

IN THE INCOME TAX APPELLATE TRIBUNAL, "F" BENCH  
MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIALMEMBER &  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 3573/MUM/2024  
(A.Y.2011-12)

ITO(Exemptions) Ward -14, Room No. 612, 6 <sup>th</sup> Floor, MTNL Telephone Exchange Building, Peddar Road, Mumbai -400026.	Vs.	JN Tata Endowment for the Higher Education of Indians, 2 <sup>nd</sup> Floor, Bombay House, 24 Homi Mody Street, Fort, Mumbai-400001.
PAN/GIR No. AAATC0085C		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Krishnakumar.Sr.DR
Respondent by	Shri.Atul Suraiya.AR

सुनवाई की तारीख/Date of Hearing	20.08.2024
घोषणा की तारीख/Date of Pronouncement	23.08.2024

**ORDER**

**PER PAVAN KUMAR GADALE, JM:**

The appeal is filed by the revenue against the order of National Faceless Appeal Centre (NFAC), Delhi /CIT(A) passed u/sec 143(3) and u/sec 250 of the Act. The revenue has raised the following grounds of appeal:

- 1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in directing the AO to allow the relief on the benefit of exemption u/s 11 of the Income-tax Act without appreciating the fact that the application of fund utilized for grants/scholarships used for overseas education*

*are governed u/s 11(1)(c) of the Act and hence cannot be treated as application for charitable purpose in India?*

*2. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in directing the AO to allow the basis of the order of the Hon'ble ITAT in the own case of the assessee Jamestji Tata Trust case without appreciating the fact that the Department has not accepted the said decision on merits and has filed an appeal u/s 260A to the Hon'ble High Court vide ITXA 1847/2014, which is pending adjudication before the Hon'ble High Court...*

2. The brief facts of the case are that, the assessee trust is registered u/sec 12A of the Income Tax Act, 1961 and with the Charity Commissioner under the Bombay Public Trust Act, 1950. The main objects are that the assessee trust grants loan scholarship to Indian students in India for their higher education overseas. The assessee has filed the return of income for the A.Y 2011-12 on 29.09.2011 disclosing a total income of Rs.Nil after claiming exemption u/sec 11 of the Act. Subsequently the case was selected for scrutiny and notice u/sec 143(2) and u/sec 142(1) of the Act are issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and furnished the details and information in support of the claims made in the return of income filed and also application of income for achieving the objects of the trust. Whereas the Assessing Officer was not satisfied with the details and explanations. Finally the A.O has denied the claim of exemption u/sec 11 of the Act referred at Page 7 Para4.6 to Para 5 of the order as under :

*“4.6. Further wordings in section 11(1) (a) are elaborately discussed in the case of HIGH COURT OF DELHI in the case of Director of Income-tax (Exemption) Vs National Association of Software and Services Companies (345 ITR 362) which undersigned has quoted above.*

*Here it may be seen that assessee's object is not merely "giving financial assistance". Its object as mentioned in paragraph 1 of trust deed (page 2 of trust deed) is " provide higher education and advancement by training and educating in India England and other foreign countries such number of Indians as far as funds of the trust permit." Thus it can be said that its activities are not limited to selection of candidates and disbursing the cheque to them Its object along with financial assistance is necessarily connected with education of Indians outside India. Thus while executing the charitable purpose; latterly of charitable purpose which is foundation of its activity i.e education of students abroad, is happening outside India.*

*Thus it can be concluded that:*

- i. Application as well as charitable purpose should be in India. It is not the case that charitable purpose should be confined to India and execution of charitable purpose may be inside or outside India*
- ii. Charitable purpose itself or activity related to charitable purpose should happen within Indian territories.*
- iii. Income applied on charitable purpose on education means that education or activity related to education that is process of education should happen within Indian territories.*
- iv. Here in instant assessee's case charitable purpose 'education' itself and activities related to education are happening outside Indian territories.*
- v. If there is a charitable purpose 'education' in this case- which tends to promote international welfare in which India is interested-CBDT's order to that effect is required.*

*vi. Merely the fact that person to whom payment is made for charitable purpose is Indian or payment is made within Indian territories is not sufficient but the charitable purpose or activity related to charitable purpose for which payment is made should happen within Indian territories.*

*vii. Payment to an Indian person for his education does not necessarily mean that payment of amount to an Indian person for his education abroad/outside India is income applied on education in India.*

*viii. That the act/event of paying amount happening within Indian territories is not sufficient since both conditions mentioned in land 2 are to be satisfied.*

*In view of above detailed discussion I hold that amount of ₹ 4,04,35,275 spent by assessee trust for charitable purpose outside India is not exempted u/s 11 and same will be treated as its income for the year under consideration and is being taxed accordingly. Penalty proceeding u/s 271(1)(c) of the IT Act are initiated separately for filing of inaccurate particulars.*

*5. Subject to the above remarks, the total income of the assessee is computed as under:*

<i>Total Income -</i>	<i>Nil</i>
<i>Add: loan Scholarship Awarded disallowed</i>	<i>4,04,35,275/-</i>
<i>Total income</i>	<i>4,04,35,275/-“</i>

3. Aggrieved by the order, the assessee has filed the appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, statement of facts, submissions of the assessee and findings of the AO and decision of the Hon'ble ITAT in the assessee's own case for the A.Y 2010-11 and the decision of the Coordinate bench of the Honble Tribunal in the case of Jamsetji Tata Trust Vs Jt.DIT(Exemptions)(2014) 44 taxmann.com 447 (Mumbai ITAT) and directed the Assessing Officer to allow the

exemption u/sec 11 of the Act and allowed the assessee appeal. Aggrieved by the CIT (A) order, the revenue has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld.DR submitted that the CIT(A) has erred in directing the A.O to grant the exemption U/sec11 of the Act overlooking the facts that the ITAT decision relied by the CIT(A) is not accepted by the revenue and the revenue has filed an appeal u/sec260A of the Act with the Jurisdictional Hon'ble High court and the Ld.DR prayed for allowing the revenue appeal. Per Contra, the Ld.AR supported the order of the CIT(A) and relied on the judicial decisions.

5. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld.DR that the CIT(A) has erred in directing the Assessing Officer to allow the exemption u/sec 11 of the Act. At this juncture, we consider it appropriate to refer to the findings of the CIT(A) in granting relief to the assessee at Page 25 Para 6 to 7 of the order read as under:

*"6. Decision:*

*6.1 The appellant in its grounds of appeal 1 and 2 has raised the following grounds:*

*1. On the facts and circumstances of the case and in law, the learned Assessing Officer erred in holding that the loan scholarships given to the Indian Students in India in Indian Rupees is deemed to be expenditure incurred by the trust overseas because the students have used the scholarship for overseas education.*

2. On the facts and circumstances of the case and in law, the learned Assessing Officer erred in denying the deduction of Rs. 4,04,35,275/- being income applied to charitable purposes in India towards loan scholarships, being the objects of the trust.

Both the two grounds of appeal are being adjudicated together for the sake of convenience and to avoid repetition.

6.2 Brief facts of the case are that the appellant had filed its return of income on 29.9.2011. The case of the appellant was selected for scrutiny. During the scrutiny assessment proceedings the AO observed that the appellant had given loans/grants of Rs. 4,04,35,275/- to various students who were studying outside India. The AO further observed that the appellant did not have any CBDT's order in this regard u/s 11(1)(c) of the Income Tax Act. The AO held that the application of income i.e. execution of charitable purpose as well as charitable purpose both should be in India. It is not the case that the charitable purpose should be confined to India and execution of charitable purpose maybe inside or outside India, The AO relied on the order of the Hon'ble Delhi High Court in the case of Director of Income Tax (Exemption) vs. National Association of Software and Service Companies (345 ITR 362). In view of the same the AO issued a showcause noticed dated 6.3.2014 to the appellant and the appellant submitted its reply on 13.3.2014.

6.2.1 The appellant in its reply to the AO submitted that purpose id required to be made in India but it is not necessary that related to following such purpose be carried out in India. It has further stated that candidate is issued the cheques before he goes abroad for education. It is immaterial for purpose of section 11 whether the charitable or religious purposes are confined to the taxable territories or not. It is sufficient if the income is applied within India and to that extent the income will be exempt under the said provision. The appellant relied on the judgments in the case of Bharata Kalanji vs. ITO 30 ITD 161 (Mad.) and H.E.H. The Nizam's Pilgrimage money trust vs. CIT 171 ITR 323 affirmed in 243 ITR 676. The AO did not accept the submission of the

*appellant and disallowed the exemption of Rs. 4,04,35,275/- by concluding as under:*

*1. Application as well as charitable purpose should be in India. It is not the case that charitable purpose should be confirmed to India and execution of charitable purpose maybe inside or outside India.*

*2. Charitable purpose itself or activity related to charitable purpose should happen within Indian territories.*

*3. Income applied on charitable purpose on education means that education or activity related to education that is process of education should happen within Indian territories.*

*4. Here in instant assessee's case charitable purpose education itself and activities related to education are happening outside Indian Territories.*

*5. If there is a charitable purpose education in this case which tends to promote international welfare in which India is interested CBDT's order to that effect is required.*

*6. Merely the fact that person to whom payment is made for charitable purpose is Indian or payment is made within Indian territories is not sufficient but the charitable purpose or activity related to the charitable purpose for which payment is made should happen within Indian territories.*

*7. Payment to an Indian person for his education does not necessarily mean that payment of amount to an Indian person for his education abroad/outside India is Income applied on education in India.*

*8. That the act/event of paying amount happening within Indian territories is not sufficient since both conditions mentioned in 1 and 2 are to be satisfied.*

*6.2.2 The appellant in its reply has reiterated the stand taken before the AO and has also relied on the judgment of the Hon'ble ITAT in the case of the Jamsetji Tata Trust vs. Joint Director of Income-tax (Exemption) Range- II, (2014) 44 taxmann.com 447 (Mum.-Trib.) wherein the Hon'ble ITAT has held that the education grant given to the Indian Students in*

*India for education/higher education abroad fulfills the conditions of application of money for such purpose in India. The appellant has also submitted that the Hon'ble ITAT while delivering this judgment has clearly held that the facts in the case of National Association of Software and Services Companies which was relied upon by the AO were distinguishable. The relevant part of the judgment of the Hon'ble ITAT is as under:*

*10.5 We have considered the rival submissions and perused the relevant material. The assessee has given grant to 97 scholars studying in various institutions and universities outside Indian and the total amount of grant is Rs. 1,53,50,000/-. The assessee paid the grant in India and for the purpose of education of Indian students/persons, thus the charitable purpose of the grant is education of Indian persons. The application of income of the assessee completes at the point when the assessee released the grant which took place in India. The decision relied upon by the revenue is not applicable in the facts of the present case as the application of income took place in India and for the purpose of education of Indian students/persons. Therefore, for taking education by beneficiary from abroad would not amount to application of income of the assessee outside India. In the case of Bharata Kalanji (supra) the Chennai Bench of this Tribunal while deciding a question arising from the payment of Rs. 1.55 lakh made to a travel corporation of Indian for sending a troop on tour. The AO treated the expenditure as application of income of the trust for charitable purpose. However CIT revised the assessment and was of the opinion that this expenditure was prohibited and was not applied for purpose of trust in India and, therefore, not eligible for exemption u/s 11. The main object of the trust was to advance, propagate, increase and promotion of Indian classical and Folk arts and Indian music etc. The trust was invited by the Government of Nigeria to give certain dance performance abroad. Accordingly the trust sends a troop and paid a sum of Rs. 1.55 lakh being the passage money to the Travel Corporation of India. The Tribunal held in para 6 as under:-*

"6. The crucial question is only whether the conditions in section 11 are complied with. That section states that the income derived from property held under trust wholly for charitable purposes shall not be included in the total income to the extent to which such income is applied to such purposes in India. The question is whether this section requires the application of money in India or the carrying out of the purposes in India or both. The contention of the revenue is that apart from the money being spent in India even the purpose must be carried out in India.

The section itself contradicts this contention. Section 11(1)(c) (ii) provides that income applied to such purposes outside India is exempt in the case of trust created before 1-4-1952 subject to the approval of the Board. This underlines the principle that Governments do not forego their revenue in favour of charges paid outside their countries and hence the relevant consideration is whether the situs of the application of the money and not the place in which the objects of the trust may become effective. It may be pertinent to refer to section 1 of 16 which exempts scholarships granted to meet the cost of education where also the CBDT itself does not consider scholarship granted for education abroad as money spent outside India. Similarly in the present case of such a wide object of propagation of art it would be difficult to confine it to the shores of the land. We are of the considered opinion that the expression "applied to such purposes in India" refers only to the situs of the expenditure and not to the place 'where the "purposes" are carried out. The fact that the troupe gave the performance abroad is therefore no disqualification for treating the amount actually spent in India as application of the amount for charitable purposes. The Commissioner also referred to collections made for performances given as an activity for profit. We find that such performances do not constitute activities for profit as the collections are in the nature of donations received for the purposes of the trust. Hence this objection also cannot be sustained, it follows that the exemption granted by the Income-tax Officer was not erroneous and did not require to be reviewed by the

*Commissioner. Hence his order u/s 263 is cancelled. The appeal is allowed."*

*10.6 Similarly in the case of CEO Clubs India (supra), coordinate bench of this Tribunal has held in para 11 as under:-*

*"The other objection of the DIT was that the activities of the Assessee were not confined to India and therefore registration cannot be granted. The basis for these observations is that conferences were to be held outside India. We are of the view that holding of conferences abroad would not make the activities of the Assessee being carried out outside India. The benefits of such conference will ultimate go to Assessee and its members. It cannot be said that the activities of the Assessee were carried on outside India."*

*10.7 Following the above decisions of Tribunal, we hold that the education grant given to the Indian students in India for education/higher education abroad fulfills the conditions of application of money for such purpose in India.*

*6.2.3 The appellant has further submitted that the appeal of the department against the order of the Hon'ble ITAT in the above mentioned case has been dismissed. The appellant has pleaded that as the facts of the instant case are similar to the facts in the case of Jamestji Tata Trust, the disbursement of the loan scholarship should be considered as application of income in India. The appellant has also submitted that in the appellant trust's own case for A.Y. 2010-*

*11 on similar facts the CIT (A) had allowed the aforesaid ground of appeal relying on the judgment of the Jamestji Tata Trust and no further appeal has been filed by the department against the said order of the CIT (A). The appellant in its submission has also distinguished the judgments relied upon by the AO while passing the assessment order.*

*6.2.4 I have gone through the reply of the appellant and relying on the judgment of the Hon'ble ITAT Mumbai in the Jamestji Trust Case and the order of the CIT (A) in the*

*appellant's own case the AO is directed to allow the exemption u/s 11 of Rs. 4,04,35,275/- as income applied to charitable purpose in India. The grounds of appeal 1 and 2 are allowed.*

*6.3 The appellant in its ground of appeal 3 has assailed the AO for charging interest u/s 234B. As the same is consequential the ground of appeal 3 is not being adjudicated upon.*

*6.4 The appellant in its ground of appeal 4 has assailed the AO for charging interest u/s 234 D. As the same is consequential the ground of appeal 4 is not being adjudicated upon.*

*7. The appeal is allowed”.*

6. Further, the Hon'ble Tribunal in the assessee's own case for the A.Y.2012-13 has dismissed the revenue appeal in ITA No. 2188/Mum/2024 dated 24.07.2024 observing at Page 3 Para 5 to 6 of the order as under:

*“5. We have heard rival submission of the parties and perused the relevant material on record. The assessee trust claimed loans granted to Indian students as scholarship for their overseas education as application of for the purpose of exemption u/s 11 of the Act. But according to the Assessing Officer income should have been applied for charitable purpose on education within Indian territories and not outside India. According to him, mere fact that persons to whom payments have been made for charitable purpose is Indian and payment has been made in Indian territory is not sufficient but the activity related to charitable purpose for which payment is made, should also happen within Indian territory. Before the Ld. CIT(A), the assessee relied on the decision of the Co- ordinate Bench of the Tribunal in the case of Jamsetji Tata Trust (supra). The Ld. CIT(A) after considering that facts of instant case being identical to facts of Jamsetji Tata Trust (supra), he deleted the disallowance observing as under:*

*"6.2.1 The appellant in its reply has reiterated the stand taken before the AO and has also relied on the judgment of the Hon'ble ITAT in the case of the Jamsetji Tata Trust vs. Joint*

*Director of Income-tax (Exemption) Range- II, (2014) 44 taxmann.com 447 (Mum.-Trib.) wherein the Hon'ble ITAT has held that the education grant given to the Indian Students in India for education/higher education abroad fulfills the conditions of application of money for such purpose in India. The appellant has also submitted that the Hon'ble ITAT while delivering this judgment has clearly held that the facts in the case of National Association of Software and Services Companies which was relied upon by the AO were distinguishable. The relevant part of the Judgment of the Hon'ble ITAT is as under:*

*10.5 We have considered the rival submissions and perused the relevant material. The assessee has given grant to 97 scholars studying in various institutions and universities outside Indian and the total amount of grant is Rs. 1,53,50,000/. The assessee paid the grant in India and for the purpose of education of Indian students/persons, thus the charitable purpose of the grant is education of indian persons. The application of income of the assessee completes at the point when the assessee released the grant which took place in india. The decision relied upon by the revenue is not applicable in the facts of the present case as the application of income took place in India and for the purpose of education of Indian students/persons. Therefore, for taking education by beneficiary from abroad would not amount to application of income of the assessee outside India. In the case of Bharata Kalanji (supra) the Chennai Bench of this Tribunal while deciding a question arising from the payment of Rs. 1.55 lakh made to a travel corporation of Indian for sending a troop on tour. The AO treated the expenditure as application of income of the trust for charitable purpose. However CIT revised the assessment and was of the opinion that this expenditure was prohibited and was not applied for purpose of trust in India and, therefore, not eligible for exemption u/s 11. The main object of the trust was to advance, propagate, increase and promotion of Indian classical and Folk arts and Indian music etc. The trust was invited by the Government of Nigeria to give certain dance performance abroad. Accordingly the trust sends a troop and paid a sum of Rs. 1.55 lakh being the passage money to the Travel Corporation of India. The Tribunal held in para 6 as under-*

"6. The crucial question is only whether the conditions in section 11 are complied with. That section states that the income derived from property held under trust wholly for charitable purposes shall not be included in the total income to the extent to which such income is applied to such purposes in India. The question is whether this section requires the application of money in India or the carrying out of the purposes in India or both. The contention of the revenue is that apart from the money being spent in India even the purpose must be carried out in India. The section itself contradicts this contention. Section 11(1)(c)(ii) provides that income applied to such purposes outside India is exempt in the case of trust created before 1-4-1952 subject to the approval of the Board. This underlines the principle that Governments do not forego their revenue in favour of charges paid outside their countries and hence the relevant consideration is whether the situs of the application of the money and not the place in which the objects of the trust may become effective. It may be pertinent to refer to section 1 of 16 which exempts scholarships granted to meet the cost of education where also the CBDT itself does not consider scholarship granted for education abroad as money spent outside India. Similarly in the present case of such a wide object of exemption u/s 11 of Rs. 3,47,50,026/- as income applied to charitable purpose in India. The grounds of appeal 1,2 and 3 are allowed" (emphasis supplied externally)

5.1 In the above case relied upon by the ld CIT(A), the coordinate bench held the disbursal of loan scholarship to students in India for study overseas as application of income for charitable purposes in India. As the facts and circumstances of the instant case are identical to the facts of decisions relied upon by the Ld. CIT(A) therefore, we uphold the order of the Ld. CIT(A) on the issue in dispute. The grounds of appeal of the Revenue are accordingly dismissed.

6. In the result, the appeal of the Revenue is dismissed".

7. We find the CIT(A) has dealt on the facts, provisions of the Act, and judicial decisions. The Ld.DR could not

controvert the findings of the CIT(A) with any new cogent material or information on the disputed issues to take different view. We have considered the facts, circumstances, submissions and ratio of judicial decisions as discussed above and are of the view that the CIT(A) has passed a reasoned and conclusive order. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 23.08.2024

Sd/-  
**(RENU JAUHRI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated:23/08/2024

KRK

**Copy of the Order forwarded to:**

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//