

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPURBENCH, JODHPUR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 462/Jodh/2018  
Assessment Year: 2014-15**

ACIT, Circle- (Exemptions) Jodhpur.  <b>(Appellant)</b>	<b>Vs.</b>	M/s Padmavati Institute for Medical Education & Science Trust, 38 Polo Ground, Udaipur. [PAN: AABTP3103C] <b>(Respondent)</b>
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**I.T.A. Nos. 272 to 273/Jodh/2019  
Assessment Years: 2015-16 to 2016-17**

Dy. CIT, Central Circle-1, Udaipur.  <b>(Appellant)</b>	<b>Vs.</b>	Padmavati Institute for Medical Education & Science Trust, 101, Kothi Bagh, Bhatt Ji Ki badi, Udaipur. [PAN: AABTP3103C] <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh. Amit Kothari, CA</b>
<b>Respondent by</b>	<b>Sh. O.P. Meena, CIT. DR</b>

<b>Date of Hearing</b>	<b>12.12.2023</b>
<b>Date of Pronouncement</b>	<b>19.12.2023</b>

**ORDER**

**Per: Bench:**

A batch of three appeals of the revenue were filed against the order of the Id. Commissioner of Income Tax (Appeals)-1, Udaipur, [in brevity the 'CIT (A)']

order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity the Act] for A.Ys. 2014-15 to 2016-17. The impugned order was emanated from the order of the ld. Income Tax Officer, (Exemptions), Udaipur, (in brevity the AO) order passed u/s 143(3) of the Act.

2. At the outset, all the appeals are common and have a same nature of fact. Therefore, all the appeals are taken together, heard together and disposed of together. For the sake of convenience, **ITA No. 462/Jodh/2018** is taken as the lead case.

**ITA No. 462/Jodh/2018**

3. The revenue has taken the following grounds which are reproduced as below:

*“1) On the facts and the circumstances of the case and in law the Ld. CIT (Appeals) has erred in treating receipts of earmarked funds amounting to Rs. 7,43,95,029/- as corpus donation and allowed exemption u/s 11(l)(d) even there were no specific directions from donor for such receipts of corpus donation.*

*2) On the facts and the circumstances of the case and in law the Ld. CIT (Appeals) has erred in allowing benefit u/s 11(1)(d) which is not applicable once the exemption u/s 11 is denied.*

3) *On the facts and the circumstances of the case and in law the Ld. CIT (Appeals) has erred in directing to allow exemption u/s 11 of the Act without appreciating the fact that assessee did not qualify for exemption u/s 11 of the Act.*

4) *Any other question of law as deemed fit in the facts and circumstances of the case may also be framed before the Hon'ble Tribunal in the interest of justice.”*

4. Brief fact of the case is that the assessee is a trust and registered U/s 12A of the Act and running the hospital, dispensary and clinic in Udaipur. The founder of the trust is Dr. Kirti Kumar Jain who is also the trustee and founder of Dr. Kirti Jain Family Foundation Inc. During impugned assessment year, the assessee had earned income amount to Rs.1,16,259/- by way of interest and incurred expenditure amount to Rs.76,01,540/- in revenue in nature and Rs. 157,160/- by way capital for boundary wall. The assessee trust has received 7,43,95,029/- from Dr. Kirti Jain Family Foundation Inc. (in short ‘DKJFFI’) towards corpus donation for the trust during impugned assessment year. During impugned assessment year, the assessee started construction on the allotted land of UIT (Udaipur Improvement Trust) and also organized various health camp, carried out medical education and health awareness programme. The assessee-trust had taken loan- from bank for purchasing land from UIT. The assessee had repaid loan&

interest by utilising the donation of Dr. Kirti Kumar Jain. The ld. AO had rejected the claim U/s 11 and added back the expenditure amount to Rs.76,01,540/- with total income. The ld. AO had rejected the benefit of Sec 11(1)(d) related to corpus fund the amount was utilised for repayment of loan but not for construction of hospitals. The ld. AO fully relied on that the donor had not made any specific direction for repayment of loan. During the impugned assessment year, the construction is under process and amount was allocated for boundary wall. Although the activities of the assessee-trust was running with the help of GBH American Hospitals (in short 'GBH'). The ld. AO had made grievance that the assessee is contravening Section 13(3) as Dr. Kirti Kumar Jain founder of the assessee trust was also the managing director of GBH. As per the ld. AO there is violation of proviso of section 13(1)(c)(3) of the Act. The confirmation of the donor was filed by the assessee during the assessment proceeding. But this corpus fund was duly rejected by invoking sections 11 and 11(1)(d). Accordingly, for the violation of section 11(1)(d), the foreign contribution amount to Rs.7,43,95,029/- was added back with the total income of the assessee. Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) dismissed the assessment order. Being aggrieved, the revenue filed an appeal before us.

5. The ld. DR vehemently and framed the ground-wise argument which are as follows.

**Ground No. 1 and 2**

5.1 The issue is the entire corpus donation Rs.7,43,95,029/- was disallowed by disallowing the exemption u/s 11(1)(d) of the Act. In argument, the ld. DR mentioned that the amount received from 'DKJFFI'. The confirmation for contribution was sent by 'DKJFFI'. The funds shall be used only for the purposes of acquisition construction running of hospital/dispensary, clinic and for repayment of any loan taken for the above purposes. But primarily the argument of the assessee was not accepted for the approval for the donor, later, the assessee submitted two submissions on dated 06.01.2014 and 18.01.2014 where the confirmation was signed by Dr. Kirti Jain as donor. It is also mentioned that the entire repayment of loan is not accepted, so, violation of section 11(1)(d) the corpus funds correctly added back with the total income of the assessee. The ld. DR fully relied on the order of the assessing authority.

6. The ld. AR first vehemently argued and relied on the appeal order, the relevant page 16 to 18 which are reproduced as below:

*“(b) Whether the donation of Rs.7,43,95,029/- is a corpus donation within the meaning of section 11(1)(d) of the Act.*

11.1 The AO has held that the donation of Rs 7,43,95.029.- was not a corpus donation for the following reasons

a) The confirmation of the donor trust did not mention that the amount contributed would form part of the corpus of the trust.

(b) The amount of Rs 7,43 95.029/-had been received from the Dr. Kirti Jain Family Foundation Inc..USA. The purpose of donation as approved under the Foreign Contribution Regulation Act (FCRA). was "Construction/running of hospital/dispensary/clinic" whereas the assessee had utilized the donation for repayment of loan. Vide letter dt. 20 09.2010, the donor trust had originally confirmed that it had agreed to make contributions up to Rs. 20 Crores ( Rupees Twenty Crores Only] to the trust in the next 2 years for trust to carry out its activities of making a Medical and Health Education Multiplex at Udaipur Only in subsequent letters signed by Sh. Kirti Kumar Jain repayment of loan was added to the purpose for which donation was made.

(c) The assessee filed false reports under the FCRA stating that foreign donation was used for construction of Hospital

(d) At the time of obtaining FCRA approval for receipt of foreign donation Dr. Kirti Kumar Jain (who is also Founder of Kirti Jain Family Foundation Inc. also settlers / Trustee of Padamati Institute for Medical Education and Science Trust) was aware of the fact that the assessee had already acquired land from UIT on 04 08 2010 for construction of hospital building. On the basis of these documents assessee sought permission from

*FCRA for the purpose of construction of hospital / clinic and which was approved by the FCRA Authority. But, very interestingly, after three four month from the approval from FCRA. Dr Kirti Kumar Jain changed his opinion and made declaration of utilization of fund by amendment the purpose as 'repayment of loan1 as per his declaration letter dated 06.01.2014, which seems to be a contradictory from the approval letter of the FCRA Authority.. Section 11(1)(d) excludes from the basket of income u/s 11(1) "income in the form of voluntary contributions made with a specific direction that they will form part of corpus of the trust or institution", whereas in the assessee's case the confirmation issued by the donor, Dr. Kirti Jain family Foundation Inc., nowhere mentions that the amount contributed will form part of corpus of the trust.*

*11.2 The assessee's submissions before the AO were that the assessee trust intended to use the foreign donation for purchase of land for building a hospital but pending FCRA approval the assessee had taken loan from bank for making payment to UIT towards land allotted to the assessee trust for construction of hospital building. However, construction could not be undertaken as there was a stay on construction on the said land by the Hon Rajasthan High Court. It was further submitted that on receipt of the donation, it was utilized to repay the loan. It was submitted that purchase of land was the primary step for construction of hospital and after obtaining permission under FCRA the fund was utilized for repayment of loan, therefore it*

*was incorrect to say that funds were utilized for repayment of loan and not purchase of land. The assessee submitted that repayment of loan was permissible under FCRA The assessee submitted that in its reports under the FCRA the assessee had duly disclosed the fact of repayment of loan taken for purchase of land for construction of medi health multiplexes. Alternatively, it was submitted that even if the fund received is treated as part of total income the same has been utilized for repayment of loan which is application of income as decided in various case laws.*

*11.3 The AO was not convinced with the submissions of the assessee and observing that "After going through the overall facts a picture has come to the notice that the assessee planned a colourful device to get the income exempted under the settled provisions As it is evident that on the hand, the assessee has claimed expenditures including repayment of loan showing charitable activities carried out by it to claim exemption, and on the other hand, the assessee has received much higher foreign funds under the FCRA and claimed it as corpus fund1 to avoid the true receipts. Moreover, the foreign funds / contribution as received was used for repayment of loan whereas the funds was to be used for repayment of loan whereas the funds was to be used exclusively for construction of medical hospital" denied benefit of section 11(1)(d) and treated the donation of Rs 7,43,80,029/- as income of the assessee trust."*

7. The ld. AR further argued and placed that the land was allotted by UIT. The Foreign Contribution Regulation Act (in short 'FCRA') is required to accept the foreign fund. Due delay in approval in FCRA the foreign donation is hangedup. The assessee-trust under compulsion had taken loan from bank for payment to UIT for purchasing land. Further, the litigation was started and the construction was stuck up as per order of the Hon'ble Rajasthan High Court. The trust was registered on 28.03.2007 and registered u/s 12AA of the Act on dated 06.11.2007. Hence, the entire process of construction of building was delayed due to the matter was in litigation before the Hon'ble Rajasthan High Court. When the Hon'ble High Court released the stay, the development of construction was resumed. The funds of Dr. Kriti Kumar Jain, amount of Rs.7,43,95,029/- was ready to disburse. The delay was happened in due process of FCRA. The donor Dr. Jain also agreed in FCRA to donate 20 crore in coming two years to assessee. Due to delay in process for approval in FCRA, the assessee trust has taken loan for payment to UIT for purchasing land and the said amount was duly returned back after receiving the donation. The donor had already placed the consent before the ld. AO and purpose of donation was well explained for repayment of loan. So, the violation of section 11(1)(d) is not served the purpose. The ld. AR fully relied on the order of the ld. CIT(A).

### **Ground No. 3**

8. In this ground, the Id. DR further relied on the assessment order, the relevant part of the assessment order is duly reproduced as below:

*“4.16 The reply filed by the assessee has been considered. The assessee itself admitted that Registration of Trust u/s 12A does not automatically make it eligible for claiming exemption u/s 11, and in order to claim exemption, the assessee trust is required to fulfil certain set of conditions for accumulation and application of money. By knowing the facts, the assessee planned a colourful device to get the income exempted on the basis of claim of money. By knowing the facts, the assessee planned a colourful device to get the income exempted on the basis of claim of expenditures by producing various activities towards its related person /part}'. However, the assessee could not be able to prove these activities. The activities of the trust as mentioned through description slips on letterhead of GBH American Hospital do not lead to benefit of public. Let us have a look over the description slips which itself gives a clear picture of what kind of charity was carried out by the assessee under the roof of GBH American Hospital. During the assessment proceedings, the assessee was not able to provide any authentic documents to justify as to what kind of charitable activities in the form of 'Investigation, Minor Procedure, Pharmacy, Minor Dressing, Minor Procedures, Ambulance charges and Nursing charges were carried out. Similarly, the assessee was also not be able to produce any*

*documentary or evidential proof in respect of organizing the educational & awareness programmes at different places / cities of the Udaipur district, as claimed.*

*The assessee's submission that land acquired and Boundary Wall was constructed by the trust for construction of Hospital Building due to maintaining of status quo by the Hon'ble High Court, is considered but not to be fully acceptable since there may be possible to get so many options /alternates for achieving the goal of the trust as per its objects.*

*The Id. AR has submitted in his reply that 'it is not necessary that the charitable activities should be at a large scale in the initial period of the trust. Whatever, income from contribution/interest or corpus raised by the Trust are being fully applied for charitable activities and the assessee has rightly claimed these expenditures u/s 11 of the Act'. Absolutely, it is not necessary that the charitable activities should be at a large scale in the initial period of the trust. But this logic is not to be effective in the assessee's case since the trust had constituted on 28.03,2007 (almost 9 years back), and during this vast period, the trust had just purchased a land from UIT on 4,8.2010 under the settled guidelines / rules for establishing a Health Multiplex/construction of medical hospital, but till the end of the assessment proceedings, the land is kept totally vacant without making any improvement / construction except construction of a small boundary wall in the front side of the land (as envisaged from spot inquiry). Whatever reason remained there for not*

*construction of hospital/clinic, but the intention of legislature to provide scheme of exemption of tax on income of the societies / trust was based on the principle of social justice and to impart medical facilities to the weaker section of the society and enable them to become a healthy citizen. The activities of the society are profit oriented and want to enjoy the exemption without doing any work for charitable purpose.*

*4.17 It may also be pertinent to mention here that 'Administrative & Genefal expenses' and 'Finance Charges' arc neither directly nor proximately related to charitable purpose nor are these expenditures directed to achieving the objectives of charity. It is the net income, after deducting these expenses, is available in the hands of the assessee trust for charitable activity, These expenses are directly related to earning income and are deductible from gross receipt as expenses under normal commercial principle. These are expenses attributable to earning income and riot application of income u/s 11. All applications are undoubtedly expenses but all expenses are not application of income.”*

9. Per contra, the Id. AR further relied that due to the delay of entire processing for foundation of hospital, the activities of the trust was through GBH for benefit of the public. The Id. AR relied on the appeal order, the relevant pages 18 to 19 which are reproduced as below:

*“11.4.2 As regards the AO's observations regarding violations of FCRA provisions, I have gone through the report in form FO6 submitted by the assessee for the Y.E. 31.032014 and find that in the accompanying activity report the assessee has specifically reported that the trust has also paid Rs 776.90.000/- towards repayment of loan taken for purchase of land from government for construction on Medical health multiplexes. Thus the assessee has duly disclosed the fact of repayment of loan taken for purchase of land for construction of medi health multiplexes in reports filed under the FCRA.*

*11.4.3 As regards the observations of the AO that the confirmation of the donor trust did not specifically mention that the amount contributed would form part of the corpus of the trust. it is seen that though the A.O is correct in noting that in letter dt. 20 09.2010 of the donor trust no direction was made that the donation was towards corpus of the assessee trust, it is seen that the assessee has filed letters dt. 0601 2014 and 18 01.2014, from the donor foundation, on a reading of which it is evident that the donor had given specific corpus fund to avoid the true receipts. Moreover, the foreign funds / contribution as received was used for repayment of loan whereas the funds was to be used for repayment of loan whereas the funds was to be used exclusively for construction of medical hospital." denied benefit of section 11(1)(d) and treated the donation of Rs 7 43,80.029/- as income of the assessee trust.”*

10. We heard the rival submission and considered the documents available in the record. The foreign donation was received amount of Rs.7,43,95,029/- is a corpus donation and within the meaning of section 11(1)(d). The fund was duly delayed for delay in approval from FCRA, where it is mentioned that the funds is for “construction/running of hospital/dispensary and clinic”. The assessee had utilized this donation for repayment of loan which is not at all violation section 11(1)(d) and duly covered with consent of the donor. Further the donor agreed to donate amount to Rs. 20 crores to the assessee in next two years for carrying out the activities of the assessee trust in Udaipur. The donor, Dr. Kirti Jain has also submitted the letter for the purpose of donation on dated 06.01.2014. The fund was donated by founder member of the trust. The source is well explained. There is no deviation in activities of trust as per the stated main object. Expenses were incurred for charitable activities. The delay in project was due to stuck up of construction as per order of Hon’ble Jurisdictional High Court. In our considered view, there is no violation of section 11(1)(d) r.w.s. 11(1). We find that there is no valid reason to interfere in the impugned appeal order. Therefore, the **ground nos. 1, 2 & 3** of the revenue are dismissed.

#### **Ground No. 4**

11. Ground No. 4 is general in nature.

12. In the result, the appeal of the revenue is dismissed.
13. As our observations in the **ITA No 462/Jodh/2018** are *mutatis mutandis* applicable to **ITA Nos. 272 to 273/Jodh/2019** and will be followed accordingly.
14. In the result, the appeals of the revenue bearing **ITA Nos. 462/Jodh/2018 and 272 to 273/Jodh/2019** are dismissed.

**Order pronounced in the open court on 19.12.2023**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order