

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BENCH "B", MUMBAI
BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER
AND
SMT RENU JAUHRI, ACCOUNTANT MEMBER
ITA No.2510/Mum/2024
[Assessment Year: 2011-12]**

St. Joseph's Education and Medical Relief Society St. Joseph Convent- 64A, Hill Road, Bandra (West), Mumbai- 400050 PAN: AAATS2693D	Vs.	Income Tax Officer (E.)-(I)- (1) 6 th Floor, MTNL Tel. Ex. Building, Cumballa Hills, Peddar Road, Mumbai- 400026.
(Appellant)		(Respondent)

ITA No.2509/M/2024
[Assessment Year: 2010-11]
ITA No.2511/M/2024
[Assessment Year: 2012-13]
ITA No.2553/M/2024
[Assessment Year: 2009-10]

St. Joseph's Education and Medical Relief Society St. Joseph Convent- 64A, Hill Road, Bandra (West), Mumbai- 400050 PAN: AAATS2693D	Vs.	Asstt. Commissioner of Income Tax (Exem.)-2(1), 6 th Floor, MTNL Tel. Ex. Building, Cumballa Hills, Peddar Road, Mumbai- 400026.
(Appellant)		(Respondent)

ITA No.2512/M/2024
[Assessment Year: 2013-14]
ITA No.2513/M/2024
[Assessment Year: 2014-15]
ITA No.2514/M/2024
[Assessment Year: 2015-16]
ITA No.2515/M/2024
[Assessment Year: 2016-17]



St. Joseph's Education and Medical Relief Society St. Joseph Convent- 64A, Hill Road, Bandra (West), Mumbai- 400050 PAN: AAATS2693D	Vs.	Deputy Commissioner of Income Tax, (Exemptions) – 2(1) 6 th Floor, MTNL Tel. Ex. Building, Cumballa Hills, Peddar Road, Mumbai- 400026.
(Appellant)		(Respondent)

ITA No.2516/M/2024
[Assessment Year: 2017-18]

St. Joseph's Education and Medical Relief Society St. Joseph Convent- 64A, Hill Road, Bandra (West), Mumbai- 400050 PAN: AAATS2693D	Vs.	Asst. Commissioner of Income Tax, (Exem.) Circle 2 6 th Floor, MTNL Tel. Ex. Building, Cumballa Hills, Peddar Road, Mumbai- 400026.
(Appellant)		(Respondent)

ITA No.2517/M/2024
[Assessment Year: 2018-19]

St. Joseph's Education and Medical Relief Society St. Joseph Convent- 64A, Hill Road, Bandra (West), Mumbai- 400050 PAN: AAATS2693D	Vs.	National Faceless Assessment Centre, (DLC-CA(103)(2)) 6 th Floor, MTNL Tel. Ex. Building, Cumballa Hills, Peddar Road, Mumbai- 400026.
(Appellant)		(Respondent)



Present for:

Assessee by : Shri Dharan Gandhi & Shri R.V.Shah

Revenue by : Shri Anurag Tripathi, SR. A.R.

Date of Hearing : 16.10.2024

Date of Pronouncement : 30.10.2024

ORDER

Per Bench:

Present appeals filed by the assessee is against separate orders dated 28/03/2024 and 29/03/2024 passed by Ld.NFAC/Ld.CIT (A) for assessment years 2009-10 to 2018-19.

Brief facts of the case are as under:

2. The assessee is a society registered under the Societies Registration Act 1860, since 21/04/1966. It was registered with the charity commissioner under registration number 7498 with effect from 04/05/1966. The assessee was also registered as charitable trust, under section 12A of the act, vide Certificate No. TR/4239 dated 04/08/1975. The assessee has also been granted certificate under section 80G of the act with effect from 01/04/1992. It is submitted that as on date, both these certificates are valid and in force.

It is submitted that, the assessee is running 12 institutions established in different parts of the country covering hospitals, educational institution, imparting education to pre-primary, primary and high school etc. It is submitted that, all these



institutions are focused on imparting education to the poor people, especially to tribal population. It is also submitted that, the assessee runs hospital by the name St. Elizabeth Hospital, at Mumbai having about hundred beds which is one of the major institution of the assessee. It is submitted that, the assessee is running following institutions under its banner:

reproduce table at page 2-3 of CIT appeal order 2011-12

S.No.	Name of Unit	Place	Activity
1.	St. Joseph's Convent	Bandra	Preprimary, high school, boarding school
2.	St. Joseph's Convent Primary Section	Bandra	Primary School
3.	Priti Sagar Collem/ Tilamol	GOA	Primary, Formal Education
4.	Sacred Heart Convent	Hubli	Pre Primary, Primary, High School
5.	Holy Family Convent	Igatpuri	K. G. and High Section School
6.	Jyoti Nivas	Manor	Boarding, Health, Education
7.	Krupa Prasad	Nashik	Boarding, Health, Education
8.	Anand Ashram Convent	Palghar	Boarding, Health, Education
9.	St. Joseph's Convent	Panchgani	School, Boarding
10.	Navjeevan Niwas	Udhwa	Health and Education
11.	Premankur	Vellugaon	Boarding, Health and Education
12.	Premada Nakshatra Ashram	Yellapur	Boarding, Health and Education
13.	St. Elizabeth Hospital	Mumbai	Hospital

2.1. Assessee for the years under consideration filed its return of income the details of which are as under:



S.No.	Asst Year	Date of ROI	Declared Income
1.	2009-10	30/09/2009	Nil
2.	2010-11	08/10/2010	1,06,106/-
3.	2011-12	29/09/2011	59,640/-
4.	2012-13	30/09/2012	1,00,817/-
5.	2013-14	28/09/2013	1,11,310/-
6.	2014-15	06/10/2014	1,56,538/-
7.	2015-16	05/10/2015	1,76,020/-
8.	2016-17	16/10/2016	1,75,000/-
9.	2017-18	26/10/2017	1,48,206/-
10.	2018-19	18/10/2018	1,76,170/-

2.2. It is submitted that for the years under consideration the main objects of the trust for which it is established are as per the memorandum of association dated 24.03.1966 trust deed dated :

1. to establish, conduct, maintain, administer and carry on medical and education institution works and activities for the benefit of women and children.
2. to take over, to establish, Endow, conduct, maintain, administer, develops, equipped, improves, educational and medical institutions, works and activities connected with the educational welfare and advancement of women and children irrespective of caste, community, religion or social status.
3. to take over, establish, endow, conduct, maintain, administer, develop, equip, improve, schools, colleges and other institutions, hospitals, dispensaries, founding homes, maternity homes, nursing homes and convalescent homes for



women, crutches, nurseries, reading rooms and other educational and other medical institutions works, any teas and activities in any part of India for women and children.

4. To provide residential accommodation and educational equipment and maintenance either free of cost or for consideration to teachers, doctors, nurses, pupils, staff, servants, separated employees, orphans and others connected with the work of the society and to educate, train and assist in equipment of personal for the purpose of the society.

5.

10. And generally to carry out such measures as are incidental or conducive to the attainment of all or any other objects.

The above objects have been placed at page 6-7 of the paper book.

2.3. The assessee for the year under consideration furnished along with the return of income computation of income, income and expenditure account, balance sheet and audit report in Form 10B, declaring total income to be 'Nil'. It is submitted that, the assessee was issued certificate for 'Nil' TDS, which is placed in the paper book.

2.4. The Ld.AO noted that, for all the years under consideration the assessee received income by way of;

i) royalties, ii) agency commission, iii) ground amenities, iv) canteens, v) farmhouse income, vi) lunch income, vii) sale of scrap, viii) miscellaneous income, ix) nursing course fees, x) incentives, xi) rent income.



2.4.1. During the assessment proceedings, the Ld. AO issued show cause notices for all the years under consideration calling upon assessee to explain, as to why, receipts from above referred activities should not be treated as business income under section 2 (15) of the act.

2.4.2. For assessment year, 2009-10 the assessee was not granted any opportunity to file submissions before the Ld. AO. The Ld. AO passed assessment order under section 143 (3) of the act, taxing the receipts from activities noted hereinabove, as income under the head, profit and gains of business. The Assessee appealed against the assessment order before the Ld.CIT(A) who did not adjudicate the issue on merits, despite the fact that, the assessee filed written submissions. On an appeal before the *Tribunal*, this *Tribunal* vide order dated 18/06/2014 remanded the appeal to the Ld.CIT(A) for fresh adjudication after giving reasonable opportunity of being heard to the assessee.

2.4.3. In respect of assessment years 2010-11 to 2018-19, the Ld. AO disallowed the receipts under various heads as business income, rejecting the submissions of the assessee.

Aggrieved by the orders of the Ld. AO, the assessee preferred appeals before the Ld. CIT(A) for assessment years 2010-11 to 2018-19.

2.5. Based on the submissions furnished by the assessee and as per the directions of the coordinate bench of this *Tribunal* for assessment year 2009-10, the Ld. CIT(A)/NFS vide separate orders



passed the impugned order confirming the addition made by the Ld. AO by observing as under:

For assessment A 2009-10

*“As directed by Hon'ble ITAT in their order dated 18/06/2014, this appeal is taken for fresh adjudication. During the course of appeal proceedings assessee has submitted their submissions which are considered in this appeal proceeding the appellant reiterated their earlier stand as taken before the AO during assessment proceeding. In this case the main issue is whether a sum of Rs.2,17,55,044/- is income from business or not. It is found from the records that the income generated from royalties, hiring income, commission income, sell of scrap, rent, and interest on FD etc. cannot be treated as income attributable to the objects of the appellant society. It is also found that the appellant society earned income from hiring of their hall and ground for marriage or other purposes, royalties from caterers etc. cannot be construed under the provisions of educational purpose. This activity of the appellant society is a Regular, Organized and a systematic one. Further it is found that the appellant has to maintained separate books of accounts in respect of the above activities. Considering the above irregularities I think the AO has rightly treated the above mention income as business income and disallowed the exemption u/s 11 of the Act. As such the appeal of the appellant is **dismissed.**”*

For assessment years 2010-11 to 2018-19.

2.5.1. The observations of the Ld. CIT(A) are similar for all the remaining years. For sake of convenience the observations of the Ld. CIT(A) has been reproduced for assessment year 2010-11 as under:



“Being aggrieved with the order u/s 143(3) of the act dated 20/03/2014 this appeal was filed by the appellant.

During the course of appeal proceedings the appellant filed explanation which is considered. From the said explanation, it is found that activity of Hiring of marriage Hall and ground, Royalties from caterers, Agency commission and Rental income are derived from appellant society. In this regard reliance is placed on the decision of Hon'ble Supreme Court in the case of Sole Trustee, Lok Shikshan Trust vs. CIT (101 ITR 234), even though it is incidental to its main activity of providing business education. Since it is a organized systematic activity, it can be called business incidental to the main object of the society. The hall and ground are given to public on rental basis for marriage and other purposes. The appellant has also received royalty income from caterers and decoration on the hall and grounds for marriage purpose. Therefore, in respect of above income, it is undisputed that it is a systematic regular activity of the appellant and it has all characteristics of a business as defined in the Act. The appellant has maintained separate ledger account of its activities however no separate books of account have been maintained by them. Since no separate books of accounts have been maintained by the society for the above activities and therefore no question of allowing deduction u/s. 11 (4A) to the society in respect of the above activities. In view of the above, the action of the AO in treating the income. from other sources of Rs.3,53,97,510/- as business income of the appellant is justified. Moreover, in appellant's own case on similar issue, for A.Y.2009-10 and 2010-11 the other income has been treated as business income. In respect of assessment year 2009-10 the issue in question was upheld by the CIT (A). Considering the above appeal of the appellant is dismissed.”



Aggrieved by the orders of the Ld.CIT (A)/NFAC, the assessee has preferred appeal before this *Tribunal*.

3. Both the revenue as well as assessee submitted that the disallowance made by the authorities below for the years under consideration are based on identical reasoning and on similar facts and circumstances. Accordingly, all these appeals are decided by way of a consolidated order.

3.1. It is submitted by the Ld. AR that, while computing the income in assessee's hands, the Ld.AO observed that certain activities carried on by the assessee involved carrying on activities in the nature of trade and business. The Ld. AR submitted that the Ld.AO opined that, such activities, even if meant for advancement of any object of general public utility, cannot be treated as charitable purpose within the meaning of proviso provided in Section 2(15) of the act, subsequent to the amendment brought therein. He submitted that the Ld.AO was also of the opinion that, since assessee did not maintain separate books of account in respect of such activities, the second condition under section 11(4A) stand violated. The Ld.AO thus treated the surplus out of these activities as Business Income under section 11(4A) and taxed it accordingly.

Sr .No.	Activities carried by assessee
A.	<u>Receipt under the head royalties</u>
B.	Receipt from use of ground



	amenities and agency commission.
C.	Receipt from running canteen, lunch home and farm.
D.	Receipt from sale of scrap.
E.	Receipt from Nursing course fee.
F.	Receipt from Miscellaneous sale.
G.	Receipt from sale and machinery
H.	Receipt of interest on FD.
I.	Receipt from PCO.

3.2.The Ld.AR submitted that from the above activates income received by the assessee are incidental to the main object of the trustee and is not out of any organised, systematic activity, as held by the Ld. AO/NFAC. It is submitted that, the assessee runs its medical and educational institutions at various places Bandra, Panchgini, Igatpuri, Hubli etc. it is submitted that the assessee has its main object to establish, conduct, maintain, administer and carry on medical and educational institutions for the benefit of women and children.

3.3.With this backdrop, the Ld.AR submitted that **Ground No.3, 6, 7, 8** raised by the assessee is challenging various disallowances made by the Ld.AO under various heads vis-à-vis the requirements under section 11 of the act.



3.3.1. Ground No.4, 9 is without prejudice ground wherein the assessee is challenging the applicability of requirements under section 11 (4A) of the act

3.3.2. Ground No.5 by the assessee is challenging the applicability of the decision of *Hon'ble Supreme Court* in case of *Sole Trustee, Loka Shikshna Trust Vs.CIT* reported in (1975) 101 ITR 234.

3.3.3. Ground No.1& 2 are general in nature and therefore do not require adjudication.

3.3.4. The Ld.AR also submitted that in all the assessment years under consideration assessee has raised identical grounds and the only difference will be in respect of the quantum of addition.

Accordingly **Ground Nos.3 – 9** are adjudicated in a consolidated manner as under:

A. Receipt under the head royalties:

The Ld.AR submitted that, the assessee runs hospital at Malabar Hill under the name St Elizabeth Hospital. The Ld.AR submitted that to have a pharmacy within the hospital premises is very vital and inevitable. He submitted that patients undergoing treatment at the hospital needs medicines including life-saving drug, without which it is not possible for the hospital to treat its patients. The Ld.AR submitted that, the hospital do not have any pharmacy of its own as it is necessary to have licenses, qualified manpower to run date the night pharmacy. The Ld.AR submitted that as it is a huge investment to start a pharmacy, and that trust hospital does not have sufficient funds and resources to run a full-fledged pharmacy



on its own, it entered into an arrangement with M/s.Farma Cross India Pvt.Ltd., to run a pharmacy from the premises of the trust Hospital, against which the assessee receives certain income as royalty on annual basis.

A.1. The Ld.AR submitted that, pharmacy division is an integral part of running the hospital and is very essential to provide medical treatment to the patients. It is submitted that, without pharmacy division the patients will be deprived of necessary medicines required and by no stretch of imagination, cannot be treated as business income. He submitted that, merely because, an outside parties appointed to run the pharmacy division will not change the nature of the activity as assessee trust is still pursuing its dominant object of providing the medical relief.

A.2. The Ld.AR emphasised that, the amount received under the head royalty constitutes only 1% of the total income which indicates that the above income is ancillary to the main objects of providing medical relief.

B. Receipt from use of ground amenities and agency commission:

B.1. The Ld.AR submitted that, the assessee runs a school at Bandra under the name St Joseph's Convent High School and St Joseph's Convent Primary School at Hubli, Igatpuri and other places. It is submitted that, these education institutions have open ground attached to it. The Ld.AR submitted that, after the school hours and for on holidays these grounds remain unutilised. In



order to generate some resources for educational activities, the school thought fit to allow its use by outside people for functions.

B.2. The Ld.AR submitted that, instead of dealing with various outside people directly, the assessee thought fit to avail services of one Mr.Soharab Zorabian and Mr.Augustino Ferraz to deal with the people requiring the use of ground for a few hours during holidays or when the ground was not in use. It was submitted that, the assessee assumed no expenses, responsibility, liability or risk whatsoever; In terms of agreement dated 01/10/2007 between the assessee and Mr.Augustino Ferraz, the latter was appointed as agent for the purpose of dealing with the persons interested in use of the premises and in turn the assessee received a fixed amount of rent for each functions held. A similar agreement was entered between assessee and Mr.Soharab Zorabian.

B3. It was submitted by the Ld.AR that, the above income was received for the use of the trust property and cannot be termed as income from business. The Ld.AR drew our attention to pages 258 and 257 of the paper book, wherein, a sum of ₹ 9000/- per month and 1000/- month were received from these parties. The Ld.AR submitted that at page 274 of the paper book details of the payments received in respect of the use of grounds has been tabulated. The Ld.AR please reliance on pages 267-273 of the paperbook wherein the ledger and other details like confirmation from the agents of the amount paid are placed.



B4. The Ld.AR submitted that, Mr.Augustino Ferraz was issued certificate under section 197 of the act, by the Ld. AO to pay the amount of rent to the assessee without deducting any tax on the same. He the submitted that the Ld. AO issued certificate only upon being satisfied that, such income is not taxable in the hands of the assessee. The Ld.AR submitted that, by letting out the school ground on holidays and/or on days when it is not required; any income received from such activity cannot be treated as business activity which is for a profit motive. He submitted that, the grounds are located at the prime locations and had assessee to have intention to earn profit it would have been let out for very high rent as compared to the nominal amount received by the assessee from the agents. It was submitted that, the assessee was only receiving a monthly compensation by way of rent from these agents being meagre sums, and therefore, it cannot be treated as business activity without there being any element of profit embedded in such receipts.

B5. The Ld.AR placed reliance on the decision of *Hon'ble Madras High Court* in case of *CIT vs Samyukta Gowda Saraswatha Sabha* reported in 245 ITR 242. The Ld.AR submitted that, *Hon'ble High Court* was seized with an identical situation, wherein, the school was providing education and letting out of grounds though it was not one of the objects of the assessee but was carried out to fulfil the main objects of the trust. *Hon'ble Court* then held that, letting out of ground for a few hours was with an intention to earn income



to fulfil and apply the same for the main objects of the assessee. He submitted that, similar was the view taken by *Hon'ble Madras High Court* in case of *CIT vs Sri Rao Baghadur Dharamraj educational charity trust* reported in 300 ITR 365 and *CIT vs Grdhandas Bhagavandas charitable trust* reported in 136 Taxman 161. The Ld.AR also relied on the decision of *Hon'ble Calcutta High Court* in case of *CIT vs Sahujain trust* reported in 56 DTR 402, wherein it was held that invoking section 11 (4A) was also held to be bad in law.

C. Receipts from canteen, lunch home and farm:

C.1. The Ld.AR submitted that, canteen is run at various schools for exclusive benefit of the students At St Elizabeth Hospital Canteen is run for the benefit of the patients and their families, who come for treatment. It is submitted that, this negligible of the surplus. Ld. AR. submitted that by selling the foodstuff for the benefit of the students and the parents of the families and the activity is the only in furtherance of the object of the society as canteen provision in the schools and hospitals are basic facilities that are necessary to be provided to the patients their families and the students and their parents. The Ld.AR drew our attention to the details of the receipts from canteen services at page 291-294 of the paper book.

C.2. Regarding the income received from providing lunch, it is submitted that the school students are charged with the nominal amount for maintaining the lunchrooms, which is a requirement to provide an environment to prepare hygienic food. It is submitted



that these receipts cannot be in any way considered to be business activity.

C.3. The Ld.AR further submitted that, the assessee trust premises at Bandra, Goa, Palghar, Yellapur and Nashik has trees of coconut, mango and other fruits and vegetables. It is submitted that, these trees exist for many years and are part of the property from where the assessee carries on its charitable activities. The Ld.AR submitted that, the assessee needs to maintain these properties and as a result it gets some fruits from these trees attached to the properties during seasons. It is submitted that, after using these fruits and vegetables for in-house consumption, they are sold in the local market for a very nominal price as their perishable. Referring to page 295-299 of the paper book, the Ld.AR submitted that, details of receipts from the sale of farm products reveals that the amount is negligible than its total income and cannot be considered as a business activity of the assessee.

D. Receipt Sale of scrap:

D.1. The Ld.AR submitted that assessee sold IT materials left after repairs jobs, old records, bets, newspapers and other junk material concerning various institutions across India. It is submitted that it arises during the course of carry on its main activity of running and maintaining schools and medical establishments. And by no stretch of imagination can be considered to be business income. The Ld.AR submitted that, the scrap have been generated out of the machines and materials purchased by assessee or generally for



the use of educational institutions and medical establishments which has outlived its life and therefore needs to be scrapped out. It is submitted by the Ld.AR that considering the total income of the assessee from the main activity, the receipt from sale of scraps are negligible.

E. Receipt from Nursing course fee:

E.1. The Ld.AR submitted that, the assessee received for conducting auxiliary nursing course for nursing aides. It is submitted that, this forms part of its medical activities and is important to provide training to the nurses in order to render proper treatment and care for the patients in the hospital. The Ld.AR submitted that these training also provides assistance to the women to become self-sufficient and are conducted for those who are poor and not qualified as nurses but to educate and train them as nursing aides. The Ld.AR drew our attention to page number 316-317 of the paper book wherein the details of the receipts have been given.

F. Receipt from Miscellaneous sales:

The Ld.AR submitted that, these receipts are out of sales from school uniforms, notebooks, stationeries at the school premises of the assessee for the students who are being enrolled to the educational institutions run by the assessee. It is submitted that, these are integral part of the activity carried on by the assessee of rendering education to the general public at large. The Ld.AR placed reliance on the decision of *Hon'ble Andhra Pradesh High*



Court in case of *CIT vs V. Vijay Vani Educational Trust* reported in 349 ITR 280 and decision of Hon'ble Madras High Court in case of *DIT (E) vs Chartered Accountancy Study circle* reported in (2012) 347 ITR 321. The Ld.AR submitted that, in all the above decisions Hon'ble Court held that, publishing and selling books of professional interests are meant to be used by general public, as well as professionals cannot be construed to be one of commercial in nature. It is submitted that, the above two decisions clearly highlight the principle that these are the activities for attainment towards the dominant object of education.

G. Sale of machineries:

G.1. The Ld.AR submitted that, the assessee realised certain receipts on account of sale of sonography and x-ray machines which have outlived their utilities. It is submitted that though these proceeds are shown under the head "sale of assets" for the purpose of accounting, it is not meant that, the assessee carried on any business activity. The Ld.AR emphasised that, upgrading machineries at the hospitals are a need of the hour in order to render, diagnosis and to prepare reports of the patients for further treatment. As the damaged machines cannot be continued in the hospitals and deserves to be replaced time and again the machines were sold without these being any profit element embedded in it. The Ld.AR placed reliance on page number 3092315 of the paper (the details of the sale of machineries are placed.

H. Receipt of Interest on fixed deposits and savings:



H.1. The Ld.AR submitted that, under section 11 (5) of the act it is mandatory for the assessee to place its money in specified investments only. It is submitted that these monies are deposited and interest is earned by the assessee. It is submitted that the source of the interest is the income received in recording the main object of the course of its medical/educational services which are held to be exempt by the assessing officer himself. The Ld.AR emphasised that most of the fixed deposits are earmarked for specific charitable activities and there is absolutely no question of any earning of profit or a business motive in placing such surplus money into bank.

H.2. Referring to section 13 (1) (d), the Ld.AR submitted that, exemption is denied under section 11 or 12 of the act in case any trust makes investments in any mode other than the specified under section 11 (5) of the act. It is submitted that the assessee is not carrying on any business of banking or money lending, whereby the deposits are received from the customers and advanced to the public at high rate of interest.

H.3. The Ld.AR referring to the provisions of section 11 (1) (a) of the act submitted that, the requirement for claiming exemption on such income is that it should be derived from the property held in trust for charitable purposes. It is submitted that the assessee invested the amounts in fixed deposit over period of Time, which is permitted mode under section 11 (5) of the act. It is submitted that, the amount is out of accumulation of income under section 11, and



also account of receipt from corporate donations. The Ld.AR thus emphasised that the interest so earned qualify for being exempted under section 11.

H.4. The Ld.AR referred to page number 215-241 of the paper book wherein details of the deposits maintained with various banks and the interest earned are provided, which forms part of the record for the authorities below. He placed reliance on the decision of *Hon'ble Punjab and Haryana High Court* in case of *CIT vs Punjab energy development agency* reported in (2010) 323 ITR 463 and the decision of *Hon'ble Delhi High Court* in case of *ITO vs Jesuit conference of India* reported in 131 TTJ 725 wherein the *Hon'ble courts* envisaged that, the investment has to be as per the prescribed mode under section 11 (5) of the act. Once the investments are made in accordance with such prescribed modes, they qualify for exemption under section 11 of the act.

H.5. The Ld.AR submitted that assessing officer has accepted the investments having made in accordance with the provisions under section 11 (5) of the act, however is treating the interest received from such investment as business income which is contrary to the intention of the provisions. The Ld.AR also submitted that in the preceding assessment years being assessment A 2004-05, 2007-08 and 2008-09 Ld. AO himself accepted the income earned from the investments to be eligible for exemption under section 11 of the act. He thus submitted that, the interest earned from such investments



as per section 11 (5) of the act cannot be treated as business income.

I. Receipt from PCO:

The Ld.AR submitted that assessee provided PCO facilities at hospitals and school for facilitating the patient's relative as well as the students to communicate to their family under emergencies. It is submitted that its meagre income that has been earned by the assessee from the PCO services and is carried out in the lieu of the main object of the trust.

4. The Ld.AR submitted that, it is necessary to understand that the above activities are incidental to the main objects of the trust and cannot be treated as business income in the hands of the assessee. The Ld.AR submitted that the main object of the assessee is admittedly covered under the definition of "charitable purposes" both as per the 2 (15) of the act. It is submitted that the proviso to section 2 (15) is applicable only if the assessee carries on advancement of any other object of general public utility which shall not be for a charitable purpose or shall not apply to the assessee for carrying out any activity that falls under the 1stthree limbs of the definition of section 2 (15) of the act, i.e., providing relief to the poor, education and medical relief.

4.1. Referring to the memorandum of the trust placed at page 10-22 of the paper book, it is submitted that, the main activity of the assessee is running and maintaining schools and medical establishments and hence the proviso to section 2 (15) is not



applicable to the assessee and assessee is entitled to the benefit of exemption under section 11 of the act. He vehemently reliance on the decision of *Hon'ble Gujarat High Court* in case of *DIT vs Ahmedabad Management Association* reported in 366 ITR 85, wherein it was held that on fair reading of section 2 (15) of the act, the newly inserted proviso to section 2 (15) of the act will not apply in respect of relief to the poor, education or medical relief. Thus where the purpose of trust institution is relief to the poor, education or medical relief, it will constitute "charitable purpose", even if it is incidentally involved in carrying on of commercial activity.

4.2.The Ld.AR submitted that, from the memorandum and articles of association and from the activities carried on by the assessee, it is clear that the dominant object is establishing, maintaining and running medical and educational institutions. He further submitted that, for securing its primary aim as mentioned in the memorandum of association, the assessee has to take necessary steps to carry out measures as are incidental to or conducive to that the of its primary objective. In support of this contention the Ld.AR please reliance on the decision of *Hon'ble Supreme Court* in case of *CIT vs Sandra Chamber of Commerce* reported in (1965) 55 ITR 722 and also the decision of *Constitutional Bench of 5 judges* by *Hon'ble Supreme Court* in case of a *CIT vs Sutat Art Silk Cloth Manufacturers Association* reported in 121 ITR 1. He submitted that *Hon'ble Supreme Court* held that, the basic principle underlying the definition of "charitable purpose" remained unaltered, even on



amendment in section 2 (15), with effect from 01/04/2009 when the restrictive proviso was inserted therein.

4.3. The Ld.AR the submitted that since in the present facts of the case of the primary purpose of the assessee was to advance educational and medical objects, it would remain charitable, even if an incidental or ancillary activity for achieving the main purpose was profitable in nature. The Ld.AR emphasising to the kind of income received by the assessee out of these ancillary activities he submitted that, these are meagre income as compared to the income that is accepted by the Ld. AO and authorities below as exempt under section 11 of the act.

4.4. The Ld.AR submitted that these activities is not hit by the new provisions of section 2 (15) of the act. Referring to section 11 (4A) of the act the Ld.AR submitted that the activities which may be incidental to the main objects are however business in nature as presumed under section 11 (4A) of the act. But the generation of income is not the conclusive proof for determining the charitable nature of the activities.

4.5. The Ld. AR thus submitted that, if the incidental activities were well covered by section 2(15) of the act, but were charitable in nature, in such an eventuality the application of section 11(4A) applies only to the business activities and does not apply to such incidental or ancillary activities as stated hereinabove. The Ld.AR emphasised that none of the activities as submitted hereinabove are carried out by assessee with a motive to earn profits and therefore



there was no need to maintain a separate books of account for such activities.

4.6. It is submitted that the assessee was established to pursue educational and medical objects for charitable purposes, within the meaning of section 2 (15) of the act, and in the process of achieving such objects assessee received certain income which are incidental to the main object and which are conducted only for the purposes of securing the main object. It is also submitted that, the income arising by such activities are only incidental and ancillary to the dominant object for conducting the educational medical activities and the said income were always utilised only for the purposes of feeding its dominant purpose. He the submitted that assessee cannot be denied benefit under section 11 of the act in respect of revenues generated from such ancillary activities are to be granted exemption. In support of the contentions the Ld.AR placed reliance on following decisions:

1. *Decision of Hon'ble Supreme Court in case of Queens Educational Society vs CIT reported in (2015) 55 taxman.com 255*
2. *Decision of Hon'ble Supreme Court in case of Commissioner of sales tax vs. Sai Publication Fund reported in (2002) 258 ITR 70*
3. *Decision of Hon'ble Madras High Court in case of CIT vs Janakiammal Ayyandar Trust reported in (2005) 277 ITR 274*
4. *Decision of Hon'ble Delhi High Court in case of India Trade Promotion Organisation vs CIT (A) and others reported in (2015) 229 taxman 347;*

4.7. On the contrary, the Ld.DR placed reliance on the decision of *Hon'ble Supreme Court in case of Sole Trustee, Loka Shikshna Trust*

Vs. CIT reported in (1975) 101 ITR 234. The Ld. DR opposed the submissions of the Ld. AR. He contended that, proviso to section 2(15) makes it very clear that, while carrying out the objects of advancement of general public utility, if it is in the nature of any trade, commerce or business for any fees or consideration, then it does not fall within the definition of "charitable purposes". He further argued that the assessee's activities as stated in the foregoing paragraph are in the nature of business income and hence in violation of proviso to section 2(15). Once a charitable trust/institution is hit by proviso, then income from such activity is not exempt under section 11.

4.8. The Ld. DR also referred to the decision of *Hon'ble Supreme Court* in the case of *ACIT(E) v. Ahmadabad Urban Development Authority* reported in [2022] 143 taxmann.com 278 held that, argument of GPU activities of generating profits which could feed the main object and incidental profit-making also is not a good law. Once GPU is carried on as business, Sec.11 exemption cannot be made available as business income ploughed back to charity is irrelevant.

We have perused the submissions advanced by both sides in the light of records placed before us.

5. The provisions of section 11(4A) clearly carves out exception *qua* its non-applicability. Where the business activity is incidental to the attainment of the main objectives of the trust or, as the case may be, maintaining separate books of account are not



necessary to be maintained by such trust or institution in respect of such activities.

For clarity the provisions of section 11(4A) of the Act are reproduced hereunder:

"Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business."

5.1. CBDT Circular No. 11/2008 dated 19-12-2008 (Point No. 2.1) also clarified that, proviso to section 2(15) of the Act will not apply to medical relief etc. and where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute 'charitable purpose' even if it incidentally involves the carrying on of commercial activities.

For clarity relevant clarification reads as under:

"The newly inserted proviso to section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e., relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute 'charitable purpose' even if it incidentally involves the carrying on of commercial activities."

Therefore, as per the provisions of section 11(4A), we have to consider, as to whether the receipts from various activities as analyzed hereinabove are incidental to the objects of the Assessee/trust.



5.2. *Hon'ble Bombay High Court* in the case of *Baun Foundation Trust* reported in (2012) 73 DTR 45 took into consideration the situation, wherein the general public was also using the facility of chemist shop. In *Baun Foundation Trust (supra)*, exemption under Section 10(23C)(via) of the Act was in question. *Hon'ble Bombay High Court* referred to the decision of the *Hon'ble Supreme Court* in case of *Aditanar Educational Institution reported in (1997) 90 Taxmann 528* to hold that, a hospital must of necessity have a section or department, where medicines can be dispensed, and it is not uncommon for a medical hospital which exists for philanthropic purposes to have a chemist shop where pharmaceutical products are sold. This is a facility which is intended to be used predominantly by patients and their relatives. Though members of the general public are not prohibited from using the facility, the crucial question to determine is whether the establishment of the chemist shop is incidental or ancillary to the dominant object and purpose which is to set up and conduct a hospital for philanthropic purposes. In the facts of that case, it was held that, running of the chemist shop was not the dominant object or purpose of the trust.

5.3. The Courts in various decisions have held that, medicines are one of the most common healthcare interventions and play a significant role in patients' health management. Pharmaceuticals are an integral part of patient care. Admittedly the Assessee is running an Hospital and also having in-house patient's facilities, therefore, the medicines are essentials for the treatment of in-house



patients especially. The assessee is also giving treatment to out-patients, and therefore out-patients and even outsiders as well, are at their relatives have an option to purchase the medicines from the assessee's Pharmacy store, as there cannot be any restriction. The Assessee may be on commercial basis but in fact, directly-indirectly providing medical relief by selling medicines to the in-house patients and outpatients and outsiders as well and therefore protected by *CBDT Circular (supra)* as well.

5.3.1. It is also not the case of the revenue that the assessee established Pharmacy store exclusively for outpatients/outsideers and has utilized surplus from the operation of the chemist shop, for other objects than the prescribed objects. Hence on the aforesaid analysis, we hold that receipts from renting of Pharmacy shop is incidental and ancillary to the dominant object and purpose to provide medical facility, and thus the assessee complies with first condition of section 11(4A) of the Act.

5.4. In respect of the Interest earned by the assessee on FD, PCO receipts, Miscellaneous income, receipt from sale of scrap, canteen, lunch & farm receipts, received from sale of machines, received from nursing course fee we note that even if test of income directly arising from property of Trust is applied, interest directly accrues on funds of the Trust. *Hon'ble Bombay High Court* in case of *CIT v. Pruthivi Trust* reported in (1980) 124 ITR 488 observed that:—

"In order to ascertain the scope and ambit of the expression 'income derived from property held under trust' reference can be held to the decision of this Court in J.K. Trust v. CIT(1953) 23 ITR 143 . In this case, the High Court has held that in order to claim exemption it is not sufficient that the property is indirectly responsible for the income. The income must directly and substantially arise from the property held under trust. For arriving at this conclusion this Court referred to the decision of their Lordships of the Privy Council in CIT v. Kamakhya Narayan Singh(1948) 16 ITR 325 at p. 328, where the definition of the expression has been given of the word 'derived'. At page 151 (of 23 ITR) this Court pointed out:

'Reference might also be usefully made to the definition of the expression 'derived' given by the Privy Council in CIT v. Kamakhya Narayan Singh (1948) 16 ITR 325. It is true that their Lordships were there considering the question of agricultural income, but the interpretation placed upon the expression 'derived' by their Lordships is not without assistance for interpreting the same expression in section 4(3)(i). The expression used in this section is 'any income derived from property held under trust', and to put upon it the interpretation put by the Privy Council, the property must be the effective source from which the income arises. It is not sufficient that the property should be indirectly responsible for the income. The income must directly and substantially arise from the property held under trust. . . .'" (p. 494)

5.5. Even on above test, interest income will fall under section 11(1)(a) in respect of the receipt from letting out of assessee's premises, belonging to the educational institutions of the assessee, it is a well-settled principle of law that the test to determine as to what would be a charitable purpose within the meaning of section 2(15), is to be ascertained by its dominant object of the activity; whether it is to carry out a charitable purpose or to earn profit. If the pre-dominant object is to carry out a charitable purpose and not to earn profit, the purpose would not lose its charitable character merely because the some profit arises from the activity.



5.6. Revenue contends that provisions of section 11 (4) of the act cannot be overlooked. The revenue contends that this is a case, wherein, clearly the first proviso to section 2 (15) of the Act becomes applicable, in as much letting out the premises by the assessee amounted to an activity in the nature of trade, commerce or business, and not the object of 'advancement of education' as contended by the assessee.

5.6.1. On behalf of the assessee it is contended that the object of the trust was 'advancement of education' and merely because the auditorium being incidentally let out to outsiders for commercial purpose, would not change the dominant object of the trust which was 'advancement of education'. In support of the submissions. Reliance was placed on the decision of *Hon'ble Bombay High Court* in *DIT(E) vs. M/s Shri Vile Parle Kelavani Mandal* reported in (2015) 232 ITR 459 as also Circular no.11 of 2008 dated 19th December 2008

All the above referred activities thus, in our view are incidental and not the principal activity of the assessee. The allegations on behalf of the revenue that these are business income is not accepted as assessee could have exploited the sources of these income in order to earn huge profit, however the same has not been the intention of assessee.

5.6.2. In the decision therefore relied by the Ld.AR of *Hon'ble Supreme Court* in case of *Sole trustee, Loka Shikshana Trust vs CIT(supra)* honourable court observed that the assessee therein had



wide powers of utilisation of trust fund for the purpose of the trust but it could also divert its assets as well as any funds of the trust to other institutions whose objects are similar to the object of the trust. The *Hon'ble court* thus observed that the activities of the assessee were falling within the category of "advancement of any other object of general public utility" and not within the category of "charitable purpose that includes relief of the poor, education, medical relief". Similar is the observation by *Hon'ble Supreme Court* in case of Ahmedabad Urban Development Authority (supra). These decisions therefore are factually distinguishable from the present facts of the case and are not of assistance to the revenue in any manner whatsoever.

5.7. We are of the opinion that the manner in which these receipts are earned it is also observed that they are not earned with any profit motive. We thus hold that, section 11(4A) which requires separate accounts to be maintained would not be attracted in view of the conclusion that the said amounts received by the assessee for the years under consideration have been received in the process of achieving the main object, providing educational/medical relief. In this context, we refer to the observations of *Hon'ble Bombay High Court* in the case of *DIT(E) v. Vile Parle Kelawani Mandal* reported in (supra) *Hon'ble Court* observed as under :

"5. The Tribunal has held that the 'Management and Development Program & Consultancy Charges' is part and parcel of 'Narsee Monjee Institute of Management Studies' which has been set up by the respondent-assessee. The respondent-assessee is a trust and has set up 30 schools and colleges. The Commissioner as also the Tribunal has found that the



element of business is missing in conducting management courses. There may be some surplus generated which itself is applied towards the attainment of the object of the educational institute. The separate books of account cannot be insisted upon because once this programme is part and parcel of the activities undertaken and carried out by the Narsee Moonjee Institute of Management Studies, then the condition precedent set out in sub-section (4A) of section 11 of the I.T. Act is completely satisfied. Such finding of fact cannot be termed as perverse and it is in consonance with the factual aspect regarding activities of the trust and the object that it is seeking to achieve. Similarly, in regard to income from the hiring of the premises and advertisement rights, the said question is also not substantial question of law. Letting out of halls for marriages, sale and advertisement rights has not been found to be a regular activity undertaken as a part of business. The educational institutions require funds. The income is generated from giving various halls and properties of the institution on rentals only on Saturdays and Sundays and on public holidays when they are not required for educational activities, then, this cannot be said to be a business which is not incidental to attain the objects of the trust. This being merely an incidental activity and the income derived from it is used for the educational institute and not for any particular person, separate books of account are also maintained, then, this income cannot be brought to tax. This conclusion is also not perverse and given the facts and circumstances which are undisputed." (Emphasis supplied)

5.8. The circular relied by the Ld.AR further clarifies the position. CBDT in para 2 clarified the implications arising from the amendment:

"2. The following implications arise from this amendment:-

2.1 "The newly inserted proviso to section 2 (15) will not apply in respect of the first three limbs of section 2 (15) i.e. relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute charitable purpose even if it incidentally involves the carrying on of commercial activities.

3. The newly inserted proviso to section 2 (15) will apply only to entities whose purpose is 'advancement of any other object of general public utility i.e. the fourth limb of the definition of 'charitable purpose ' contained in section 2 (15). Hence such entities will not be eligible for exemption under section 11 or under section 10 (23C) of the Act if they carry on commercial



activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity." (Emphasis supplied)

5.9. In the light of the above discussions and analysis of the decisions relied by the Ld.AR as well as the Ld.AR applying the ratios to the relevant facts of the case we are of the opinion that the addition made by the Ld.AO in respect of the receipts from various activities undertaken by the assessee deserves to be deleted.

Accordingly ground 3-9 raised by the assessee in all the years under consideration stands allowed.

In the result appeals filed by the assessee for all the years under consideration stands allowed.

Order pronounced in the open court on 30-10 -2024.

Sd/-
RENU JAUHRI
ACCOUNTANT MEMBER

Sd/-
BEENA PILLAI
JUDICIAL MEMBER

Mumbai. Date: 30/10/2024
Snehal c. ayare, stenographer

Copy of the Order forwarded to :

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



BY ORDER,

(Dy./Asstt. Registrar)

ITAT, Mumbai