raised by the Assessee is accordingly allowed.”

44. We notice that similar view has been taken by the coordinate Bench of this Tribunal in the case of *ACIT v. Akshaya Patra Foundation* in ITA No.1821/Bang/2016 dated 1.6.2018 and also in *M/s. Capuchin Friar Services Society* in ITA No.367/Bang/2015 dated 9.10.2015. Respectfully following the above decisions, we hold that accumulation u/s. 11(1)(a) of the Act should be allowed on gross receipts as claimed by the assessee. This ground of the assessee is allowed.

45. Ground No.11 is regarding accumulation to the extent of Rs.23,65,77,268 u/s. 11(2) of the Act. The ld AR submitted that the decision on the other grounds of appeal raised by the assessee in this appeal will sufficiently address the grievance raised in this ground.

46. In the result, appeal of the assessee is partly allowed.

Pronounced in the open court on this 18th day of August, 2022.

Sd/-

(GEORGE GEORGE K.)
JUDICIAL MEMBER

Sd/-

(PADMAVATHY S)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 18th August, 2022.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.