

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH: KOCHIN**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos.88 to 91/Cochin/2022
Assessment Year: 2008-09 to 2010-11 & 2013-14

Jubilee Mission Hospital Bishop Alappat Road Thrissur 680 005 PAN NO : AAAAJ1080J APPELLANT	Vs.	Deputy Commissioner of Income-tax Exemption Circle Kochi RESPONDENT
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Appellant by	:	Sri Surendranath Rao, A.R.
Respondent by	:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing	:	14.09.2022
Date of Pronouncement	:	14.09.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

All these appeals by assessee are directed against different orders of Ld. CIT(A) for the assessment years 2008-09, 2009-10, 2010-11 & 2013-14. The first common ground in first 3 appeals is with regard to reopening of assessment.

2. In the assessment year 2008-09 & 2009-10, assessment was reopened after 4 years from the end of relevant assessment years. The Ld. A.R. submitted that the reason recorded in the assessment years 2008-09 & 2009-10 is as follows:-

“The WDV of the assets as on 31.03.2004 stood at Rs.10.57 crores. The assessee has not challenged the assessment order. However, for the A.Y. 2005-06, the WDV of the assets as on 1.4.2005, was shown as Rs.33.50 crores. While completing the assessment for the AY 2005-06,

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2006-07 and 2007-08 the latter value of Rs.33.50 crores had been adopted which resulted in allowing for AY 2005-06 onwards. Thus, the excess depreciation allowed for AY 2008-09 comes to Rs.2,56,18,018/-. Further, in the return of income for the AY 2007-08, the amount shown in the balance sheet as on 31.3.2007 under the head "General Fund" was Rs.19,61,70,315/-. However, in the Return of income for the AY 2008-09, the opening balance under the same head as on 01.04.2007 was shown as Rs.20,42,41,259/- resulting in an overnight increase of Rs.80,70,944/-. Since income chargeable to tax amounting to Rs.3,36,88,962/- has escaped assessment within the meaning of section 147 of the Act, the notice u/s 148 of the Act was issued."

3. In the assessment year 2009-10, the reason recorded is as follows:

"The WDV of the assets as on 31.03.2004 stood at Rs.10.57 crores. The assessee has not challenged the assessment order. However, for the AY 2005-06, the WDV of the assets as on 1.4.2005, was shown as Rs.33.50 Crores. While completing the assessment for the AY 2005-06, 2006-07 and 2007-08 the latter value of Rs.33.50 crores had been adopted which resulted in allowing for AY 2005-06 onwards. Thus the excess depreciation allowed for AY 2008-09 comes to Rs.2,26,53,723/-. Further, in the return of income for the AY 2008-09, the amount shown in the balance sheet as on 31.3.2008 under the head "General Fund" was Rs.21,19,25,483/-. However, in the return of income filed for the AY 2009-10 and the revised computation filed on 12.12.2011, the opening balance under the same head as on 1.4.2007 was shown as Rs.22,19,67,599/- resulting in an overnight increase of Rs.1,00,42,116/-. Since income chargeable to tax amounting to Rs.3,26,95,839/- has escaped assessment within the meaning of section 147 of the Act, the notice u/s 148 of the was issued."

4. The contention of Ld. A.R. is that the AO while recording the reasons as above has not alleged that there was any failure on the part of assessee to disclose fully or truly all material facts necessary for the purpose of assessment. He relied on the following judgements:-

- a) Microsoft Corporation India Pvt. Ltd. Vs. Dy.CIT (357 ITR 50) (Delhi HC)
- b) Titanor Components Vs. ACIT (343 ITR 183) (Bombay HC)
- c) Principal CIT-II Vs. L&T Ltd. (113 Taxmann.com 48) (SC)

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5. He also submitted that the re-assessment proceedings have not emanated from any new material coming to light.

- a) CIT, Cochin Vs. Malayala Manorama Co. Ltd. (410 ITR 423)(Kerala HC)
- b) CIT Vs. Kelvinator India Ltd. (320 ITR 561)(SC)

6. The Ld. D.R. relied on the order of Ld. CIT(A) and submitted that the reasons for reopening as mentioned by the assessing officer in the assessment order was also duly examined by him. The assessee had two units namely Jubilee Mission Medical College and Jubilee Mission Nursing College. Though these independent units came into existence in the year 2003, the assessee decided to merge these two units and filed revised returns for assessment years 2004-05 to 2006-07 on 19th March 2007 by revising the claim of depreciation. By then, the assessment for A.Y. 2004-05 had already been completed and the revised return filed was infructuous. Therefore, the higher depreciation claim on the basis of infructuous revised return was not in order for that year or subsequent assessment years including the instant year's computation, which was based on such wrong written down value of assets. Moreover, the assessing officer had observed that the closing balance of preceding year and opening balance of relevant year under general fund was different, hence, the assessee's books and computation of income for the relevant year did not truly and fully disclose the correct facts. The action of the assessing officer in issuing the notice under section 148 of the Act was in order. The case laws relied upon by the assessee are not relevant and do not come to its help. Hence, the Ld. D.R. stated that the ground raised by the assessee was dismissed by Ld. CIT(A).

7. We have heard the rival submissions and perused the materials available on record. We have carefully gone through the reasons recorded for reopening of assessment for the assessment years 2008-09 & 2009-10. As seen from the reasons recorded by AO for reopening the assessment, there was no allegation by AO that there was any failure on the part of the assessee to disclose fully or truly all material facts necessary for the assessment. It is also noted that assessment for the assessment year 2008-09 has been originally completed u/s 143(3) of the Act vide order dated 3.12.2010. Similarly, the assessment for 2009-10 has been completed vide assessment order passed u/s 143(3) of the Act dated 23.12.2011. At the time of completion of original assessment, the assessee furnished all the details and there was no failure on the part of the assessee to disclose all material facts fully and truly for the purpose of assessment and even in the reasons recorded for reassessment, there was no allegation by AO that assessee has failed to disclose all material facts fully and truly. In this situation, it cannot be said that the assessee had failed to disclose all material facts fully and truly required for the assessment. Therefore, we are of the opinion that there is no negligence on the part of the assessee in furnishing the required details for completing the original assessment. Being so, by placing the decision of coordinate bench in the case of Kochaniyan Unnithan and Anr. Vs. DCIT reported in 55 CCH 211(Cochin), we quash the assessment for assessment year 2008-09 and 2009-10 in ITA No.88 & 89/Cochin/2022.

A.Y. 2010-11:

8. The assessment in this case is reopened within 4 years though the original assessment has been completed u/s 143(3) of the Act on 27.3.2013. The A.O. recorded the reasons for reopening the assessment as follows:-

“The assessment was originally completed in this case on 27.03.2013. The Assessing Officer issued a notice u/s 148 on 21.07.2014. The assessee had filed the original return and the assessment was duly completed u/s 143(3). The AO in the reasons recorded has stated as follows:

In the Return of income for the AY 2009-10 filed on 30.09.3009, the amount shown in the Balance sheet as on 31.03.2009 under the head "General fund" was Rs.19,55,90,575/-However, in the Return of income filed for AY 2010-11, the opening balance under the same head as on 01.-04.2009 was shown as Rs.20,20,12/986/- resulting in a overnight increase of Rs.64,22,411/-.

Since Income chargeable to tax amounting to Rs.62,44,411/- has escaped assessment within the meaning of section 147 of the Income Tax Act 1961, the notice u/s 148 was issued.”

9. The contention of the Ld. A.R. is that the reasons recorded very clearly show that, the only material that the AO has relied on, to make the addition is the audited Balance sheet. Profit & Loss account and the annexures. These materials on the basis of which the AO now formed an opinion about escapement of income were available, even before the completion of the original assessment u/s 143(3) of the Act. Nothing new has come to the knowledge of the AO subsequent to the completion of the original assessment. A re-assessment which is commenced on the basis of return of income and documents, which are already part of records is not valid and cannot be sustained. It is thus clear that

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the starting point of the reassessment proceedings now initiated as is evident from the assessment order is the return of income filed originally. The AO had no new or additional material based on which he could form a reason to believe that income had escaped assessment. The AO on a relook at the return, accounts and documents which were available with him from the time when original return was filed and it was on the basis of this financial statements that the original assessment of the firm was completed. Hence, the reassessment proceedings are based only a mere change in the opinion. Where accounts had been furnished by assessee when called upon and thereafter assessment was completed under section 143(3), subsequently on a mere re-look of said accounts earlier furnished by assessee, it is not permissible under section 147 of the Act to reopen assessment of assessee on ground that income has escaped assessment. This view has been confirmed by the decision of the Hon'ble Supreme court in ACIT Vs. ICICI Securities Primary Dealership Ltd. (24 taxmann.com 310 (SC) (384 ITR 299)(SC).

- Reassessment based merely on change of opinion:

9.1 The Ld. A.R. further submitted that the starting point of the reassessment proceedings now initiated as clearly mentioned in the reasons recorded is the return of income filed originally. The AO thus had no new or additional material based on which he could form a reason to believe that income had escaped assessment. The AO on a relook at the return, accounts and documents, which were available with him from the time when original return was filed and it was on the basis of this balance sheet that the original assessment of the firm was completed. Hence the reassessment proceedings are based only on the basis of a mere change in the opinion.

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9.2 The Ld. A.R. referred the recent decision of the Kerala High Court in the case of CIT Vs Malayala Manorama Limited (95 taxmann.com 136 (Kerala) (2018) in which the Court has decided that power conferred under section 147 of the Act is not one of review.

9.3 The Ld. A.R. also referred the decision of the Kerala High Court in the case of IBS Software Services (P) Limited Vs Union of India (W.P.(C).No.27373 of 2011 (V)) dated 20.03.15 in which the Court decided that if the necessary and basic documents are already before the AO and in case the AO had not gone into those details, then it is the default of the officer and not the assessee and hence reassessment is not valid. The fact in the instant case is similar to the facts in this decision of the Jurisdictional High Court. Reassessment must be based on reasons recorded and these reasons recorded has to emanate from some material coming to the notice of Assessing Officer after the original assessment. Taking a different view based on the same materials is nothing but a change of opinion, and is not authorised by s.147 of the Act. This view is now confirmed by the decision of the Delhi High court in CIT Vs Kelvinator of India Ltd (256 ITRI)(Del) which was affirmed by the Apex court in CIT VS Kelvinator of India Ltd (320 ITR 561)(SC). Hence, the Ld. A.R. stated that these facts are squarely applicable to the assessee's case.

9.4 Even when no specific details are called for but full and true disclosure is made in the return and audited accounts and the assessment is completed under section 143(3) of the Act, there is a presumption that the AO has completed the assessment after due application of mind. The Ld. A.R. referred the decision of the Delhi High court in CIT Vs.

Kelvinator Of India Ltd (256 ITR 1)(Del) wherein held as follows:-

“An order of assessment can be passed either in terms of sub-section (1) of section 143 or sub-section (3) of section 143. When a regular order of assessment is passed in terms of the said sub-section (3) of section 143 a presumption can be raised that such an order has been passed on application of mind. It is well known that a presumption can also be raised to the effect that in terms of clause (e) of section 114 of the Indian Evidence Act judicial and official acts have been regularly performed, if it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further, the same would amount to giving a premium to an authority exercising quasi-judicial function to take benefit of its own wrong doing.”

9.5 The Ld. A.R. further referred the decision of Hon’ble Supreme Court in CIT vs. Kelvinator of India Ltd. (320 ITR 561)(SC) wherein it has affirmed the above decision of the Delhi high court. The apex court held that the concept of change of opinion must be treated as an in-built test to check abuse of power by the Assessing Officer and that the reasons must have a live link with formation of belief. Important excerpts of the decision are reproduced hereunder:

“However, one needs to give a schematic interpretation to the words ‘reason to believe’, failing which section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of ‘mere change of opinion’, which cannot be per se reason to reopen. One must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review; he has the power to reassess, but the reassessment has to be based on fulfilment of certain pre-conditions and if the concept of ‘change of opinion’ is removed as contended on behalf of the department, then in the garb of reopening the assessment, review would take place. One must treat the concept of change of opinion’ as an in-built test to check abuse of power by the Assessing Officer”.

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10. On the other hand, the Ld. D.R. submitted that in this case assessment under section 143(3) of the Act was completed on 27.03.2013. Subsequently it was noticed by the Assessing Officer that there was a difference between opening and closing balance of the general fund amounting to Rs.64.22 lakhs, which had not been verified in the assessment order made under section 143(3) of the Act. The assessing officer reopened the case under section 147 of the Act after recording reasons to believe that income had escaped assessment and after necessary approval, issued notice under section 148 of the Act. In the reassessment, which was completed on 23rd March 2016, the Assessing Officer added back the difference of Rs 64.22 lakh in the General Fund which had been claimed by the assessee as Corpus donation after observing that there was no evidence to show that there was a specific direction from the donors. The assessing officer further held that 85% of the net income was required to be applied for charitable purpose and as less than 85% had been applied, the shortfall was taxed.

11. We have heard the rival submissions and perused the materials available on record. In this case, the original assessment has been completed u/s 143(3) of the Act on 27.3.2013. Later, it was found that there was a difference between opening and closing balance of the general fund amounting to Rs.64.22 lakhs, which has not been verified in the assessment order made u/s 143(3) of the Act. For that reason, the AO has reopened the assessment by issuing notice u/s 148 of the Act and added back the difference of Rs.64.22 lakhs in general fund which had been claimed by assessee as corpus donation. In our opinion, all the material already available on record at the time of completion of original assessment on 27.3.2013 and there was no material to come to the conclusion that income escaped

assessment. In our opinion, as held by the Hon'ble Supreme Court in the case of CIT Vs. Kelvinator of India Ltd. reported in 320 ITR 561, wherein held as under:

“3. To answer the above question, we need to note the changes undergone by section 147 of the Income-tax Act, 1961 (for short, “The Act”). Prior to the Direct Tax Laws (Amendment) Act, 1987, section 147 reads as under:

“147. *Income escaping assessment. –If—*

(a) *The Income-tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under section 139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or*

(b) *Notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year,*

he may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in sections 148 to 153 referred to as the relevant assessment year)”.

4. After the enactment of the Direct Tax Laws (Amendment) Act, 1987, i.e., prior to 1st April, 1989, section 147 of the Act, reads as under:

“147. *Income escaping assessment – If the Assessing Officer, for reasons to be recorded by him in writing, is of the opinion that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).”*

5. After the Amending Act, 1989, section 147 reads as under:

“147. *Income escaping assessment – If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned*

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(hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year)."

11.1 In our opinion, since there was no material brought on record by to come to the conclusion that income escaped assessment while recording the reasons for reopening of assessment and it is only a change of opinion, accordingly by placing above judgement of Hon'ble Supreme Court, we quash the assessment for the assessment year 2010-11 also.

A.Y. 2013-14:

12. Ground No.2 in this appeal ITA No.91/Coch/2022 is as follows:-

2. *"The appellant had claimed before the Assessing Officer that the amount that can be accumulated and carried forward should be ascertained at 15% of gross receipts of the appellant for the year. The Assessing officer is not justified in netting of the application towards object of the trust from the gross receipts and reckoning the amount to be accumulated and carried forward at only 15% of such net surplus. The issue regarding the quantum of accumulation and carry forward is already settled by the CBDT vide circular No.5P (LXX-6) dated 19.06.1968 and the Commissioner of Income Tax (Appeals) should have known that the CBDT circular is binding on the Assessing officer. The Assessing Officer should have also appreciated that the appellant had applied more than 85% of the Gross Receipts during the year as per requirement of Section 11."*

13. Facts of the issue are regarding computation of percentage of the income that can be accumulated under 15%. A charitable entity is required to spend at least 85% of its receipt during the year on its object, which is considered as its application. Up to 15% of the receipts can be accumulated and carried forward to subsequent years. Any shortfall from 85% can also be accumulated and carried forward to be spent in the subsequent five years for any specific purpose subject to filing of form 10.

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The assessee is running a Medical College and hospital. It contends that 15% of the gross receipts should be allowed to be carried forward and up to 85% of the gross receipts are required to be applied in a year. On the other hand, the assessing officer has held that 85% of the net income was required to be applied and shortfall from the same was to be taxed.

14. The Ld. A.R. has relied upon Circular number 5P(LXX-6) dated 19th June 1968 of CBDT as well as Hon'ble Supreme Court decision in the case of CIT vs Programme for Community Organization (248 ITR1) in support of its claim. However, it is clear that the Circular as well as the Hon'ble Supreme Court decision has been misinterpreted by the assessee. The assessee is running a hospital and has regular earnings such as sale of medicines received from the patients etc., which form part of the gross receipt. The income needs to be computed on commercial principles by reducing various expenses; otherwise 15% of the gross receipts as intended by the assessee would not give the correct picture. The Hon'ble Supreme Court decision has examined whether accumulation should be a percentage of gross donation received on net income after application out of such donation. In a concern such as a hospital the receipts like sale of medicine etc. are not donations but the net income is required to be computed first on the basis of commercial principles. Hence, Ld. CIT(A) decided that the arguments put forth by the assessee is without any merit and dismissed this ground.

15. The Ld. D.R. relied on the order of Ld. CIT(A).

16. We have heard the rival submissions and perused the materials available on record. After hearing both the parties, we are of the opinion that this issue came for consideration before the

coordinate bench in the case of Divine Trust, Chalakudy Vs. PCIT in 245/Coch/2015 dated 22.1.2016, wherein held as under:-

“10 We have heard the rival submissions and perused the material on record. The solitary issue that arises for our consideration is whether 15% of the accumulation permitted u/s 11(1)(a) of the Act is to be calculated on the gross income or on the net income. On a plain reading of section 11(1)(a) of the Act, it can be seen that 85% of the income of the trust to be applied for charitable/religious purposes and upto 15% is permitted for accumulation in order to avail full exemption. There is no condition stated/s 11(1)(a) of the act to invest the 15% accumulated income in the modes specified as per section 11(5) of the Act. Section 11(2) of the Act is for giving relief to unapplied income which is short of 85% with a condition of keeping such surplus in the specified mode as per section 11(5) of the Act. This is to be done after giving notice to the AO by the assessee in Form No.10 of the Income Tax Rules. The issue, in the instance case is whether at the first stage of accumulation of 15% surplus u/s 11(1)(a) the calculation is made on the gross income or on the net income. This issue has been decided by the several judicial pronouncements and also clarified by the Board circular, which are as under:

i). Circular no.5-P(LXX-6) of 1968 dated 19.6.1968

The circular clearly stated that “the reference in clause (a) of Section 11(1) is invariably to ‘income’ and not to ‘total income’. The expression ‘total income’ has been specifically defined in section 2(45) as ‘the total amount of income computed in the manner laid down in this Act.’ It would accordingly, be incorrect to assign to the word ‘income’ used in section 11(1)(a), the same meaning as has been specifically assigned to the expression ‘total income’ vide section 2(45).”

ii) CIT vs Programme for Community Organization 228 ITR 620 (Ker)

The Hon’ble High Court decided the issue in favour of the assessee following the CBDT circular dated 19.6.1968. The Hon’ble High Court held (at page 625):

“taking into consideration all the facts and the circumstances, the situation needs no disturbances of any kind. For the above reasons, we answer

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question no.1 to the effect that the assessee is entitled to exemption of 25% on Rs. 2,57,376/- and not on Rs. 87,010/-“ (here Rs. 2,57,376 is the gross income and Rs. 87,010/- is the surplus after application.

iii) CIT vs Programme for Community Organization reported in 248 ITR 1/166 CTR 401 (SC)

The revenue went on appeal before the Supreme Court against the judgment of the Hon'ble Kerala High Court mentioned above. The Hon'ble Supreme Court confirmed the view of the Hon'ble High Court and held (166 CTR 401 (at page 401):

“having regard to the plain language of the above provisions, it is clear that charitable or religious trust is entitled to accumulate twenty five per cent of the 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 percent there out. It is unclear on what basis the revenue contended that it was entitled to accumulate only twenty five percent of Rs. 87,010/-“

(iv) S R M M /CT M Tiruppani Trust vs CIT 145 CTR 176(SC):

The Hon'ble Supreme Court held that (at page 180):

“a mere look at section 11 (1) and 11(2) is sufficient to dispel this argument. U/s 11(1) every charitable or religious trust, irrespective of whether it has filed a declaration u/s 11(2) or not, is entitled to deduction of certain income from its total income of the previous year. The income so exempt is the income which is applied by the charitable or religious trust to its charitable or religious purposes in India. If the entire income is so applied, the entire income would be exempted. If the entire income is not applied but some income is accumulated by such a trust, then also u/s 11(1)(a) such accumulated income to the extent of 25% of the total income (or Rs. 10,000/-, whichever is higher) would be exempted from income tax. Section 11(2) in turn provides that the restriction which is specified in cl(a) of sub section(1) as regards accumulation shall not apply if the assessee gives notice as prescribed u/s 11(2)(a) and invest the amount accumulated in Govt securities as per section 11(2) (b). The restriction specified in cl.(a) of sub section(1) is clearly the restriction of 25% of the accumulated income (or Rs 10,000/-, whichever is higher) being exempt. If more than 25% (or Rs.10,000), is to be exempted then the assessee has to comply with the conditions prescribed u/s 11(2).”

v. CIT & Another vs ALN Rao Charitable Trust 216 ITR 697:

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In this case, the Hon'ble Supreme Court observed that (at page 703):

“ a mere look at section 11(1)(a) as it stood at the relevant time clearly shows that out of the total income accruing to a trust in the previous year from property held by it wholly for charitable or religious purposes, to the extent the income is applied for such religious or charitable purposes, the same will get out of the tax net but so far as the income which is not so applied during the previous year is concerned at least 25% of such income or Rs. 10,000/- whichever is higher, will be permitted to be accumulated for charitable or religious purposes and it will also get exempted from the net.”

6. *In the instant case, if the 15% of the gross total income is set apart u/s 11(1)(a) of the Act, it comes to Rs. 2,03,50,121/- (15% of Rs. 13,56,67,475/-). After incurring of capital expenditure, the surplus was only Rs. 92,71,940/-. Therefore, there is no need to file Form 10 before the AO nor for any investment as mentioned u/s 11(5) of the Act, since the entire excess would be within 15% of the income accumulated as per Sec. 11(1)(a) of the Act. Hence, in the light of the various judicial pronouncements, and CBDT circular cited supra, we hold that CIT is not justified in invoking his revisionary jurisdiction u/s 263 of the Act and the same is quashed. It is ordered accordingly.”*

16.1 In view of the above judgement of coordinate bench, we allow the claim of the assessee and ground No.2 is allowed.

17. Ground No.3 of the appeal is reproduced as under:-

1. *“The Commissioner of Income Tax (Appeals) is not justified in treating Rs.38,68,753/- as voluntary contributions and not corpus donations. The Commissioner of Income Tax (Appeals) should have accepted that the amounts received were corpus donations and the appellant was not liable to apply 85% of the same towards the objects of the trust. The AO should have appreciated that the full details of the donors have been filed by the, appellant as called for. Moreover, there is no requirement in law that the directions from the donors to treat the amounts as corpus donations should be in writing. The order of the Commissioner of Income Tax (Appeals) is against law.”*

18. We have heard the rival submissions and perused the materials available on record. After hearing both the parties, we are

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of the opinion that this issue is squarely covered by the decision of Hon'ble Karnataka High Court in the case of DIT Vs. Sri Ramakrishna Seva Ashram 357 ITR 731, wherein held as under:

“Held, dismissing the appeal, that the documents furnished by the assessee to the Department, particularly, a report regarding Swamy Vivekananda Integrated Rural Health Centre and Shree Sharadadevi Eye Hospital and Research Centre (Units of Sri Ramakrishna Sevashrama) made it clear that the centres were started in the year 1992 with due registration and had been working since then for the welfare of needy people and the first project of it was leprosy eradication project. Likewise, they had 14 projects, which were started in rural areas. The contributions received were kept in fixed deposit. It showed that the intention of the assessee was to treat these contributions as corpus and the income derived from the corpus was used for carrying on the activities. The assessee was entitled to renewal of registration and also entitled costs.”

18.1 Same view was taken by the coordinate bench in the case of DCIT (Exemptions) Vs. Chinmaya Mission Educational & Charitable Trust, Greater Cochin, Ernakulam in ITA No.330/Coch/2016 dated 5.10.2017. In view of the above judgement, we allow the ground taken by the assessee and direct the AO to consider the contribution of Corpus donations.

19. Ground No.4 of the appeal of the assessee is reproduced as below:-

“The Commissioner of Income Tax (Appeals) is not justified in disallowing Rs.3,43,894/- being the contributions and donations made by the appellant. The Commissioner of Income Tax (Appeals) should have appreciated that in the case of charitable institutions it is not necessary as per Law to give donations only to institutions which are registered under section 12A. The Commissioner of Income Tax (Appeals) should have known that, the appellant being a charitable institution engaged mainly in running hospitals and educational institutions is authorised to give contributions and donations to poor individuals and others who are in need of help for furtherance of their education, for medical treatment, etc.”

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20. At the time of hearing, no argument has put-forth on this issue. Accordingly, this ground of appeal of the assessee is dismissed.

21. Ground No.5 of the appeal of the assessee is reproduced as below:-

“The Commissioner of Income Tax (Appeals) should have known that the excess application of the appellant over 85% of the gross receipts during the earlier years was eligible to be carried forward and set off during this year against the gross receipts. The appellant had excess application relating to the earlier years to be carried forward and set off during the year.”

22. Facts of the issue are that the assessee has made a claim that excess of application of earlier years needs to be set off in this assessment year. It has claimed that in the preceding assessment year, it had excess application which should be set off against current years receipts. The assessee's claim regarding brought forward amount of deficit or excess of the application of earlier years is not correct as such excess application could be sourced out of:-

- a) Accumulated amounts of earlier years,
- b) Corpus donations, or
- c) Loans or borrowings.

22.1 The Ld. CIT(A) observed that if the same is from earlier accumulated amounts or Corpus donations, allowing the same would amount to double deductions as such income is already treated exempt. If the expenditure is out of loans or borrowings the repayment of the same would qualify as application in the year of repayment of such loan. Hence, the contention of the assessee is not acceptable by him. The Hon'ble Supreme Court in the case of Subros Educational Society had dismissed the SLP without deciding the questions raised on this issue. Moreover, in that case the Hon'ble Supreme Court has admitted the Department's review petition before it. Further, amendment brought by Finance Act, 2021 has prohibited

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carry forward of deficit. In view of this, Ld. CIT (A) has decided that the ground raised by the assessee against assessee.

23. The Ld. D.R. relied on the order of Ld. CIT(A)

24. We have heard the rival submissions and perused the materials available on record. The Hon'ble Supreme Court in the case of CIT(Exemption) Vs. Subros Educational Society reported 303 CTR 1(SC) has decided the similar issue, wherein held as follows:-

“Any excess expenditure incurred by trust/charitable institution in earlier assessment year could be allowed to be set off against income of subsequent years by invoking section 11”.

24.1 In view of the above, we allow the ground taken by the assessee.

25. In the result, the appeals filed by the assessee in ITA Nos.88, 89 & 90/Coch/2022 are allowed and ITA No.91/Coch/2022 is partly allowed.

Order pronounced in the open court on 14th Sept, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 14th Sept, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**