IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "G", MUMBAI

BEFORE SHRI. PADMAVATHY S., ACCOUNTANT MEMBER

AND

SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA NO. 4055/MUM/2023(A.Y: 2014-15)

Gemmological Institute of India 501, Mehta Bhavan, Opp. Hinduja College, Charni Road, (East), Mumbai - 400 004. **PAN: AAACP8376M** **(Appellant)**	*Vs.*	Income Tax Officer (Exemp) – 1(3) Room No. 511, 5th Floor, Piramal Chamber, Lal Baug Parel, Mumbai - 400 012. **(Respondent)**

Assessee Represented by	**:**	**Ms. Vasanti Patel**
Department Represented by	**:**	**Shri. Dr. Kishor Dhule – CIT DR**
Date of conclusion of Hearing	**:**	**11.06.2024**
Date of Pronouncement	**:**	**20.06.2024**

O R D E R

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 28.08.2023 of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the "*CIT(A)*"], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as "*the Act*"] for the A.Y. 2014-15, wherein the Ld.

CIT(A) has upheld the additions made to the total income of the appellant by the Ld. AO in respect of donations received to the tune of Rs. 1,15,00,000/-.

2. The facts in brief are that the appellant is a public charitable trust established in 1971, registered under the Bombay Public Trusts Act, 1950 with the Charity Commissioner, Mumbai since 1971. The appellant has also registered under section 12A of *"the Act"* since 1973 and has been granted the benefit of exemption under section 11 of *"the Act"* in the past till Assessment Year 2008-09.

3. During the financial year 2013-14 pertaining to A.Y. 2014-15, the appellant has received donation of Rs. 30,00,000/- to corpus fund from Diamond Exporters Association Ltd. and also Rs. 85,00,000/- from Gem and Jewellery Export Promotion Council for research and development activities and towards the formulation of the quick Detection Centre, respectively. The said contribution was desired to be utilized toward capital expenditure to be incurred towards buying the testing instruments, furniture and fixtures, etc. and also to augment research and development facilities. Out of the total donations of Rs. 1,15,00,000/-, the appellant purchased equipment worth Rs. 67,32,557/- for the specified

purposes, and treated it as a capital asset. The appellant filed e-return of income on 25.09.2014 declaring total income as 56,97,623/- and has itself offered its income as business income and not claimed exemption u/s. 11 of "*the Act*".

4. Since the contributions are received for acquisition of equipment, the appellant has reduced the amount of such contribution from the cost of the equipment purchased in its computation of income.

5. The case was selected for scrutiny u/s. 143 of "*the Act"*. During the course of assessment proceedings, the appellant filed various documents/submissions and explanations as called for by the Ld. AO. The Assessing officer, vide order u/s. 143(3) of *"the Act"* dated 26.11.2016, added the total donations received of Rs. 1,15,00,000 (Rs. 30,00,000 plus Rs. 85,00,000) as income from other sources and brought it to tax.

6. Aggrieved by this order of the Ld. AO, the appellant preferred appeal before the Ld. CIT(A) u/s. 250 of *"the Act"*. The Ld. CIT(A) has dismissed the said appeal while upholding the addition made by the Ld. AO. The assessee/appellant is in appeal before us and has raised following ground in the appeal.

"I. LEVYING TAX ON DONATIONS RECEIVED FOR ACQUISITION OF CAPITAL ASSETS - RS. 7,75,00,000/-:

1.1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals), National Faceless Appeals Centre [CIT(Appeals)] erred in upholding the additions made to the total income of the Appellant by the learned Assessing Officer in respect of the Donations received Rs. 1,15,00,000/- to be utilized for acquisition of the assets for the purposes of the Trust/as per directions of the donors.

1.2. The learned Assessing Officer and the learned CIT(Appeals) failed to appreciate that the donations received by the Trust with specific direction towards acquisition of assets to be used as per the directions of the donor are "Capital Receipts" not liable to tax.

1.3. The learned Assessing Officer and the learned CIT(Appeals) failed to appreciate the submissions made and explanations furnished by the Appellant as also the legal position emerging from various judicial pronouncements in this behalf.

The Appellant prays that the additions made by the learned Assessing Officer may kindly be deleted as the same are unwarranted and unjustified."

7. At the very outset before opening the arguments the Ld. Counsel/Ld. AR on behalf of the appellant brought to the notice of the Tribunal that there is a delay of around 11 days in filing the appeal. He has referred to affidavit dated 07.11.2023 in respect of condonation of delay stating that the impugned order dated 28.08.2023 came to the notice of the appellant on 30.10.2023 while the outstanding demands against the appellant were being verified in e-filing account. The said Appellate Order has not so far

been served on the Appellant either physically or through e-mail. It is stated that the delay in filing of the appeal is neither deliberate nor intentional and the same may condoned. The Ld. DR with respect to the condonation of delay has very fairly stated that since the delay is not extraordinary, the same may be considered sympathetically. Accordingly, in view of the submissions made by the parties, the delay in filing the appeal is condoned. The request made by the appellant in that regard is allowed. The appeal is admitted for hearing on merit.

8. We have also heard the Ld. AR as well as Ld. DR with respect to the grounds of appeal. It is argued on behalf of the appellant by the Ld. AR that the Ld. AO has failed to appreciate the submissions of the appellant with regard to the donations having been considered as subsidy in the books of accounts for the relevant year thereby treating the said donations as capital receipts and the observations of the Ld. AO in para 4 of the order dated 26.11.2016 are therefore not legally sustainable because the Ld. AO has wrongly concluded that by showing the donations under the head capital receipts in the audit report in form no. 3CB and 3CD, it cannot change the nature of amounts and receipts as such cannot be treated as

capital receipts of the assessee trust and no exemption is allowed on the same.

9. The Ld. AO further concluded that the assessee trust is a business entity covered by provision to Section 2(15) and is not eligible for any exemption u/s. 11 of *"the Act"*. It is further argued that the assessment order was challenged before the Ld. CIT(A) who has not considered the arguments advanced on behalf of the appellant correctly and as therefore upheld the additions made by the Ld. AO of the total donations amount to Rs. 1,15,00,000/- as taxable income.

10. The Ld. AR further brought to the notice of the Bench that the Ld. Coordinate Bench, Mumbai Tribunal, order dated 15.04.2024, has deleted such additions made in respect of the assessment years 2015-16, 2016-17 and 2017-18 in the appeal against the order of the Ld. AO and Ld. CIT(A). It was argued that the present appeal could not be clubbed with those appeals and therefore the ratio of the Coordinate Bench applies to the present A.Y. 2014-15 and for that reasons, the impugned order needs to be set aside.

11. The Ld. DR on behalf of the revenue has argued that the amount of contribution received by the assessee is not a capital receipts but is to be considered an income of any kind as defined u/s. 56(1) of *"the Act"*. It is further argued by the Ld. DR that the Ld. Coordinate Bench of Mumbai Tribunal has not considered the applicability of Section 56(1) as it could not be noticed by the Ld. Tribunal. It is further argued that the assessee has referred the donations amount for corpus fund and as mentioned in page 29 of the paper book assessee has referred itself as business entity. Therefore, for the above reasons, it cannot be stated to have a corpus fund because the corpus fund is described as assets of a charitable trust and not of a business entity as has been claimed by the appellant/assessee. The Ld. DR has further referred to Section 2(24)(iia) of *"the Act"* and submitted that the voluntary contributions received by a trust created for charitable purposes or by an institutions established for such purposes has to be considered as income as defined u/s. 56(1) of *"the Act"*.

12. The Ld. DR further referred to the page 81 of the paper book to point out that the amount of Rs. 30,00,000/- has been referred to be corpus fund towards the research and development studies and cannot be considered to be a gift or donation because the appellant cannot solicit gift and

therefore, the said amount has to be considered as income as defined u/s. 56(1) of *"the Act"* and the question of applicability of Section 56(1) has not been adjudicated by the Ld. Coordinate Bench referred.

13. In reply to the contentions of the Ld. DR, the Ld. AR on behalf of the appellant stated that the said submissions were never raised before Ld. CIT(A) by the revenue regarding the donations amount not qualifying to be gift. It is further argued that for invoking Section 56(1) of *"the Act",* there has to be income whereas the donation received by the appellant has to be treated as capital receipts as it was the intention and the purpose mentioned by the donors while making the said donations and the judgment of the Ld. Coordinate Bench referred and relied by the appellant/assessee is squarely applicable to the current A.Y. 2014-15 subject matter of the appeal. It is further argued that it is not the case of the Ld. DR and the revenue that the said order of the Ld. Coordinate Bench has been challenged and set aside.

14. We have considered the rival submissions and carefully examined the record. At the very outset, the Ld. AR has taken us the page no. 23 of the paperbook to show the detailed income for the relevant A.Y. He has also

referred to page no. 23 alongwith page no. 28 and 29 of the paperbook to show that the donation amount has been shown as corpus fund as find mentioned in page no. 28 and 29. Page 23 of the paperbook shows that the donation amount has been reduced from the amount of cost of assets for the relevant A.Y. 2014-15 for the purpose of depreciation. To appreciate the arguments of parties para 6 of Ld. CIT(A) order where the Ld. AO order is also discussed, is relevant and reproduced as under:

> 6.0 *"I have considered the submission of the appellant and order passed by the Id. AO. I find that the arguments and the case laws cited by the appellant were also argued before the AO. The Ld AO has discussed all the arguments of the appellant in the assessment order and has concluded that it is not acceptable. I find the argument of the Ld. AO very relevant in the context of the facts and circumstances of the case. The relevant part of the order of the Ld. AO is as under-*
>
> > *"The above submission of the assessee has been perused but not found tenable for the following reason:*
> >
> > *a). Firstly, it is very clear that the assessee trust is in receipt of donation income of Rs.30,00,000 from Diamond Exports Association Ltd and Rs.85,00,000/- from Gem and Jewellery Export Promotion Council for purchase of asset for research and development instrument, however, the case law relied upon by the assessee deals with sales tax issue. The rules for the grant and donations are totally different and cannot be taken conjointly. Therefore, it held that the facts are totally distinguishable.*

Secondly the assessee himself treats themselves as business concern and filed the return of income as business concern only. lt means the assessee trust is a business entity covered by proviso to section 2(15) and is not eligible for any exemption u/s. 1 1 of the lncome Tax Act, 1961 .

b). For the Asst. Year 2011-12, the assessment in the assessees case has been completed by invoking the provisions of section 2(15) and income of the assessee was assessed as business income. The assessee preferred an appeal before the CIT(A) has confirmed the order of the AO.

c). Upto the A.Y. 2011-12 the assessee has claimed exemption u/s 11 in its return of income but in BY.2012-13 the assessee has revised its return of income and filed its return as business entity for the above said reasons.

d). Though the assessee has shown the said donation under the head capital receipts in the Audit Report in Form No. 3CB and 3CD, it cannot change the nature of amount and receipts. Therefore, it cannot be treated as capital receipts of the assessee trust and no exemption is allowed on the same.

e). The above four factors establishes that the assessee is a business entity and not eligible for any exemption u/s. 11 of the Income Tax Act,1961.

i). Further, the judgement on which the assessee has relied upon has been perused wherein the question arised before the Hon'ble Supreme Court was as under:

> *The question in this case is whether the subsidy received by the assessee-Company from the Andhra Pradesh Government is taxable as revenue receipt or not"*

The facts of the assessees case are totally different from the case relied upon. The assessee has received donation and the same has been shown as capital receipts. ln the referred case, the assessee was in receipt of grant (subsidy) from Diamond Exports Association Ltd of Rs.30,00,000/- and Rs.85,00,000/ - from Gem and Jewellery Export Promotion Council for purchase of asset for research and development instrument however, the case law relied upon by the assessee deals with sales tax issue. The rules for the grant and donations are totally different and cannot be taken conjointly. Therefore, it held that the facts are totally distinguishable.

g). As it is very clear that as per Accounting Standards business entity cannot claim capital expenditure as expenses in the income and expenditure account but cannot claim depreciation on the said capital assets hence, the assessee can claim depreciation in future on those capita! assets which are purchased from the above said donation.

In nutshell, the donation received by the assessee amounting to Rs.1,15,00,000/- is hereby added to the total income as income from other sources.

6. ln the return of income, the assessee has himself offered his income as business income and not claimed exemption u/s 11. |n view of the above Section 2(15) is not invoked by the assessee.

6.Subject to the above remarks, the total income of the assessee is determined as under:

			Rs.
	lncome as per return of income		*56,97,623*
Add:	Donation received (as discussed above)	*1,15,00,000*	

Less	*Depreciation@15%ofRs.1,15,00,000/-*	*17,25,000*	
	Total Income		*1,54,72,623*
	Round Off u/s288A		***1,54,72,620***

7.0 I find that the appellant treats itself as a business entity as is evident from the return filed. As the appellant is a business concern, the provisions of exemption of section11 of the income tax are not applicable in its case. The appellant is covered by section 2(15) of the Act. In the preceding and succeeding years also, the appellant has filed its return as a business concern. The AY wise treatment of donation is summarized as under-

Assessment Year	*Whether section 11 exemption was claimed*	*Whether the case was selected for scrutiny?*	*Ifyes, whether section 11 claim was allowed in scrutiny assessment by AO*	*Status before the appellate authorities*
2008-09	*Yes, claimed*	*Yes*	*AO denied exemption u/s. 11*	*CIT(A), ITAT and Bombay High Court held in favour of the appellant allowing exemptions u/s. 11.* *The Supreme Court dismissed the appeal filed by the Revenue on account of low tax effect. Hence, the order of the High Court attained finality. Copy of the above orders are enclosed as* ***Annexure 1.***
2009-10	*Yes, claimed*	*Not selected*	*Not Applicable*	*Not Applicable*

2010-11	*Yes, claimed*	*Not selected*	*Not Applicable*	*Not Applicable*
2011-12	*Yes, claimed*	*Yes*	*AO denied exemption u/s. 11*	*CIT(A) confirmed the denial of section 11 exemption by the Ao. ITAT set aside the case to the file of the Ao for re-adjudication on the nature of activities whether educational or any other object of general public utility carried out by the appellant trust. Copy of the ITAT order is enclosed at Annexure 2.*
2012-13	*Not claimed*	*Yes*	*Returned income accepted as assessed income.*	*Copy of assessment order is enclosed as Annexure 3.*
2013-14	*Not claimed*	*Yes*	*Corpus donations were treated as revenue receipt.*	*CIT(A) confirmed the addition made by the AO. An appeal was filed before ITAT, the appellant settled the appeal under Vivaad se Vishwas Scheme.*

Point 3: Status of assessments made for AY 2018-19 to AY 2022-23 is as under:

Assessment Year	*Whether section 11 exemption was claimed*	*Whether the case was selected for scrutiny?*	*Ifyes, whether section 11 claim was allowed in scrutiny assessment by AO*	*Status before the appellate authorities*
2018-19	*No*	*No, intimation u/s. 143(1)*	*Not applicable*	*Not applicable*

		issued dated 12.03.2020 accepting returned income.		
2019-20	*No*	*No, Intimation u/s. 143(1) issued dated 27.03.2021, accepting returned income.*	*Not applicable*	*Not applicable*
2020-21	*NO*	*No, Intimation u/s. 143(1) issued dated 11.10.2021, accepting returned income.*	*Not applicable*	*Not applicable*
2021-22	*No*	*No, Intimation u/s. 143(1) issued dated 28.10.2022, accepting returned income.*	*Not applicable*	*Not applicable*
2022-23	*No*	*No, Intimation u/s. 143(1) issued dated 16.03.2023, accepting returned income.*	*Not applicable*	*Not applicable*

From the above analysis, it is clear that the appellant is a business entity and therefore is not eligible for availing the benefit of section 11 of the Income tax Act.

8.0 Mere treatment of the said donation under the head capital receipt in the tax audit report in the form no 3CB and 3CD cannot change the character of the amount of receipts. Therefore, the amounts received by the appellant trust cannot be treated as capital receipt of the appellant. The case laws cited by the appellant also do not help as the facts are distinguishable.

Decisions cited by the appellant have been rendered in the context of sales tax. Accordingly, these case laws are of no help to the appellant I am also in the agreement with the view of the Ld. AO that as per accounting standards business entity cannot claim capital expenditure as expense in the income and expenditure account but can claim depreciation on the said capital asset which are purchased out of the said donation. Therefore, I am of the view that the treatment of these donations by the Ld. AO as income from other sources of income is correct. Accordingly, I confirm the order passed by the Ld. AO. grounds of the appellant are dismissed."

15. Thus, it was argued before the Ld. CIT(A) by the assessee/appellant that the donation of Rs. 30,00,000/- was received from the diamond Exporters Association Ltd. with a specific direction that it shall be part of the corpus of the appellant trust and the contribution/donation of Rs. 85,00,000/- from Gem and Jewellery Exports Promotion and Council was received for the specific purpose that it shall be spent towards the promotion of the Quick Detection Centre for bearing the capital expenditure to be incurred by the appellant, it is therefore vehemently argued:

    i. Since these donations are made to fulfill specific objectives in the capital field, therefore, has to be considered as contributions towards the purpose of the appellant trust.

ii. It is settled legal proposition that voluntarily contribution towards the corpus are outside the scope of income as defined in Section 2(24)(iia) due to their capital nature and are not taxable.

iii. As mandated by the donors, out of total donations of Rs. 1,15,00,000/- the appellant purchased equipment worth Rs. 67,32,557 (i.e., Rs. 27,52,165/- towards purchase of research and development Equipment and Rs. 39,80,357/- towards setting up of BDB Laboratory) and treated these as capital assets.

iv. Therefore, the donations received with specific directions of donor towards corpus fund are capital receipts only and hence the donation of Rs. 1,15,00,000/- are capital receipts not considerable to tax.

16. The arguments before the Ld. Coordinate "G" Bench, Mumbai in ITR NO. 3783,3784,3785/Mum/2023, order dated 15.4.2024, were almost same and similar which was dealing with the appeal of the appellant on the same facts for the subsequent A.Y. 2015-16,

2016-17, 2017-18. The relevant portion of the order of the Ld. Coordinate Bench wherein the same issue has been treated and adjudicated upon is relevant and reproduced as under:

4. *"During these three years, the assessee has undertaken the job of testing of gem stones and has collected testing fees for the said job. Besides, it has collected various kinds of fees like tuition fees, convocation fees, application fees an examination fees for conducting technical and practical education. While computing total income of these three years, the assessee did not claim exemption u/s 11 of the Act. It computed its total income considering itself as a business entity in all the three years. The Ld. D.R. submitted that the above said receipts have been received from the commercial activity carried on by the assessee and the said receipts have exceeded the limit prescribed for this purpose under the proviso to sec. 2(15) of the Act. Accordingly, the assessee is debarred from claiming itself to be a charitable institution as per the proviso to sec.2(15) of the Act and accordingly, it cannot claim exemption u/s 11 of the Act.*

5. *The Assessing officer noticed that the assessee has received donations of following amounts in these three years and did not offer them for taxation: -*

Assessment Year	*Amount*
2015-16	*2,70,00,000*
2016-17	*3,61,62,120*
2017-18	*3,20,00,000*

When questioned about the same, the assessee contended that the donation amounts are not taxable for the following reasons: -

(a) The donations are capital receipts and hence not taxable. It was stated that the donors have given these donations for a specific purpose of purchasing

assets and hence the same constitutes capital receipts in the hands of the assessee.

(b) It was further submitted that the assessee has purchased assets out of the above said donations and while claiming depreciation on those assets, the cost of the assets was reduced by donation amount as required under Explanation 10 to sec. 43 of the Act and the depreciation has been claimed on Net amount only.

The assessee relied upon various case laws in support of the above said propositions.

6. The AO did not accept the above said contentions of the assessee. He observed that the assessee is a trust and it has received donations. Merely because the assessee claimed itself to be a business concern, it cannot change the nature of amount and receipts in the hands of trust (since such receipts are in the nature of income u/s 2(24)(iia) and sec. 12 of the Act). Accordingly, the AO held that the donation amounts cannot be treated as Capital receipts. Accordingly, the AO added the donation amounts received by the assessee to the total income of the assessee in all the three years.

7. The Ld. CIT(A) noticed that the assessee has stopped claiming exemption u/s 11 of the Act from AY 2012-13 onwards. He also concurred with the view taken by the AO that mere treatment of donation as capital receipt in the tax audit report cannot change the character of the amount of receipts. Before Ld. CIT(A), the assessee put up an alternative contention, viz., if the donation amount is held to be taxable, then the depreciation should be allowed on the full value of assets without reducing the donation amount. The Ld. CIT(A) accepted the alternative contention of the assessee and accordingly directed the AO to allow depreciation on the full value of assets. The

assessee is aggrieved by the decision of Ld. CIT(A) in holding that the donation amounts are not capital receipts and hence they are liable to be taxed

8. *The Ld A.R contended that the assessee did not claim exemption u/s 11 of the Act and it has computed the total income by treating itself as a business organization. The donors have given the donations towards purchase of assets and hence the said donations constitute capital receipts in the hands of the assessee. Further, the assessee has not claimed exemption u/s 11 of the Act and hence, the provisions of sec.12 and 11(1)(d) will not be applicable to the assessee. Further, the assessee has reduced the donation amount from the cost of assets for computing depreciation. Accordingly, the Ld A.R contended that the donation amounts, being capital receipts, cannot be brought to tax. In support of her contentions, the Ld A.R placed her reliance on certain case laws.*

9. *The Ld D.R, on the contrary, submitted that the assessee has been registered u/s 12A of the Act as a charitable institution and hence the donations received by a charitable institution is taxable in the hands of charitable institutions. Merely because the assessee treats itself as a business organization will not change the taxability. The Ld D.R further submitted that the donations are in the nature of gifts and such kind of gifts have been made taxable u/s 56(2)(x) of the Act.*

10. *In the rejoinder, the Ld A.R submitted that the provisions of sec.56(2)(x) shall apply to the gifts received after 1.4.2017 and hence the said provision will not apply to the years under consideration.*

11. We have heard rival contentions and perused the record. We notice that the assessee has received donations in all the three years under consideration and the Yearwise break-up details of donations received by the assessee are detailed below:-

Name of Donor	*AY 2015-16*	*AY 2016-17*	*AY 2017-18*
Dimond Exports Assn.	*30,00,000*	*25,00,000*	*20,00,000*
Gem &Jwellery Export	*2,40,00,000*	*1,86,62,120*	
Promotion Council			
Bharat Diamond Bourse		*1,50,00,000*	
Government under ASIDE scheme			*3,00,00,000*
TOTAL	*2,70,00,000*	*3,61,62,120*	*3,20,00,000*

It is the submission of the assessee that these donations have been given by the above said institutions for purchase of assets

12. The ld A.R relied upon various case laws in support of her contention that the donations given for a specific purpose are in the nature of capital receipts. We notice that all the decisions relied upon by the assessee are related to the cases of charitable trusts which were not registered u/s 12A of the Act. Even though the assessee herein is registered u/s 12A of the Act,yet it did not claim exemption u/s 11 of the Act, apparently on the reasoning that it is not entitled for exemption u/s 11 of the Act due to the operation ofthe proviso to sec.2(15) of the Act. However, the tax authorities have taken the view that the provisions of sec.11 to 12 of the Act relating to charitable trust shall be applicable to the assessee, even if it is not eligible to claimexemption u/s 11 of the Act.

13. Under sec. 2(24)(iia) and sec. 12 of the Act, the voluntary contributions are deemed to be income derived from property held under the trust and hence the donations received by the assessee was held to be taxable by the tax authorities. In our view, both the

above said sections shall be applicable only if the assessee computes its income in accordance with the provisions of sec.11 to 13 of the Act. In the instant cases, the assessee is held to be not eligible to claim exemption u/s 11 in view of the proviso to sec. 2(15) holding it to be non-charitable in nature, then the question of applying the provisions of sec.11 to 13 of the Act should not arise. In the instant cases, the assessee has not claimed exemption u/s 11 of the Act. Further, the assessee has computed its total income treating itself as a business concern. Accordingly, we are of the view that the provisions applicable to a business concern for computing total income should be applied to the assessee. Hence, we are of the opinion, the view expressed by the tax authorities is not correct. Before us, the assessee placed reliance on various case laws, which dealt with the case of receipt of corpus donations by a charitable trust/institution not registered u/s 12A of the Act. The Pune bench of Tribunal has held in the case of ITO (Exemptions) vs. Serum Institute of India Research Foundation (2018)(90 taxmann.com 229) has held that the Corpus specific voluntary contributions are in the nature of capital receipts in the case of trust not registered u/s 12A of the Act. Identical view has been expressed by the co- ordinate bench of Mumbai Tribunal in the case of Versova Kokni Sunni Jamat Trust vs. CPC (ITA No.5905/Mum/2019 dated 05-04-2022) and also in the case of Chadraprabhu Jain Swetamber mandir (2017)(82 taxmann.com 245)(Mum-Trib). In our view, the ratio laid down in the above said cases can be conveniently applied in the present case also, since the assessee was not eligible to claim exemption u/s 11 of the Act.

14. Further, it is the submission of the assessee that the donations have been given to the assessee by the above cited associations for the specific purpose of purchasing assets. It is also the submission of the assessee that it

has considered these donations as subsidy and accordingly claimed depreciation on the cost of assets as reduced by the donations. This action of the assessee reinforces the fact that these donations were given with a specific purpose of acquiring assets for the use of the assessee. Accordingly, we hold that the above said donations received by the assessee shall constitute capital receipts in the hands of the assessee. Further, the provisions of sec.56(2)(x) shall apply to the gifts/donations received after 1.4.2017 only and the above said donations have been received prior to that date. Hence the provisions of sec.56(2)(x) shall also be not applicable to these years.

15. Accordingly, we set aside the orders passed by Ld CIT(A) in all the three years under consideration and direct the AO to delete the addition towards donations. Since we have held that the donations are capital receipts and not taxable, the order passed by Ld CIT(A) accepting alternative contention of the assessee is also liable to be set aside, i.e., the donations given for the specific purpose of purchasing asset should be reduced from the cost of asset for the purpose of allowing depreciation as required by Explanation 10 to sec.43 of the Act.

16. In the result, all the three appeals of the assessee are allowed."

12. It is thus evident from the order of the Ld. Coordinate Bench reproduced as above that all the points raised before us were raised by the revenue as well as by the appellant and has been duly considered and adjudicated upon the Ld. Coordinate Bench. Therefore, we are in respectful agreement with finding of the Ld. Coordinate Bench and

found it relevant for the present A.Y. 2014-15 also and the said finding squarely covers the facts and circumstances of the present case also.

13. It is to be noticed that the Ld. DR before the Ld. Coordinate Bench has raised the issue of donations stating that the donations are in the nature of gifts and such kind of gift have been made taxable u/s. 56(2) of *"the Act"*. Since the revenue has failed to convince the Ld. Coordinate Bench in that regard as is evident from the finding recorded on the said issue by the Ld. Coordinate Bench, the Ld. DR very surprisingly before us has raised the same issue but u/s. 56(1) of the Act and as already discussed it was argued by the Ld. DR that the donations which are in the form of gift has to be considered as income of any kind as defined u/s. 56(1) of *"the Act"*.

14. The Ld. AR in that regard has vehemently argued that the Ld. DR is highly misconceived because for invoking Section 56(1), there has to be an income whereas the assessee received donations with a specific direction which has to be necessarily considered as capital receipts and the Ld. AR has referred and relied upon by the various pronouncements of different Benches of the ITAT as well as Hon'ble

High Court and has submitted that the assessee has rightly shown the said donation in the books of account as "subsidy" in view of the specific directions of the donors and the subsidy for a specific purpose to be utilized as per the direction of the donor, necessarily has to be considered as capital receipts. In that regard, the judgment of Chennai Tribunal reported as [2023] 151 taxmann.com 379, judgment dated 05.07.2023 is relevant wherein it is held : ***"Since as per subsidy scheme, subsidy could be utilized either for setting up of new biomass co-generation system or to promote existing system and its benefits, such subsidy was capital receipts in hands of assessee."***

15. We are convinced by the argument of Ld. AR in that regard because for attraction of Section 56(1) the amount has to qualify as an income, whereas the assessee has shown the donations as subsidy to be treated as capital assets in the books of accounts. Nothing has been brought on record or submitted by the Ld. DR that a trust registered under *"the Act"* cannot claim itself to be a business entity or that it cannot file return as business entity as has been done by the assessee since the A.Y. 2013-14. Since the assessee has rightly and lawfully

considered the donations as subsidy which as per legal pronouncements has to be treated due to specific directions of the donor, as capital receipts, therefore, Section 2(24)(iia) is not attracted in the case of the assessee. For these reasons, the Section 56(1) is also not attracted and the arguments of the Ld. DR in that regard does not hold water and is outrightly rejected.

16. For the above reasons, order of the Ld. CIT(A) is not legally sustainable in the eyes of law and accordingly set aside for the A.Y. 2014-15, we direct the Ld. AO to delete the addition made on account of donations.

17. The appeal is accordingly allowed and the grounds raised in the appeal are adjudicated in the favour of appellant in above terms.

Order pronounced in the open court on 20.06.2024

Sd/-/-	Sd/-/-
(PADMAVATHY S.)	**(RAJ KUMAR CHAUHAN)**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

Mumbai / Dated 20.06.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai