

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI**

**BEFORE**

**DR. BRR KUMAR, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 968/Del/2023  
Asstt. Year: 2016-17

DCIT, Circle-1(1)-Exemption New Delhi.	Vs.	Hamdard Laboratories (India) 2A/3, Hamdard Building, Asaf Ali Road, New Delhi – 110 002 PAN AAATH0842H
(Appellant)		(Respondent)

Assessee by:	Shri R.M. Mehta, CA
Department by:	Shri T James Singson, CIT, DR
Date of Hearing:	31.08.2023
Date of pronouncement:	27.09.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the Revenue is directed against the order dated 30.03.2022 of the Ld. Commissioner of Income Tax (Appeals) NFAC, Delhi (**"CIT(A)"**) pertaining to Assessment Year (**"AY"**) 2016-17.

2. The Revenue has taken the following grounds:

*"1. Whether on the facts and in the circumstances of the case, Ld. CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that assessee has offered substantial concession in rent to person specified u/s 13(3), which is a clear violation of Section 13(2)(b) of the Act, 1961 and hence assessee is not eligible for exemption u/s 11/12 of the Act, 1961.*

*2. Whether Ld. CIT(A) in the facts and circumstances of the case was correct in allowing exemption u/s 11 & 12 of the Income Tax Act, 1961 to the assessee.”*

3. In brief, the assessee is a Trust registered under section 12A of the Income Tax Act, 1961 (**the “Act”**). It e-filed its return for AY 2016-17 on 15.10.2016 disclosing income at ‘nil’ after claiming its entire income as exempt under section 11 and 12 of the Act. The case was selected for scrutiny. Statutory notice(s) were issued and served upon the assessee. In response thereto the assessee made submissions vide reply dated 13.12.2018, 18.12.2018 and 21.12.2018 to the query raised by the Ld. Assessing Officer (**“AO”**) about residential accommodation provided to trustees and their family members. The Ld. AO did not find the replies tenable mainly for the reason that leasing out of the two properties of the trust, namely the property at 25 Kautilya Marg, New Delhi and 13 Rajdoot Marg, New Delhi for use by the trustees and their family at the consolidated lease rent of Rs. 90,000/- per month attracted the provisions of section 13(2)(b) of the Act and therefore, the assessee was not entitled to avail exemption under section 11 and 12 of the Act. He, therefore taxed the assessee as AOP and computed the taxable income of the assessee at Rs.1,93,93,48,991/- including therein addition of Rs. 31,20,000/- as income from house property and disallowance of depreciation of Rs. 5,23,190/- claimed by the assessee in respect of leased out properties in the assessment order dated 30.12.2018 framed by him under section 143(3) of the Act.

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A). During appellate proceedings the Ld. CIT(A) called for the remand report on each ground of appeal taken by the assessee before him. On receipt of remand report, the Ld. CIT(A) obtained counter comments of the assessee. After introduction of faceless scheme w.e.f. 25.09.2020 fresh notice under section 250 of the Act was issued to the assessee. In response thereto the assessee furnished written submissions of evidences/details vide letter dated 19.01.2021. On consideration thereof, the Ld. CIT(A) held that the assessee

is a charitable institution eligible for exemption under section 10(23C)(iv) or under section 11/12 of the Act. The observations and findings of the Ld. CIT(A) are reproduced hereunder:

*"7. I have considered the facts of the case, assessment order/remand report, appellant's written submissions and re-joinder on AO's remand report. In the instant case, the AO after observing that in the return of income filed for the AY 2016-17, the assessee trust claimed benefits of section 11 & 12, rejected the same after observing that the assets held under assessee trust are not judiciously expended /used and were applied for unreasonable benefit of person specified in section 13(2)/13(3) of the Act. On the basis of detailed findings recorded in the assessment order, the AO denied the benefits of section 11 and 12 of the Act to the assessee and assessed it as AOP at a total income of Rs. 1,93,93,48,991/- On the contrary, the appellant's claim is that the AO instead of examining the matter with reference to the provisions of Section 10(23C)(IV) of the Act adverted to the Provisions of Sections 11&12 of the Act and invoked the Provisions of Sections 13(2)/13(3) of the Act sans evidence, although there was no change in facts as compared to the preceding assessment years and he should have followed the rule of consistency. Besides, the appellant has strongly submitted that it's case is not covered by provisions of sec. Sections 13(2)/13(3) as no undue benefits were passed on to the specified persons u/s 13(3) as alleged by the AO. In the remand proceedings, both the AO and appellant reiterated their claims. Here first question before me is that whether the assessee is allowed to raise plea /argument that its case may be examined with the provisions of section 10(23C)(IV), particularly when no such claim was made in the return of income. In this regard, it is noted that as per landmark decision of the Hon'ble Supreme Court in Goetze India any claim made otherwise than by filing of revised return cannot be entertained by the AO during the course of assessment proceeding, however, the said case does not apply to claims made before the Appellate Authorities otherwise than by Revised Return of Income, I find that there is plethora of decisions, ratio of which held that a fresh claim can be raised before the Appellate Authorities, even if it has not been raised before the Assessing Officer nor claimed in the Return of Income, the Appellate Authorities have wide powers to entertain it. Few of the case are being referred as under:-*

*In the case of CIT V/s Mithesh Impex 270 CTR (Guj) 66, the Head note and conclusion are reproduced as below:-*

*"Appeal-Fresh claim – Allowability - Assessee raised fresh claim u/s 801B before CIT(A) but not raised before AO-Raising of such fresh claim before CIT(A) in appeal was objected by revenue-Held, if a claim though available in law is not made either inadvertently or on account of erroneous belief of complex legal position, such claim cannot be shut out for all times to come, merely because it is raised for first time before appellate authority without resorting to revising of return before AO-Any ground, legal contention or even a claim would be permissible to be raised for first time before appellate authority when facts necessary to examine such ground, contention or claim are already on record-Since facts relating to fresh claim raised by assessee, is already on record. Appellate Commissioner need not nor did they travel beyond materials already on record-Appeal filed by revenue dismissed*

*Held:*

*This is primarily on the premise that if a though available in law is not made either at if a claim inadvertently or on account of erroneous belief of complex legal position, such claim cannot be shut out for all times to come, merely because it is raised for the first time before the appellate authority without resorting to revising the return before the assessing officer.*

*(Para 39)*

*Therefore, any ground, legal contention or even a claim would be permissible to be raised for the first time before the appellate authority or the Tribunal when facts necessary to examine such ground, contention or claim are already on record. In such a case the situation would be akin to allowing a pure question of law to be raised at any stage of the proceedings. This is precisely what has happened in the present case. The Appellate Commissioner and the Tribunal did not need to nor did they travel beyond the materials already on record, in order to examine the claims of the assesseees for deductions under section 801B and 80HHC of the Act.*

*(para 40)*

*Conclusion:*

*There is no prohibition on the powers of the Tribunal to entertain an additional ground which according to the Tribunal arose in the matter and for just decision of the case.*

*The power of the Appellate Assistant Commissioner is co-terminus with that of the Income Tax Officer, if that he so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income Officer.....*

*Similarly, the Head-note in the case of CIT V/S Rajasthan Fasteners (P) Ltd 266 CTR (Raj.) 401 is reproduced as below:-*

*"Exemption u/s 10B-Newly established hundred per cent export oriented undertakings Claim of exemption disallowed it was contended by assessee that inadvertently and on account of mistake by office of Chartered Accountant, instead of exemption having been claimed u/s 108 in return, it was wrongly typed as 801B, hence, mistake was not attributable on part of assessee and thereafter alternative letter which was send as clarification note should have been treated as revised return and accordingly claim should have been allowed-CIT(A) reversed order of AO which was upheld by ITAT-Held, assessee is 100% export oriented unit and had been claiming exemption night from assessment year 2004-05 u/s 108-It may be that claim is to be allowed on year to year basis but when facts and circumstances reveal that assessee. was eligible even this year for exemption u/s 108 and it has been found to be in order except that instead of mentioning exemption u/s 108, while e-filing return of income tax. it was wrongly, on account of typographical error mentioned Section 801B, it cannot be said to be such a mistake by which exemption could be disallowed out rightly-Purpose of assessment proceedings before taxing authorities was to assess income correctly and tax liability of assessee in accordance with law-If such clerical mistake occurred, then AO was duty bound to inform*

*assessee that this claim is wrongly claimed and that one may claim exemption under concerned section-Therefore, once assessee was found eligible for exemption u/s 108, a having been allowed such exemption in past, and merely because typographical error crept in while e-filing return and it was mentioned as u/s 801B instead of Section108, this being technical mistake, should not come in way by disallowing otherwise allowable/eligible exemption."*

*The Hon'ble Rajasthan High Court in para 13 of the order quoted from Jute Corporation of India Ltd. V/S CIT (1991) 187 ITR 688 (SC) as below:-*

*"13 In the case of Jute Corporation of India Ltd. v. Commissioner of Income Tax: (1991) 187 ITR 688 (SC), while dealing with the powers of the Appellate Assistant Commissioner, the Supreme Court observed that*

*"An appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may ha in the matter. There is no good reason to justify curtailment of the power of the appellate Assistant Commissioner in entertaining an additional ground raised by the assessed in seeking modification of the order of assessment passed by the income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered in As own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also."*

*Furthermore, the Hon'ble Rajasthan High Court in para 17 of the order has discussed the powers of the CIT (A) viz-a-viz the Assessing Officer while disposing of an appeal- the para 17 is reproduced as below for the sake of clarity.*

*17. We may also observe that the CIT(A) had plenary power in disposing of an appeal. The scope of his power was co-terminus with that of the Income Tax Officer. He could do what the Income Tax Officer could do and also direct him to do what he had failed to do. It has been held by authorities of the Hon'ble Apex Court (supra) that above observations are squarely applicable and the interpretation of Section 251(1)(a) of the Act. The declaration of law was clear that the power of the Appellate Assistant Commissioner [CIT (Appeals)] was co- terminus with that of the Income Tax Officer and if that is so, there appears to be no reason as to why the appellate authority could not modify the assessment order on an additional ground even if not raised before the Income Tax Officer. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise, an appellate authority, while hearing an appeal against the order of a subordinate authority, had all the powers which the original authority might have in deciding the question before it subject to the restrictions or limitation, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority was vested with all the plenary powers which the subordinate authority might have in the matter. As the assessee has filed a revised computation, in our view, it holds good as except the change of Section from 8018 to 10B, all other supporting material remained the same including the*

*audit report claiming such exemption. The Bombay High Court in the case of CIT VS. Prabhu Steel Industries (P) Ltd. (191 ITR 530) held that where a claim for special deduction was made by the assessee not in his return but in the course of the assessment proceedings and the AO failed to consider the same, it was open to the appellate authority to entertain the claim. The Hon'ble Apex Court in the case of CIT Vs. Kanpur Coal Syndicate (53 ITR 225) observed that the power of the CIT(A) sitting in appeal over an assessment were plenary and co-terminus with those of the AO and that he can do what the ITO can do and also direct him to do what he has failed to do and in our view, the CIT(A) indeed has powers to examine the assessee's claim on merits by virtue of Sec. 250(5), In that case, the claim was first time made under Sec.80HHC before the CIT(A) and accordingly no infirmity was found by the Hon'ble Apex Court in grant of deduction u/s 80HHC. The Punjab & Haryana High Court in the case of Ramco International, reported in 332 ITR 300, where the assessee claimed deduction u/s 801B of the IT Act although furnished Form 10CCB, it was held that even where there was a claim by way of an application without filing a revised return and in such a situation, deduction could not be disallowed"*

*The law developed, post Goetz (India)'s case, has made it abundantly clear that an assessee is entitled to make fresh claim for deduction or relief before the Appellate Authorities during the course of the Appellate proceedings, irrespective of the claim not being made by revising the Return of Income before the Assessing Officer during the course of assessment proceedings. The decision in Goetze (India)'s case has not prohibited such claim before the Appellate Authorities. Further these judicial precedents cited and reproduced above make it amply clear that if an assessee is otherwise eligible for a particular deduction/exemption then the same cannot be denied to him or it simply on the ground that this claim was not made by the assessee in his return of income. In the instant case, at the outset, the appellant has been claiming that it is duly eligible for exemption as per provisions of section 10(23C)(IV) of the Act. In the remand report, the AO has also not commented that the appellant trust is not eligible for exemption u/s. 10(23C)(iv) of the Act. The AO simply emphasized that this claim was made in the return of income.*

*At this juncture, it imperative to reproduce the provisions of sec. 10(23C)(iv), which reads as under-*

*"10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-*

*[ )*

*23C any income received by any person on behalf of-*

*)*

*16 any other fund or institution established for charitable purposes 17[which may be approved by the prescribed 15[(iv) authority18], having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States; or*

*In the context of the above section, it is also necessary to look into the objects of the appellant trust. The principal objects of the assessee as set out in the Deed dated 28.08.1948 are as under:*

**"44.** *The Qaumi Income of the Wakf i.e. shall be spent only within the territories of the Union of India and only on objects of public charity which satisfy the following two cumulative tests*

*1. They must be objects of public charity for the benefit of all persons irrespective of caste, colour or creed, such as relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity of profit and*

*i. They must be consistent with the principles of true teaching of Islam.*

*Provided however, that in spending the income on objects of public charity, priority shall be give to the collective needs of the country or to such needs as many benefit the largest number of persons or their generations.*

**45.** *Priority may be given to the following:*

*1) To establish and run an Institute for the promotion of medical education and research with emphasis on indigenous systems of medicines,*

*2) To establish and successfully conduct a Tibbia College in conformity with the recognized standards.*

*3) To establish and run charitable hospitals and clinics where poor patients are given free treatment.*

**46.** *Qaumi Income may also be spent on the following:*

*1) To establish and run educational institutions, and/or aid those which are already in existence.*

*2) To build schools, laboratories, wells or such other buildings of a public nature as many benefit the largest number of people of the country.*

*3) To publish books, pictures, maps or literatures or to aid in publication of the same by the publication of which the object of Wakf are fulfilled or achieved.*

*44. Help may be given to needy orphans, needy widows or helpless persons, needy authors and research scholars and victims of unforeseen calamities without restriction of cast, colour or creed."*

*For the attainment of the aforesaid objects, the appellant utilizes the income generated from manufacture and sale of Unani and Ayurvedic medicines. Entire income of the appellant is donated to a registered charitable society namely Hamdard National Foundation (hereinafter referred to as (HNF) which came into existence on June 6, 1904 with the same chantable objects as given in the Trust Deed of Hamdard Laboratories India. Thus HIL is a business held under charitable trust and HNF is a special purpose vehicle set up for the sole purpose of effectuating the charitable intent of HLL. With the income generated from manufacture and sale of Unani Medicines, following education and medical institutions have been established and are being run:*

1. *Jamia Hamdard University, Hamdard Nagar, New Delhi*
2. *Hamdard Institute of Medical Sciences & Research (Medical College). Hamdard Nagar, New Delhi alongwith two state of art modern hospitals with 600 bed capacity.*
3. *Majeedia Hospital of Unani Medicines*
4. *Hamdard Public School, Talimabad, New Delhi*
5. *Hamdard Primary School, Okhla, New Delhi* 6. *Rabea Girls Public School, Old Delhi*
7. *Hamdard Study Circle providing free coaching to poor and needy aspirants of Indian Administrative Services*
8. *Hamdard Coaching Centre providing free coaching to poor and needy students preparing for all India Medical & Engineering competitions.*

*In the instant case, there is no dispute that HIL exists solely for charitable purposes and not for purposes of profit, as there is no findings in this regard found recorded in the assessment order. It is a fact that the appellant has derived the benefit of exemption under the relevant provisions of the Income Tax Act 1922 and thereafter continuously u/s 10(23C)(iv) of the Act including the three immediately preceding assessment years i.e. 2013-14 to 2015-16. Despite all these facts the AO failed to follow the principle of consistency. Since there was no change in facts, therefore, the AO has to allow the assessee's claim following the principle of consistency as laid down by the Hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT [1992] 60 Taxman 248/193 ITR 321 (SC) and various other judicial precedents referred to below:-*

1. *Radhasoami Satsang v. CIT (1992) 60 Taxman 248/193 ITR 321 (SC)*
2. *Commissioner of Income-tax vs. Gopal Purohit [2010] 188 Taxman 140 (Bombay)*
3. *Principal Commissioner of Income-tax-8 v. Quest Investment Advisors (P) Ltd. (2018) 96 taxmann.com 157 (Bombay)*
4. *Deputy Commissioner of Income Tax, Circle 17(1), New Delhi v. Moet Hennessy (1) (P) Ltd [2020] 114 taxmann.com 733 (Delhi - Trib.)*
5. *NIIT Ltd. v. Deputy Commissioner of Income-tax, LTU, Central Circle-16(1), New Delhi [2019] 112 taxmann.com 66 (Delhi-Trib)*

*Moreover, in the case of Adarsh Public School vs. JCIT [2018] 90 taxmann.com 356 (Delhi - Trib), the Hon'ble Delhi ITAT Bench 'A' held that there is no disharmony between section 10(23C) and section 11 and, thus, exemption of section 11 cannot be denied even when there is a specific provision of section 10(23C). Though in the said decision, allowability of sec. 11 was in dispute but ratio of this judgment holds goods in the instant case also.*

*In view of the above facts and judicial precedents cited supra, I am of the considered view that unless and until the grant of exemption u/s 10(23C)(iv) of the Act is not withdrawn by the prescribed authority, the same*

*cannot be denied by the AO. Accordingly, the AO is directed to entertain the appellant's claim of exemption u/s. 10(23C) (iv) and allow it accordingly. Effectively on all the grounds raised in para 2 above, the appellant succeeds.*

*8. Even otherwise also, I find merit in appellant's claim that its case is not covered by provisions of sec. Sections 13(2)/13(3) as no undue benefits were passed on to the specified persons u/s 13(3) of the Act. It would be appropriate to refer to the provisions of section 13(1) of the Act which deals with the trusts not eligible for exemption. As per section 13(1), the following trusts are not eligible for exemption under Sections 11 and 12:*

*a. trust for private religious purposes, which enures no public benefit: [Sec. 13(1)(a)]*

*b. charitable trust created or established on or after 1-4-1962 for the benefit of any particular religious community or caste [Sec. 13(1)(b)] (other than scheduled castes/tribes, back ward classes or women and children). (Explanation 2)*

*c. A trust or institution for charitable or religious purposes, if any part of its income or property is used or applied, or enures. directly or indirectly to the benefit of a person specified u/s 13(3) of the Act, viz., (i) the author or founder of the trust. (1) a substantial contributor whose total contributions to the trust upto the end of the relevant previous year exceed Rs. 50,000; (iii) where the author or contributor is an HUF, a member of the family; (iv) the trustee or manger of the trust; (v) any relative of such author. founder, contributor, member, trustee or manager, and (vi) any concern in which any of the persons aforesaid has a substantial interest. [Sec. 13(1)(c)]*

*The AO held that the assessee transferred the amount to the trusts/concerns referred u/s. 13(3) of the Act hence, its case is covered under provisions of section 13(2). Considering the facts of the case as brought out, I am inclined to agree with the contention of the appellant trust. It is seen that there were no benefit to any individual or trustees, question of using or applying any part of income or any property of the trust directly or indirectly for the benefit or any persons referred to in sub section (3) would not arise in the this case. The facts as mentioned above make it absolutely clear that the appellant trust has not provided any benefit to the trustee and there is no violation of section 13(2) of the Act.*

*In the instant case, the AO's action in denying the exemption u/s. 11 & 12 was on account assessee's case being covered by the provisions of sec. 13(2)/13(3) of the Act. The AO noted that two properties i.e. 25, Kautilya Marg, New Delhi-110021 13 and Rajdoot Marg, New Delhi-110021 were provided as residential accommodation by the trust to Mr. Hammad Ahmed, Mutawalli(Trustee) and Mr. Abdul Majeed. Mutawalli for license fee of 540000/- and Rs. 540000/- respectively which in his view were far less as compared to other properties of same area. The appellant trust explained before me that Trustees in the present case function in a dual capacity vis a vis trustees as also employees and their educational, technical qualifications and experience helped assessee trust in achieving hale and hearty turnover over the period of time. The appellant contended that the properties shown in the screenshot were either furnished or semi- furnished, being either independent houses or independent floors with covered areas larger than the covered area of the property at 25 Kautilya Marg owned by the assessee and nor these properties were confronted with specific instances, thus comparison done by the AO is not justifiable. Further, the appellant contended that the AO erred in invoking the said Provisions with reference to the family members of the erstwhile Chief Mutawalli, Late Abdul Mueed Sahib, who occupied a part of the premises at 25 Kautilya Marg i.e Ground Floor with a covered*

*area of 401.12 Sq. Mtr free of rent and entirely on compassionate grounds. As regards property at 13, Rajdoot Marg, the appellant submitted that it is not owned by HLI but by another independent trust namely Hamdard National Foundation which has leased it to HLI since 2007 and a part of it is occupied by Mr. Abdul Majeed since 2010-11 as per the terms of his employment with HLI since 1995. Considering the facts of the case and appellant's submissions, I am inclined to agree with the appellant's claim that it did not violate the provisions of sec. 13(2)/13(3) of the Act. On consideration of the entire material before me, I am the view that the law requires the AO to bring on record cogent evidence to justify the invocation of section 13 of the Act and the material collected by the AO from the Internet as well as otherwise cannot be termed as the collaborative piece of evidence. The appellant has satisfactorily established that the property let out by the trust and properties quoted by the AO were not similar, merely because these are properties are located in same area, their rental value cannot be equated. Besides, the AO failed to provide details of these properties to present its case in a fair way. It is the consistent opinion of judiciary that material collected behind the back of the assessee cannot be used against unless and until providing reasonable opportunity of rebuttal.*

*As regards property located at 25 Kautilya Marg, New Delhi, I find that the area of property was rented to Sh Hammad Ahmed, Senior Trustee on license fee of Rs. 45,000/- p.m. for the past 40 years and the balance portion of the property was in use of the family members of appellant's erstwhile chief Trustee late Abdul Mueed Sahib. It is to be noted that this property has been given on rent for the last 40 years and in case where property is rented for such a long term, its rental value tends to be on lower side and it cannot be compared with other properties which are available for rent. Thus, it cannot be said that any undue benefits have been passed on to the specified persons u/s 13(3) in the form of residence at below the market rate.*

*As regards property at 13, Rajdoot Marg, I find that it is not owned by the assessee trust but owned by Hamdard National Foundation which is an independent trust, this property was leased to the appellant since 2007 and a part of it is occupied by Mr. Abdul Majeed since 2010-11. The rent so paid by Mr. Abdul Majeed has been duly accounted for by the Hamdard National Foundation. Therefore, it is wrong to allege that there was any violation of provisions of sec. 13(2)/13(3) in respect of this property too. There are various judicial precedents wherein it has been categorically held that merely because of difference in rental value of property, it cannot be said that undue benefit was passed on trustee or specified persons u/s. 13(2)/13(3) of the Act. Few of them are discussed hereunder-*

1. *In the case of Kishore Trust vs. ADIT reported in [1996] 59 ITD 137 (Calcutta) [29-03-1996], the Hon'be ITAT CALCUTTA BENCH 'C', held as under:-*

*"While holding that the assessee had violated the provisions of section 13(1)(a)/13(2)(a)/13(3), the Assessing Officer had never disputed the adequacy of rent charged by the assessee. The Commissioner (Appeals) had also not brought any material on record to show that the rent charged by the assessee was low compared to the rent chargeable under similar circumstances. Therefore, the assessee's plea that the rent charged was adequate was acceptable. In other words, the assessee could be said to have been adequately compensated in the form of rent for the premises let out to the company. Under section 13(1)(c)(i) the benefit of exemption under section 11 is denied to an assessee who has used' or 'applied any part of the income or property of the trust for the benefit of any person referred to in sub-section (3). The connotation 'used' or 'applied' should be understood as a positive act of use or application of the income of the trust or the property of*

*the trust. In the instant case the rent, having been held to be reasonable with reference to the area of premises out, it could not be said that there was any benefit passed on directly or indirectly to the person referred to in sub-section 13(3). In fact, by not making efforts to collect the outstanding rent, the assessee could not be said to have used or applied the income or property of the trust as there was no positive act on the part of the assessee in that regard. Therefore, the provisions of section 13(1)(c)(i) were not violated by the assessee-trust.*

*Section 13(2)(a), which had been applied by the assessing Officer, was also not applicable to the facts of the case, inasmuch as, under the said provision, the income or property of the trust would be deemed to have been used or applied if the same is lent to any person referred to in sub-section (3) the word 'lent' connotes the positive act of lending by the assessee-trust and the same could not be applied to a case where the assessee had not lent any sum. The objection raised by the Department was that the assessee had not chosen to realise the rent by taking any legal action. The inaction on the part of the assessee in not collecting the rent could not be equated to an act of lending the income or property of the trust. Therefore, the provisions of section 13(2)(a) were not applicable to the facts of the instant case.*

***Therefore, the assessee was entitled to the benefit of exemption under section 11, if other conditions stipulated therein were complied with."***

*1. The Hon'ble Allahabad High Court in the case of CIT vs. Bharat Sewa Sansthan [2013] 36 taxmann.com 539 (Allahabad) decided the similar issue in favour of the assessee trust. The head note is reproduced as under:-*

*"Section 13, read with section 12A, of the Income-tax Act, 1961 - Charitable or religious trust Denial of exemption [Benefit to members] Assessment years 1994-95 to 1998-99 Assessee, a society, was registered under section 12A Assessing Officer denied exemption to assessee and made addition to its income. He observed that (i) huge amounts spent by assessee and passed on to two other organizations had no obvious link with charitable purpose and their immediate hidden purpose was to benefit members of society, and (ii) President and Treasurer of society had occupied a building, which was owned by assessee's sister concern, namely, 'M', at a nominal rent - Amounts passed on to other organizations were in nature of donations/grants, of which members of society would not be beneficiaries- President and Treasurer, who got accommodation, were also office bearer of 'M' Assessing Officer had not mentioned anywhere that funds were misappropriated and were not utilized for objects of society. Whether in view of aforesaid position, Assessing Officer was wrong in denying exemption to assessee. Held, yes [Paras 9, 10, 12 & 15] [In favour of a assessee]*

*1. In the case of Raghubir Saran Charitable Trust vs. ITO [1987] 22 ITD 11 (DELHI), the Hon'ble ITAT DELHI BENCH 'B' held as under-*

*"It was no longer in dispute that the property in question was governed by the Delhi Rent Control Act and the standard rent of this property was below Rs. 4,000 per month which was the rent being paid by the company. In view of the principles laid down by the Supreme Court in the cases of Dewan*

*Daulat Rai Kapoor v NDMC [1980] 122 ITR 700, Mrs Sheila Kaushish v CIT [1981] 131 ITR 435, and Amolak Ram Khosla v. CIT [1981] 131 ITR 589 since in the instant case the rent payable by the company to the assessee was considered to be more than the standard rent assessable under the Delhi Rent Control Act it was not permissible to say that the rent charged by the assessee was inadequate and was intended to confer any benefit on the settlors or their relatives The assessee was, therefore, entitled to exemption under section 11 and the addition made by the ITO to the rental income was not justified"*

1. *Lastly, but not the least in the case of CIT vs. Bholaram Educational Society [2019] 101 taxmann.com 193 (SC), the Hon'ble Apex Court dismissed the SLP filed against the order of High Court, holding that rent paid by assessee-trust to a trustee for using land and building was not excessive and, thus, exemption could not be denied to assessee under section 11 by invoking provisions of section 13(1)(c). In the said case, Commissioner (Appeals) as well as Tribunal opined that having regard to fair market value of property, rent paid was not excessive - Moreover, rent had been valued as per prevailing rate fixed for purpose of stamp duty.*

*In view of the facts discussed above and judicial precedents ches supra, it is held that the no undue benefits passed on from the assessee trust to the trustee and as such there is no violation of sec. 13(2)/13(3) as alleged by the AO. However, since I have already held that the appellant trust is eligible for exemption u/s. 10(23C)(iv), which is its main plea, therefore, grounds/plea raised by the appellant regarding this issue become academic in nature.*

*9. As regards the AO's action in disallowing the claim for depreciation on the property owned by the assessee amounting to Rs.5,23,190/-,I find that in view of judgment of Rajasthan & Gujarati Foundation (2018) 300 CTR (SC) 1) ratio of which held that depreciation is allowable to charitable trust even if the entire expenditure incurred for acquisition of capital assets has been treated as application of income for charitable purpose u/s. 11(1)(a). sec. 11(6) inserted by Finance (No. 2) Act, 2014 is effective for AY 2015-16, the AO is directed to consider the depreciation of Rs. 5,23.190/- as application of income while arriving at appellant's net taxable as per provisions of section 11 and 12 of the Act. However, since I have already held that the appellant trust is eligible for exemption u/s 10(23C)(iv), which is the main plea, therefore, grounds/plea raised by the appellant regarding this issue also become academic in nature.*

*10. After holding that the appellant is a charitable institution, eligible for exemption u/s 10(23C)(iv) or 11/12 of the Act, the appellant trust automatically becomes eligible for claim of both capital and revenue expenditure incurred for the objects/ charitable purposes which would be regarded as application of income. Hence, the AO is directed to adopt the appellant trust's status as AOP (Trust) and allow benefits of sec. 10(23C)(iv) or 11/12 of the Act. The addition made at Rs. 4,38,69,083/- by disallowing capital expenditure is directed to be deleted. The ground raised by the appellant regarding this issue is allowed.*

*In view of the above, the grounds raised by the appellant in the instant appeal are allowed."*

5. Dissatisfied, the Revenue is in appeal before the Tribunal and both the grounds relate thereto.

6 Drawing our attention to the order of the Ld. AO it is submitted by the Ld. CIT (DR) that the assessee has offered substantial concession in rent to persons specified under section 13(3) which violates the provision of section 13(2)(b) of the Act. The Ld. CIT(DR) pointed out that in order to quantify the concession allowed in respect of property at 25 Kautilya Marg, the Ld. AO relied on the data available at makaan.com for semi furnished accommodation for area of 3300 sq. ft.. The Ld. CIT(DR) frankly admitted that the Deptt. did not obtain valuation report from the statutory authority. He objected to the direction given by the Ld. CIT(A) to allow exemption under section 10(23C)(iv) and/or under section 11 and 12 of the Act.

7. The Ld. AR gave a brief background of the case in synopsis of submissions placed before us. It is stated that the assessee is trust constituted by and under its own Trust Deed dated 28.09.1948 (**"Deed"**) whereby the partners of a business known as "Hamdard Dawakhana" dedicated the said business to charity. The said partnership was engaged in the business of manufacture and sale of indigenous medicines.

7.1 It is further stated that to carry out its charitable activities, Hamdard created a special purpose Vehicle, a registered society for philanthropic purposes, i.e. Hamdard National Foundation (**"HNF"**) on 12.05.1964 and which continues to enjoy exemption under section 11 since then.

7.2 It has been pointed out that the assessee has derived the benefit of tax exemption consistently over the last few decades (70 years approx.) both under the Act of 1922 and thereafter the 1961 Act, the latter under section 11 and thereafter under section 10(23C)(iv) of the Act, including the three preceding AYs i.e. 2013-14, 2014-15 and 2015-16 in assessment framed under section 143(3) of the Act. (copies placed at pages 46-49 of the Paper Book).

7.3 It is clarified that it would be obvious from the Audit Report submitted under section 12A(B) of the Act in Form No. 10B under Rule 17B and Form No. 10BB under Rule 16CC and Annexure thereto (pages 21 to 45 of Paper Book) that the Trust had sought exemption in AY 2016-17 presently under consideration under section 10(23C)(iv) of the Act.

7.4 The following points have been highlighted:-

1. *That the trustees functioned in dual capacity viz trustees as also employees whose technical & educational qualifications enabled the assessee to achieve a "hale and hearty turnover" Rs.544.60 cr for the year under consideration and approved investments to the tune of Rs.849 cr (Pl see pages 16 to 19 and 36 & 37 of the PB).*
2. *In addition to (1) above the trustees in question drew salaries of Rs.54,00,000/- p.a. and 10% thereof was recovered as license fee for the accommodation provided to both of them.*
3. *That the AO had acted without evidence as none was confronted to the assessee, during the assessment proceedings.*
4. *The properties shown in the screen shots, were either independent houses or independent floors with covered areas larger than the covered area of the property at 25 Kautilya Marg, and either furnished or semi furnished. In other words the comparison was with like to unlike.*
5. *That the AO had failed to appreciate or chose to ignore the factual submission, that one of the trustees namely Mr. Hammad Ahmed was occupying only 389.71 sq.mtr. of the property at 25, Kautilya Marg out of a total covered area of 1096.35 sq.mtr and a comparison with the properties highlighted by the AO in the screen shots was not valid for invoking the Provisions of Section 13(2)/13(3) of the Act.*
6. *That the property at Kautilya Marg had been purchased in 1972 for a sum of Rs.7 Lakhs and had not undergone a change since then. In other words it was a dilapidated property.*
7. *That the AO had further erred in comparing the rent of the premises partly occupied by the name trustee for the last do years with the alleged rate for a fresh tenancy of a fully occupied property which is furnished or semi-furnished.*

8. *That the AO further erred in invoking the said provisions with reference to the family members of the erstwhile Chief Mutawalli, Late Abdul Muced Sahib, who occupied a part of the premises at 25 Kautilya Marg entirely on compassionate grounds and that also without ascertaining whether these were specified persons within the meaning of Section 13(3).*
9. *That since the Provisions in question applied only to property owned by an assessee, the property at Rajdoot Marg owned by HNF could not be reckoned.*
10. *The onus to invoke the Provisions of Section 13(2)/13(3) lay on the AO and which has not been discharged.*
11. *A position which has remained undisturbed for the last 40 years vis-a-vis Mr. Hammad Ahmed cannot be overturned so casually and that also without fulfilling the mandate of the said provisions."*

8. We have carefully considered the submission of the parties and perused the records. It is significant to note from the assessment order dated 07.12.2017 in the case of the assessee after scrutiny under CASS for AY 2015-16 (copy at page 49 of Paper Book) that the order specifically mentions that the assessee Trust is registered under section 12A and also notified under section 10(23C)(iv) of the Act, said Notification having been restored by the Hon'ble Delhi High Court vide order dated 18.09.2015 in W.P.(C) 5711/2013 with effect from AY 2004-05 onwards. The predecessor Ld. AO has observed that the assessee claimed exemption under section 10(23C)(iv) and that the objects of the Trust being charitable within the meaning of section 2(15) the benefit of section 11 and 12 is allowed. There is no change either in facts or in law in AY 2016-17 from those in preceding years as evidenced from the orders of assessment for AY 2013-14, 2014-15 and 2015-16 appearing at pages 46-49 of Paper Book. In CIT vs. Amit Jain (2015) 374 ITR 550 (Del) and in CIT vs. Denso India Ltd. (2015) 374 ITR 62 (Del) Hon'ble Delhi High Court held that where the AO has been following a view for the past several years, he cannot depart from the same when there has been no change in law or facts.

9. We may note the facts and decision of the Hon'ble Delhi High Court in CIT (Exemption) vs. Hamdard National Foundation (India) (2022) 441 ITR 348 (Del.). In this case, the facts were that the assessee-foundation had let out its properties and received rental income from H in relevant assessment years. In addition, the assessee had also received corpus donation from 11 during assessment year 2007-08. The Assessing Officer after making enquiry from various websites held that in lieu of voluntary and corpus donation received from H, properties owned by assessee were let out to H at a much lower rate as compared to the market rate. He, thus, invoked section 13(2)(b) read with section 13(3) and held that assessee was not eligible for exemption under sections 11 and 12. The Tribunal decided in favour of the assessee. There against the Revenue carried the matter before the Hon'ble Delhi High Court which held as under:-

*“that under section 13(2)(b), the burden of showing that the rent charged by the assessee was not adequate was on the revenue. Unless the price/rent was such as to shock the conscience of the Court and to hold that it could not be the reasonable consideration at all, it would not be possible to hold that the transaction was otherwise bereft of adequate consideration. In the instant case, the revenue had failed to bring on record any cogent evidence to show that the rent received by the assessee, was inadequate. The material collected from the internet as well as the estate agents could not be termed as a corroborative piece of evidence in this regard. Further, the rent received by the assessee exceeded the valuation adopted by the municipal corporation of Delhi for the purpose of levying house tax. It was not shown that the Assessing Officer made any independent inquiry on the age and condition of the building of the assessee. In fact, as contended by the assessee and taken note of by the Tribunal and not denied by the revenue, the property was not even ready during assessment year 2008-09 and was lying vacant. In the absence of any such inquiry by the Assessing Officer, the invocation of section 13(2)(b) was clearly flawed.”*

10. On the facts and in the circumstances of the assessee's case and placing reliance on the principle of law laid down in Hamdard National Foundation (India)'s case (supra), we do not find any substance in the appeal of the Revenue which we hereby reject.

11. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open court on 27<sup>th</sup> September, 2023.**

**sd/-  
(DR. BRR KUMAR)  
ACCOUNTANT MEMBER**

**sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 27/09/2023

**Veena**

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	