IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE "A" BENCHES, BANGALORE

BEFORE MRS. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA Nos.1265 & 1266/Bang/2024
Assessment Years: 2011-12 & 2012-13

Karnataka Chinmaya Seva Trust, Chinmaya Mission, C.M.H. Road, Indiranagar, Bengaluru-560038 Karnataka	v.	Deputy Commissioner of Income Tax (Exemptions), Circle-1 , Bengaluru
PAN:AAATK0797Q		
(Appellant)		(Respondent)

Assessee by:	Dr. N. Suresh, CA
Revenue by:	Ms. Neha Sahay, JCIT DR
Date of hearing:	04.09.2024
Date of pronouncement:	19.11.2024

O R D E R

PER BENCH:

These two appeals filed by the assessee, in ITA No. 1265/Bang/2024 and 1266/Bang/2024 have arisen from the separate appellate order(s) dated 07.03.2014 and 12.03.2024 passed by Ld. Commissioner of Income-Tax(Appeals) (hereinafter called "the CIT(A)") having DIN & Order No. ITBA/NFAC/S/250/2023-24/1062150198(1) and ITBA/NFAC/S/250/2023-24/1062456381(1) respectively for assessment year(s) 2011-12 and 2012-13, which in turn have arisen from the assessment order(s) dated 25.03.2014 and 30.03.2015 respectively passed by the ld. Assessing Officer(hereinafter called "the AO") both under Section 143(3) of the Income-tax Act,1961.

1.2. First, we shall take up assessee's appeal in ITA No. 1266/Bang/2024 for assessment year 2012-13.

2. The assessee has raised following grounds of appeal in Memo of Appeal filed with Income Tax Appellate Tribunal, Bangalore Benches, Bangalore, in ITA No. 1266/Bang/2024 for assessment year 2012-13:-

> *"1. The order of the learned CIT is contrary to the law and facts of the case. Therefore, it may be set aside.*
>
> *2. The order of the Learned CIT in so far as it is against the appellant is opposed to law, equity and weight of evidence, probabilities, facts and circumstances of the case.*
>
> *3. The Appellant denies itself to be assessed to an income of Rs. 1,82,88,905 against the returned income of Nil on the facts and circumstances of the case.*
>
> *4. The learned CIT has erred in not allowing the deduction u/s 11(1)(a) at 15% on gross income in accordance with section 11 of the Income Tax Act 1961.*
>
> *5. Without prejudice, the CIT has erred in denying exemptions u/s 11 of surplus arising from Pharmacy as business incidental. Where Pharmacy was set up under hospital which is integral part to facilitate patients to achieve the objects of 'Medical Relief".*
>
> *6. The learned CIT was not justified in law and on facts in appreciating that the appellant has applied the entire amount of receipts towards the objects of the trust and hence the denial of exemption under section 11 and 12, was bad in law, on the facts and circumstance of the case.*
>
> *7. The learned CIT has erred in considering the Scheme of the exemption provided under section 11 of the Income Tax Act, 1961.*
>
> *8. In view of the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and appropriate relief be granted in the interest of justice and equity."*

3. The brief facts of the case are that the assessee namely ***'Karnataka Chinmaya Seva Trust'*** came into existence in the year 1985 by virtue of execution of a trust deed vide Registration No. 478/85-86 dated 5.11.1985. The assessee was granted registration by Department under section 12A(a) vide order of the ld. Commissioner of Income-tax, Karnataka-II, Bangalore vide registration No. Trust/718/10A/Vol A1/374 dated 20.12.1985. The assessee was also granted recognition under section 80G(5)(vi) of the Act , by the DIT(Exemption) , Bangalore vide order dated 26.11.2009. The assessee filed its return of income for assessment

year 2012-13 on 21.03.2013 declaring income of rupees Nil. The return was processed by Revenue under Section 143(1) on 31.03.2013.The case was selected by Revenue for framing scrutiny assessment under CASS, and statutory notices under Section 143(2) and 142(1) were issued by the ld. Assessing Officer, during the course of assessment proceedings. The objects of the assessee as per assessee trust deed reads as under:-

> *"(i) To conduct study groups, lecture series, translate, publish, print and distribute books, journals, periodicals, literature, etc for promoting and spread of Indian Culture and education and enlightenment among the masses and to provide, establish, endow, maintain, control and manage schools, colleges and other educational institutions and to do all acts and things necessary for or conducive to the promotion of knowledge and to conduct school and colleges for primary, secondary and higher, commercial, technical and industrial education and for this purpose to start, establish, conduct, maintain and manage, reading rooms, libraries, tape libraries, gymnasiums, workshops, publishing houses, printing presses, hostels, residential quarters and the like.*
>
> *(ii) To provide medical relief to the poor, distressed, afflicted and mentally, physically, or psychologically handicapped persons, in India including supply of spectacles and other medical, surgical and remedial appliances and for this purpose to start, establish, conduct, maintain and manage and help dispensaries, hospitals, medical centres, diagnostic centres or other medical or aftercare institutions.*
>
> *(iii) To carry out objects of general public utility and security such as village uplift, rural reconstruction, public health and hygienics, community development, mass marriages, promotion of cottage industries and to start, establish, conduct, takeover, maintain and manage and help any institutions considered necessary to secure these objects e.g. orphanages, pinjrapoles old-age centres and the like.*
>
> *(iv) To give loans, scholarships, freeships, prize and assistance in cash or kind to students to help them in their studies.*
>
> *(v) To give donations to the National Defence Fund or any other similar fund either in cash or kind to provide medical or other relief in cash or kind to the members of the Armed Forces, their widows, children and dependents; and civilians affected by action of external aggression from any quarter.*
>
> *(vi) To give relief either in cash or kind to public in general and specially those affected by riots, flood, famines, fires, epidemics, droughts or other calamities.*
>
> *(vii) To purchase, acquire on lease or otherwise, immovable properties and to construct, maintain and manage the same or other movable properties necessary for the purposes of the Trust.*

(viii) To give donations in cash or kind to other institutions having similar object or objects and/or to help such institutions in any other manner.

(ix) To accept donations in cash or kind and to raise funds by advertisements in publications of the Trust, by arranging charity shows, by accepting fees and subscriptions, and other methods."

4. The assessee is running various education institutions throughout the State of Karnataka, Child Welfare Centre and Institute of Nursing etc. apart from hospital with the name and style of ***'Chinmaya Mission Hospital'*** at Bangalore.

4.2 The first issue which arose in this appeal concerns itself with the claim of deduction under section 11(1)(a)of the Act @ 15% of the gross receipts i.e. 15% of Rs.30,96,23,330/- viz. as sum of Rs. 4,64,43,500/- as statutory deduction claimed by the assessee u/s 11(1)(a). The assessee has raised the above issue vide Ground No.4 in Memo of Appeal filed with ITAT. The ld. Assessing Officer was of the view that this can be allowed only to the tune of 15% of net surplus rather than gross receipts. The assessee relied upon the judgment and order of ***Hon'ble Supreme Court*** in the case of ***CIT v. Programme for Community Organization*** ((2001) 248 ITR 0001(SC)), but the contention of the assessee was rejected by ld. AO. The ld. Assessing Officer observed that the deduction can only be granted under section 11(1)(a) of the Act to the tune of the 15% of the surplus i.e. gross receipts less expenses incurred towards earning the receipts and related establishment expenses, and not on gross contributions received by the assessee.

4.3. Aggrieved , the assessee filed first appeal with Ld. CIT(A). The Ld. CIT(A) rejected the contention of the assessee by holding as under:-

"3.In ground no.4 & 5 the assessee disputes the action of the AO in allowing deduction u/s 11(1)(a) only @ 15% of the net surplus rather than the entire income from the properties held by the trust. The findings of the AO recorded in para 13 and its sub paras of the assessment order are valid and confirmed. The ground no.4 &5 are dismissed in view of the findings of the AO recorded in para 13 and sub paras of the assessment order. Assessment of taxable income at Rs.1,82,88,905 is confirmed. The ground nos. 4 & 5 are dismissed."

4.4. Still aggrieved, the assessee filed second appeal with Tribunal, and at the outset ld. counsel for the assessee drew our attention to the provisions of Section 11(1)(a) of the Act and submitted that the assessee is entitled for deduction of 15% of the gross receipts , towards accumulation as is provided under section 11(1)(a)of the Act. He drew our attention to the judgment and order of ***Hon'ble Supreme Court*** in the case of ***CIT vs. Programme for Community Organization*** ((2001) 248 ITR 1(SC)) in Civil Appeal No.2658/1998,and submitted that the assessee is entitled for deduction undersection 11(1)(a) of the Act to the tune of 15% of the gross voluntary contributions. Our attention was also drawn to page 76-79 of the paper book i.e. the judgment and order of ***Hon'ble Bombay High Court*** in the case of ***CIT vs. Saifi Hospital Trust (2017)*** *395 ITR 0225(Bom. HC).* Our attention was also drawn to the order of ITAT, Bangalore Bench, Bangalore, in the case of ***Jyothy Charitable Trust v. Dy. CIT*** in ITA No. 389/Bang/2020 dated 11.02.2021, placed at page 63 to 67 of the paper book.

4.5 The ld. Sr. DR, on the other hand relied upon the decision of Ld. CIT(A).

4.6. The short question which has arisen before us on this issue is whether the assessee is entitled for claiming deduction u/s 11(1)(a) of the 1961 Act , to the tune of 15% of the gross receipts being voluntary contribution received, or is entitled for claiming deduction u/s 11(1)(a) of the 1961 Act to the tune of 15% of the surplus being voluntary contribution received less the expenditure incurred for earning the income and related establishment expenses. The issue is no more res-integra. The assessee is eligible to claim accumulation of income to the extent of 15% of gross voluntary contribution received being income derived from property held under trust. Reference is drawn to the judgment and order of Hon'ble Supreme Court in the case of ***CIT v. Programme for Community Organisation (supra), wherein Hon'ble Supreme Court held as under:***

"2. The question that really requires consideration is whether, for the purposes of section11(1)(a) of the Income Tax Act,1961,the amount for the grant of exemption

of twenty-five per cent should be the income of the trust or it should be its total income as determined for the purposes of assessment to income-tax. This question has to be answered in the light of these facts: The assessee-trust received donations in the aggregate sum of Rs.2,57,376. It applied thereout for its charitable purposes the aggregate sum of Rs. 1,70,369 leaving a balance of Rs. 87,010. The question is whether the assessee is entitled to accumulate twenty-five per cent.of Rs.2,57,376 as it contends, or twenty-five per cent of Rs. 87,010, as the, revenue appeared to contend.

Section 11(1)(a) reads thus:

> *11. (1)(a) Income derived from property held under trust wholly for charitable or religious' purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent. of the income from such property.'*

3. Having regard to the plain language of the above provision, it is clear that a charitable or religious trust is entitled to accumulate twenty-five per cent. of its income derived from property held under trust. For the present purposes, the donations the assessee received, in the sum of Rs. 2,57,376, would constitute its property and it is entitled to accumulate twenty-five per cent.thereout.It is unclear on what basis the revenue contended that it was entitled to accumulate only twenty-five per cent. of Rs. 87,010.

For the aforesaid reasons, the civil appeal is dismissed."

Reference is also drawn to the judgment and order of Hon'ble Supreme Court in the case of ***Addl. CIT v. The A L N Rao Charitable Trust, 1996 AIR 344 (216 ITR 697), wherein Hon'ble Supreme Court held as under:***

"10. Before we proceed to deal with the rival contentions centering round the true scope and ambit of section 11(1)(a) and section 11(2) as applicable to the assessment year in question, namely, 1969-70, it would be apposite to refer to these provisions at the outset. These provisions, as they stood at the relevant time, read as under :

"11. Income from property held for charitable or religious purposes.—(1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income :

(a)income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated for application to such purposes in India, to the extent to which the income so accumulated is not in excess of 25 per cent of the income from the property or rupees ten thousand, whichever is higher;

*** ** * * ** * * ***

(2) Where the persons in receipt of the income have complied with the following conditions, the restriction specified in clause (a) or clause (b)of sub-section (1) as respects accumulation or setting apart shall not apply for the period during which the said conditions remain complied with—

(a) such persons have, by notice in writing, given to the Income-tax Officer in the prescribed manner, specified the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

(b) the money so accumulated or set apart is invested in any Government security as defined in clause (2) of section 2 of the Public Debt Act, 1944 (XVIII of 1944), or in any other security which may be approved by the Central Government in this behalf."

Section 11 underwent an amendment by the Taxation Laws (Amendment) Act, 1975. As we are not concerned with these amended provisions in the present case, we need not dilate on them.

11. A mere look at section 11(1)(a), as it stood at the relevant time, clearly shows that out of total income accruing to a trust in the previous year from property held by it wholly for charitable or religious purpose, to the extent the income is applied for such religious or charitable purpose, the same will get out of the tax net but so far as the income which is not so applied during

the previous year is concerned at least 25 per cent of such income or Rs. 10,000, whichever is higher, will be permitted to be accumulated for charitable or religious purpose and it will also get exempted from the tax net. Then follows sub-section (2) which seeks to lift the restriction or the ceiling imposed on such exempted accumulated income during the previous year and also brings such further accumulated income out of the tax net if the conditions laid down by sub-section (2) of section 11 are fulfilled meaning thereby the money so accumulated is set apart to be invested in the Government securities, etc., as laid down by clause (b)of sub-section (2) of section 11 apart from the procedure laid down by clause (a)of section 11(2) being followed by the assessee-trust. To highlight this point we may take an illustration. If Rs. 1 lakh are earned as the total income of the previous year by the trust from property held by it wholly for charitable and religious purposes and if Rs. 20,000 are actually applied during the previous year by the said trust to such charitable or religious purposes the income of Rs. 20,000 will get exempted from being considered for the purpose of income-tax under first part of section 11(1). So far as the remaining Rs.80,000 are concerned, if they could not be actually applied for such religious or charitable purposes during the previous year then as per section 11(1)(a) at least 25 per cent of such total income from property or Rs.10,000, whichever is higher, will also earn exemption from being considered as income for the purpose of income-tax, that is, Rs. 25,000 will, thus, get excluded from the tax net. Thus, out of the total income of Rs. 1,00,000 which has accrued to the trust Rs. 25,000 will earn exemption from payment of income tax as per section 11(1)(a) second part. Then follows sub-section (2) which states that the ceiling or the limit or the restriction of accumulation of income to the extent of 25 per cent of the income or Rs. 10,000, whichever is higher, for earning income-tax exemption as engrafted under section 11(1)(a) will get lifted if the money so accumulated is invested as laid down by section 11(2)(b) meaning thereby out of the total accumulated income of Rs.80,000 accruing during the previous year and which could not be spent for charitable or religious purposes by the trust balance of Rs.55,000 if invested as laid down by sub-section (2) of section 11 will also get excluded from the tax net. But for such investment and if section 11(1) alone had applied Rs.55,000 being the balance of accumulated income would have been covered by the tax net. The learned counsel for the revenue submitted that the investment as contemplated by sub-section (2)(b)of section 11 must be investment of all accumulated income in Government securities, etc., namely, 100 per cent of

the accumulated income and not only 75 per cent thereof. And if that is not done then only the invested accumulated income to the extent of 75per cent will get excluded from income tax assessment. But so far the remaining 25 per cent of the accumulated income is concerned, it will not earn such exemption. It is difficult to appreciate this contention. The reason is obvious. Section 11(1)(a) operates on its own. By its operation two types of income earned by the trust during the previous year from its properties are given exemption from income-tax,(i)that part of the income of previous year which is actually spent for charitable or religious purposes in that year; and (ii) out of the unspent accumulated income of the previous year 25 per cent of such total property income or Rs.10,000, whichever is higher, can be permitted to be accumulated by the trust, earmarked for such charitable or religious purposes. Such 25 per cent of the income or Rs. 10,000, whichever is higher, will also get exempted from income-tax. That exhausts the operation of section 11(1)(a). Then follows sub-section (2) which naturally deals with the question of investment of the balance of accumulated income which has still not earned exemption under sub-section (1)(a). So far as that balance of accumulated income is concerned, that also can earn exemption from income-tax meaning thereby the ceiling or the limit of exemption of accumulated income from income-tax as imposed by sub-section (1)(a) of section 11 would get lifted if additional accumulated income beyond 25 per cent or Rs.10,000 whichever is higher, as the case may be, is invested as laid down by section 11(2) after following the procedure laid down therein. Therefore,sub-section(2) only will have to operate qua the balance of 75 per cent of the total income of the previous year or income beyond Rs. 10,000 whichever is higher, which has not got the benefit of tax exemption under sub-section (1)(a) of section 11.If the learned counsel for the revenue is right and if 100 per cent of the accumulated income of the previous year is to be invested under sub-section (2) of section 11 to get exemption from income-tax then the ceiling of 25 per cent or Rs. 10,000,whichever is higher, which is available for accumulation of income of the previous year for the trust to earn exemption from income-tax as laid down by section 11(1)(a) would be rendered redundant and the said exemption provision would become otios. It has to be kept in view that out of the accumulated income of the previous year an amount of Rs. 10,000 or 25 per cent of the total income from property,whichever is higher, is given exemption from income tax by section 11(1)(a) itself. That exemption is unfettered and not subject to any conditions. In other words,it is an absolute exemption. If sub-section (2) is so

read as suggested by the learned counsel for the revenue,what is an absolute and unfettered exemption of accumulated income as guaranteed by section 11(1)(a)would become a restricted exemption as laid down by section 11(2). Section 11(2) does not operate to whittle down or to cut across the exemption provisions contained in section 11(1)(a) so far as such accumulated income of the previous year is concerned. It has also to be appreciated that sub-section (2) of section 11 does not contain any non obstante clause like 'notwithstanding the provisions of sub-section (1)'. Consequently, it must be held that after section 11(1)(a) has full play and if still any accumulated income of the previous year is left to be dealt with and to be considered for the purpose of income-tax exemption,subsection(2) of section 11 can be pressed in service and if it is complied with then such additional accumulated income beyond 25 per cent or Rs.10,000, whichever is higher, can also earn exemption from income-tax on compliance with the conditions laid down by sub-section (2) of section 11. It is true that sub-section (2) of section 11 has not clearly mentioned the extent of the accumulated income which is to be invested. But on a conjoint reading of the aforesaid two provisions of sections 11(1) and 11(2) this is the only result which can follow. It is also to be kept in view that under the earlier Indian Income-tax Act, 1922 exemption was available to charitable trusts without any restriction upon the accumulated income. There was a change in this respect under the Act. Under the Act, any income accumulated in excess of 25 per cent or Rs. 10,000, whichever is higher, is taxable under section 11(1)(a) unless the special conditions regarding accumulation as laid down in section 11(2) are complied with. It is clear, therefore, that if the entire income received by a trust is spent for charitable purposes in India, then it will not be taxable but if there is a saving, i.e., to say an accumulation of 25 per cent or Rs. 10,000, whichever is higher, it will not be included in the taxable income. Section 11(2) quoted above further liberalizes and enlarges the exemption. A combined reading of both the provisions quoted above would clearly show that section 11(2) while enlarging the scope of exemption removes the restriction imposed by section 11(1)(a) but it does not take away the exemption allowed by section 11(1)(a). On the express language of sections 11(1) and 11(2) as they stood on the statute book at the relevant time no other view is possible.

12.In the light of the aforesaid discussion and keeping in view the illustration which we have given earlier the combined operation of section 11(1)(a) and

section 11(2) as applicable at the relevant time would yield the following result:

(i) If the income derived from property held under trust wholly for charitable or religious purposes during the previous year is Rs. 1 lakh and if Rs. 20,000 therefrom are actually applied to such purposes in India then those Rs. 20,000 will get exempted from payment of income-tax as per the first part of section 11(1)(a) .

(ii) Out of the remaining accumulated income of Rs. 80,000 for the previous year, a further sum of Rs. 25,000 will get exempted from payment of income-tax as per second part of section 11(1)(a). Thus, out of the total income derived from property as aforesaid during the previous year, that is, Rs. 1 lakh, Rs. 45,000 in all, will get excluded from the tax net on a combined operation of first and second part of section 11(1)(a).

(iii) The aforesaid ceiling of Rs. 25,000 of accumulated income from property of previous year, will get lifted under section 11(2) to the extent the balance of such accumulated income is invested as laid down by section 11(2). To take an illustration if, say, an additional amount of Rs. 20,000 out of the balance of accumulated income of Rs. 55,000 is invested as per section 11(2) then this additional amount of Rs. 20,000 of accumulated income will get excluded from the tax net as per section 11(2).

(iv) The remaining balance of the accumulated income out of Rs. 55,000, that is, Rs. 35,000 if not invested as per sub-section (2) of section 11 will be added to the taxable income of the trust and will not get exempted from the tax net.

(v) If on the other hand the entire remaining accumulated income of Rs. 55,000 is wholly invested as per section 11(2) the said entire amount of Rs. 55,000 will get exempted from the tax net.

13. We may also at this stage mention that the Kerala High Court in H.H. Marthanda Varma Elayaraja of Travancore Trust's case (supra), the Madhya Pradesh High Court in Mohanlal Hargovinddas Public

Charitable Trust's case (supra) , the Bombay High Court in Trustees of Bhat Family Research Foundation's case (supra) and the Madras High Court in C.M. Kothari Charitable Trust's case (supra) have taken the same view as the Karnataka High Court in the present case. We approve the view taken in the aforesaid decisions. We also approve the similar view taken by the Jammu & Kashmir High Court in Shri Krishen Chand Charitable Trust's case (supra). The learned counsel for the revenue, therefore, has made out no case for our interference with the decision rendered by the Division Bench of the Karnataka High Court.

14. In the result, this appeal fails and is dismissed. However, in the facts and circumstances of the case, there will be no order as to costs."

Thus, the issue is decided in favour of the assessee by following the aforesaid binding pronouncements of Hon'ble Supreme Court, wherein we hold that the assessee is entitled to accumulate income derived from property held under trust to the tune of 15% of the gross voluntary contribution received, without deducting of the expenditure incurred for earning the income and related establishment expenses. Thus, Ground No. 4 is decided in favour of the assessee. We order accordingly.

5. The second issue which arose in this appeal concerns itself with the exemption claimed by the assessee of the income arisen from running a Pharmacy for the purposes of hospital run by the assessee trust. The assessee has raised this issue vide Ground No.4. The assessee was asked by the ld. Assessing Officer to clarify whether separate books of accounts are maintained in respect of pharmacy and if so, furnish the same for verification. The assessee submitted that the ***Chinmaya Mission Hospital*** maintains separate books of accounts in respect of purchase and sale of medicine with computerized stock register through Easy HMS Software. But when the assessee was asked to furnish the separate books of accounts maintained by it having its own ledgers, journals, cash book, bank book etc,.the assessee submitted that except purchase account and sale account, there are no independent ledgers,journals, cash book, bank book etc., maintained by the assessee with respect to the pharmacy

unit. The ld. Assessing Officer observed that the books of accounts maintained by the assessee in Easy HMS Software are actually maintained in respect of ***Chinmaya Mission Hospital*** account rather than pharmacy account. The accounts of the pharmacy are merged with Chinmaya Mission Hospital account in respect of purchase and sale and stock register purpose only. But there are no separate books of accounts maintained considering the pharmacy unit as a separate cost centre. Thus, there is no separate expenditure booked in respect of maintenance of pharmacy unit with its own employees establishment expenses etc,. Thus the contention of the assessee as per ld. Assessing Officer that it is maintaining separate books of accounts in respect to its pharmacy unit has proved to be wrong, and section 11(4A) were invoked by the ld. Assessing Officer in order to tax the income from pharmacy unit. The ld. Assessing Officer observed that the assessee has earned gross profit of Rs. 1,44,51,062/- and net profit after expenses allocated comes to Rs. 1,30,47,306/- which was brought to tax by the ld. Assessing Officer.

5.2 Aggrieved, the assessee filed first appeal and the Ld. CIT(A) dismissed the appeal of the assessee by holding as under:-

> *"2. In ground no. 2, the assessee contend that it is engaged in public Charitable activity and its income is exempt u/s 2(15) r.w.s 11,12&13. The AO found out that the assessee was in receipt of anonymous donation and was carrying out its activities on commercial scale. In ground no. 3 the assessee disputes the AO's action of assessing the net surplus of Rs.14451062 from the pharmacy Unit u/s 11(4A). The appellant was running the pharmacy unit on a commercial scale. The AO in a speaking order proved that the assessee was carrying out its activities like a business venture and hence the action of the AO in assessing the net surplus is fully justified. The ground no.2 is dismissed."*

5.3 Still aggrieved, the assessee filed second appeal with ITAT, and it was submitted that the assessee is running 250 bed hospital. There is a small pharmacy attached to the hospital and the same is not a separate business. The pharmacy is catering to the hospital. It was submitted that the AO has denied exemption on the income earned on the pharmacy. It was submitted that in the assessment year's 2013-

14 and 2014-15 in assessee's own case, this issue has been decided by ITAT, Bangalore in favour of the assessee by the Tribunal in ITA No. 1667 & 1668/Bang/2019 vide common order dated 2.11.2021. Our attention was drawn to para 28 of the said order at page 16. The ld. counsel for the assessee further relied upon the decision of ITAT, Bangalore in the case of ***Moogambigai Charitable & Educational Trust*** *v. Addl. DIT(E)*in ITA No. 1224/2015 , dated 29.04.2022 which was decided in pursuance of the directions of ***Hon'ble Karnataka High Court*** in ITA no 01/2017 dated 09.03.2021 (in which one of us being Hon'ble Judicial Member was part of the Division Bench who pronounced the order , dated 29.04.2022), wherein this issue has been decided in favour of the assessee by holding that running of pharmacy is necessary requirement for running of hospital and is in fact integral part of the running of the hospital, and exemption u/s 11 were allowed on the income earned from running of pharmacy. .

5.4 The ld. DR, on the other hand, relied upon the order of the ld. Assessing Officer and she drew our attention to the assessment order and she submitted that there are twin condition under section 11(4A) which are required to be complied with before any exemption can be allowed, firstly that the business should be incidental to the attainment of the objectives of the trust and secondly separate books of accounts are maintained by such trust or institution in respect of such business. The assessee has not complied with this condition and hence it was submitted that the deduction should not be allowed to the assessee as the assessee is running a business of pharmacy.

5.5 We have considered rival contentions and perused the material on record. We have observed that the assessee is running a pharmacy within the premises of the hospital run by the assessee. The said pharmacy caters to in-patients in the hospital as well out door patients. The AO has denied the benefit of deduction u/s 11 on the ground that the said activity of running pharmacy is business. Similar issue has been decided in case of the assessee itself by the co-ordinate Bench of ITAT in favour of the

assessee by holding that the assessee is entitled for deduction u/s 11 on income earned from pharmacy. It has been held by the co-ordinate Bench that running of pharmacy is a necessary requirement for running a hospital and is an integral part of the hospital business and the same is not hit adversely by the conditions specified in the provisions of Section 11(4A) of the 1961 Act. Reference is drawn to order of ITAT, Bangalore in ***ITA No. 1667 & 1668/Bang/2019 for assessment year 2013-14 and 2014-15***, which are the orders in assessee's own case for assessment year 2013-14 and 2014-15, where in the ITAT, Bangalore Bench held as under:

"17. We have heard both the parties and perused the materials on record.

18. The ld. DR placed reliance on the judgment of the Bombay High Court in the case of Indian Machine Tool and Manufactures Association Vs. DIT(Exemption) in 302 CTR 289 wherein, it is held that the assessee has claimed exemption u/s 11 in respect of surplus earned by it by well organized exhibition and regular activity was incidental to assessee's business but assessee could not maintain separate books of account in respect of said activity as mandated u/s 11(4A) of the Income-tax(Exemption). Hence, exemption u/s 11 could not be granted.

19. Further, he relied on the judgment of Hon'ble Karnataka High Court in the case of DCIT VS. Moogambigai Charitable Educational Trust 281 taxmann.com 349(Kar), wherein, it is observed as under:-

> *"Where Tribunal held that pharmacy income of assessee trust was charitable income and not business income, however, had not recorded any reasons whether or not assessee had complied with conditions mentioned in section 11(4A), order passed by Tribunal was cryptic and suffered from vice of non application of mind and therefore, finding of Tribunal could not be sustained."*

20. Thus, he submitted that running of pharmacy is incidental activity of the assessee and the assessee has not maintain separate set of books of account as prescribed in sec.11(4A) of the Act and hence, the assessee was not entitled to exemption of income earned from pharmacy.

21. The ld.AR submitted that running pharmacy is not incidental business of the assessee and on the other hand, it is part and parcel of the main object of the trust activity of the assessee and being so,the assessee is not required to maintain separate set of books of account as enumerated u/s 11(4A) of the Act. He submitted that the assessee has been established and carried out the following activity.

> *"4.2. The one of the objective of the assessee-trust is "To provide medical relief to the poor, distressed, afflicted and mentally, physically, or psychologically handicapped persons, in India including supply of spectacles and other medical, surgical and remedial appliances and for this purpose to start, establish, conduct, maintain and manage and help dispensaries, hospitals, medical centres, diagnostic centres or other medical or aftercare institutions." The affirmations of the AO for brining to tax the surplus income from pharmacy by invoking provisions of section 11(4A) of the Act areas under:*
> *1. No separate books of account are not maintained except purchase and sale account in respect of pharmacy unit.*
> *2. On perusal of purchase and sale of medicine and after determining surplus amount, it is concluded by the AO that assessee is running pharmacy unit as business entity rather than charitable trust."*

22. Thus, while carrying on the above activities, the assessee has also carried on the business of pharmacy and income from that business was used for charitable purposes viz., providing medical relief to the poor public etc., and the assessee has claimed exemption u/s 11 of the Act for the income earned from the business of pharmacy.

23. The case of the Revenue is that the pharmacy shop constitutes an independent business that requires maintenance of the books of account separately in addition to the books of account maintained for the purpose of business of the hospital run by the assessee. When, such separate books of accounts are not maintained for pharmacy, there is a violation of provisions of section 11(4A) of the Act resulting in denial of exemption in respect of profits relatable to the said pharmacy shop.

24. On the contrary, the case of the assessee is that the running of a hospital includes a running of pharmacy as well.Therefore, the pharmacy business is not an independent business activity so far as the assessee is concerned. In fact, the same

constitutes an integral part of the business of running of a hospital. For this proposition, assessee relied on various decisions, which were already cited above. As the assessee has undisputedly maintained the books of account for the hospital separately, the assessee fulfils the condition of maintaining the separate books of account for the integral business activity for all integral business activities of running of a hospital i.e pharmacy shop as well. Therefore, there is no violation of the twin conditions specified in section 11(4A) of the Act.

25. We have perused the relevant provisions of section 11(4A) of the Act and the same reads as under:-

> *"Sec:11(4A) 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 ....."*
>
> *" We have also examined the relevant proviso to section 10(23C) of the Act and the relevant portions are extracted as under:*
>
> *"Provided also that nothing contained in sub-clause (iv) or subclause (v) [or sub clause (vi) or sub-clause (via)] shall apply in relation to any income of the fund or trust or institution [or any university or other educational institution or any hospital or other medical institution], being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business;"*

26. From the comparison of the language of the two provisions extracted above, we find, the language used in the provisions are comparable and, therefore, the common purpose is easily decipherable by the above provisions appearing in to different sections from the Act. Therefore, we agree with the relevant argument propounded by the Ld Counsel for the assessee.

27. Regarding the argument pertaining to whether the pharmacy shop is an integral part of the hospital business, as mentioned above, we find that the High Court of Bombay in the case of Baun Foundation Trust Vs. CCIT (73 DTR 45), which was delivered in the context of the provisions of section 10(23C) of the Act and find relevant to extract the relevant para which is as follows:-

"4. In Aditanar Education Institute Etc. v. Additional Commissioner of Income Tax (1997) 224 ITR 310 (SC), the Supreme Court has observed, while construing the provisions of Section 10(22) that the decisive or acid test is whether on an overall view of the matter the object is to make a profit. If after meeting the expenditure any surplus results incidentally from the activity lawfully carried on by the institution, it will not cease to be one existing solely for the statutorily stipulated purpose so long as the object is not to make a profit. Again, it is a wel1 settled position in law that the dominant nature of the purpose for which the trust exists has to be considered. The Chief Commissioner has not doubted the genuineness of the trust or the fact that it is conducting a hospital. Even if the figures which are taken into account by the Chief Commissioner are to be had regard to, it is evident that the activity of a chemist shop is an activity which is incidental or ancillary to the dominant object and purpose which is to run a hospital. The Chief Commissioner has accepted that the surplus which is earned from the operation of a chemist shop is utilized .for the purposes of the hospital. A hospital must of necessity have a section or department where medicines can be dispensed and 8 it is not uncommon for a medical hospital which exists even 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 the members of the general public are not prohibited from using the facility, the crucial question to ask or the test to answer is whether the establishment of a chemist shop is incidental or ancillary to the dominant object and purpose which is to set up and conduct a hospital for philanthropic purposes. As a matter of fact, Section 10(23C) permits the accumulation of income upto a certain stipulated amount over a stipulated period. In our view, the Chief Commissioner of Income Tax has clearly misapplied himself in law by having regard to a clearly ancillary or incidental activity and elevating it to the status of the dominant purpose for which the hospital has been established. Running the chemist shop in the present case is not the dominant object or purpose of the trust. Nor would the figure as disclosed indicate that the nature of the activity has assumed such a dominating or overwhelming importance so as to cast doubt on the true nature and character of the hospital which is conducted by the Petitioner. The Chief Commissioner has acted contrary to the judgments of the Supreme Court which hold the field consequent upon which the impugned order would have to be set aside."

28. From the above, it is clear that the running of a pharmacy is a necessary requirement for running of a hospital. It is impossibility from medical point of view that the hospital can run without "pharmacy shop" in the premises of the hospital. Considering the same, the Hon'ble High Court has held that maintenance of a pharmacy shop is ancillary to the dominant object of running of a hospital and thus, it is an integral part of the hospital. Actually the pharmacy shop is being maintained by the hospital itself and not by any private contractor. Drawing the medicine from such pharmacy shop by the Doctors in respect of the patients is also evident from the records, commonly maintained in their medical reports. It is not the case of the revenue that the profits earned on pharmacy was not spent for the objects of trust. Therefore, we find, that the cited judgments (supra) are applicable squarely to the facts of the case so far as the argument relating to if the pharmacy is an integral part of the hospital business or not. Considering the above, we are of the opinion, the conditions of maintenance of books of account in respect of the business activity of trading of medicines, which is an integral part of the hospital activities, is not the requirement of the law on the facts of this case. Thus, we affirm the assessee's contention that the pharmacy shop is an integral part of the hospital business and the same is not hit adversely by the conditions specified in the provisions of section 11(4A) of the Act. Therefore, so long as the transactions of such pharmacy which ancillary/ incidental for the business of a hospital and objects of the trust, the conditions relating to maintenance of separate books of accounts are met within the meaning of section11(4A) of the Act. Accordingly, grounds raised by the Revenue are dismissed."

The ITAT, Bangalore Bench has also decided the same issue in favour of the assessee in ***Moogambigai Charitable & Educational Trust*** v. Addl. DIT(E) in ITA No. 1224/Bang/2015 , dated 29.04.2022, in which one of us Hon'ble Judicial Member was part of the DB which pronounced the said order, wherein it was held as under:

"9. We heard the rival submissions and perused the material on record. It is worthwhile to look into the provisions of section 11(4A) of the Act, which is reproduced below:-

> "(4A) Sub-section (1) or sub-section (2) or sub-section (3) or subsection (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."

10. From the provision extracted above it is clear that the twin conditions of the business income being incidental to objects of the trust and maintenance of separate set of books need to be met in order claim exemptions u/s.11 of such income. In assessee's case there is no dispute that running the pharmacy is incidental to the objects of the Trust i.e. running the hospital and medical college. The second condition of maintenance of separate set of books is where the issue in this appeal is arising. We notice that the assessee has produced before the AO the separate ledger accounts maintained for the pharmacy business from which the AO could draw a trading account.

11. The ground on which the AO denied the exemption is that the assessee is not maintaining separate set of books though he was able to identify the pharmacy business related details from the ledger accounts maintained by the assessee. The AO has also stated that the assessee is able to generate gross profit out of running the pharmacy and hence justified treatment of the same as business income. The CIT(A) upheld the AO's views stating that if reliance placed by the assessee in the case of M/s.Franciscan Sisters of St.Joseph Society (supra) needs to be accepted, then there should be clear breakup of medicines purchased by different categories of patients i.e. indoor, outdoor and outside public. However from the perusal of the records there is no evidence to show that the CIT(A) called for the breakup and that the assessee could not produce the same from the ledger accounts.

12. We notice that the Hon'ble Chennai Bench of the ITAT in the case of M/s. Franciscan Sisters of St. Joseph Society (supra), held that

> 12. The first item so considered by the assessing authority is the receipts from pharmacy section.It is to be seen that assessee is running a fullfledged general hospital at St.Thomas Mount.The assessing authority has, no doubt, accepted the charitable nature of activities carried on by the assessee-society in respect of that hospital.The assessee is also running a dispensary. Number of patients are visiting the hospital and dispensary on a daily basis.

Patients are admitted as in-patients and they are also treated as out-patients. For all the in-patients undergoing treatment in the hospital, medicines are delivered from the pharmacy run by the assessee-society. In respect of out-patients also, most of the patients purchase medicine from the pharmacy run by the assessee. A few of the out-patients might purchase medicines from outside. Likewise, few from the public living nearby to the hospital may purchase medicines from the pharmacy run by the assessee-society. The purchase of medicines by the public is absolutely negligible. That negligible amount of sales, if any, cannot decide the nature of activities carried on by the assessee in running the pharmacy in its hospital premises. The pharmacy is not situated in any commercial area or outside the hospital compound with the intention to invite the public at large to purchase medicines from the pharmacy run by the assessee-society. The assessee society is running the pharmacy within the premises of the hospital and as part of the hospital itself. It is clear that the pharmacy is run by the assessee-society only for the purpose of running the hospital. The hospital cannot be run without a pharmacy attached to it. If an assessee wants to run a hospital, running of the pharmacy is also a must. Therefore, running of the pharmacy by the assessee-society is not an activity carried on by the assessee incidental to the running of the hospital; but, on the other hand, it is an integral part of the hospital run by the assessee.

13. In these circumstances, the assessing authority has erred both on facts and in law in holding that the pharmacy run by the assessee-society is a separate unit, running as a business. The Assessing Officer has observed that the assessee-society has maintained separate accounts for the pharmacy section. Maintaining accounts separately for pharmacy section does not decide the nature of the activities carried on by the assessee through running of the pharmacy. Separate accounts are maintained by the assessee for the purpose of proper accounting and internal control. Even in the case of charitable hospital, it is not possible to provide medicines to every patient, free of cost. It is only in very deserving cases, a charitable institution could provide medicines free of cost. Therefore, running of a pharmacy set up as part of the hospital, involves purchase and sale of medicines. Therefore, not much discussion is necessary to come to a conclusion that in the case of a full-fledged hospital, pharmacy is an essential part thereof and as such, the pharmacy is run as part of the hospital establishment.

> 14. In the facts and circumstances, we find that the collection received by the assessee from its pharmacy section cannot be excluded from computing the income eligible for exemption under Section 11 of the Income-tax Act, 1961. The pharmacy collection also forms part of the collections accounted by the assessee from its charitable activities. Therefore, Assessing Officer is directed to give exemption under Section 11 in respect of the pharmacy collection as well.

13. From the above it becomes clear that the decision of treating the pharmacy income as eligible for exemption u/s.11 is taken on the basis that the running of the pharmacy within the hospital premises is an integral part of running the hospital which is the main object of the trust. The Hon'ble Tribunal had even said that the maintenance of books is not a criteria for deciding the nature of activity. In assessee's case is very much similar and hence the principles laid down in the case of M/s.Franciscan Sisters of St.Joseph Society (supra) is squarely applicable to the assessee.

14. We also notice that the Co-ordinate Bench of the Tribunal in the case of DCIT (Exemption) v. Karnataka Chinmaya Trust in ITA Nos.1667 & 1668/Bang/2019 (order dated 02.11.2021) has considered the same issue and held as follows:-

> "23. The case of the Revenue is that the pharmacy shop constitutes an independent business that requires maintenance of the books of account separately in addition to the books of account maintained for the purpose of business of the hospital run by the assessee. When, such separate books of accounts are not maintained for pharmacy, there is a violation of provisions of section 11(4A) of the Act resulting in denial of exemption in respect of profits relatable to the said pharmacy shop.
>
> 24. On the contrary, the case of the assessee is that the running of a hospital includes a running of pharmacy as well. Therefore, the pharmacy business is not an independent business activity so far as the assessee is concerned. In fact, the same constitutes an integral part of the business of running of a hospital. For this proposition, assessee relied on various decisions, which were already cited above. As the assessee has undisputedly maintained the books of account for the hospital separately, the assessee fulfils the condition of maintaining the separate books of account for the integral business activity for all integral business activities of running of a hospital i.e

pharmacy shop as well. Therefore, there is no violation of the twin conditions specified in section 11(4A) of the Act.

25. We have perused the relevant provisions of section 11(4A) of the Act and the same reads as under:-

"Sec:11(4A) 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 ....."

We have also examined the relevant proviso to section 10(23C) of the Act and the relevant portions are extracted as under:

"Provided also that nothing contained in sub-clause (iv) or subclause (v) [or sub clause (vi) or sub-clause (via)] shall apply in relation to any income of the fund or trust or institution [or any university or other educational institution or any hospital or other medical institution], being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business;"

26. From the comparison of the language of the two provisions extracted above, we find, the language used in the provisions are comparable and, therefore, the common purpose is easily decipherable by the above provisions appearing in to different sections from the Act. Therefore, we agree with the relevant argument propounded by the Ld Counsel for the assesse.

27. Regarding the argument pertaining to whether the pharmacy shop is an integral part of the hospital business, as mentioned above, we find that the High Court of Bombay in the case of Baun Foundation Trust Vs. CCIT (73 DTR 45), which was delivered in the context of the provisions of section 10(23C) of the Act and find relevant to extract the relevant para which is as follows:-

> "4. In Aditanar Education Institute Etc. v. Additional Commissioner of Income Tax (1997) 224 ITR 310 (SC), the Supreme Court has observed, while construing the provisions of Section 10(22) that the decisive or

acid test is whether on an overall view of the matter the object is to make a profit. If after meeting the expenditure any surplus results incidentally from the activity lawfully carried on by the institution, it will not cease to be one existing solely for the statutorily stipulated purpose so long as the object is not to make a profit. Again, it is a wel1 settled position in law that the dominant nature of the purpose for which the trust exists has to be considered. The Chief Commissioner has not doubted the genuineness of the trust or the fact that it is conducting a hospital. Even if the figures which are taken into account by the Chief Commissioner are to be had regard to, it is evident that the activity of a chemist shop is an activity which is incidental or ancillary to the dominant object and purpose which is to run a hospital. The Chief Commissioner has accepted that the surplus which is earned from the operation of a chemist shop is utilized .for the purposes of the hospital. 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 even 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 the members of the general public are not prohibited from using the facility, the crucial question to ask or the test to answer is whether the establishment of a chemist shop is incidental or ancillary to the dominant object and purpose which is to set up and conduct a hospital for philanthropic purposes. As a matter of fact, Section 10(23C) permits the accumulation of income upto a certain stipulated amount over a stipulated period. In our view, the Chief Commissioner of Income Tax has clearly misapplied himself in law by having regard to a clearly ancillary or incidental activity and elevating it to the status of the dominant purpose for which the hospital has been established. Running the chemist shop in the present case is not the dominant object or purpose of the trust. Nor would the figure as disclosed indicate that the nature of the activity has assumed such a dominating or overwhelming importance so as to cast doubt on the true nature and character of the hospital which is conducted by the Petitioner. The Chief Commissioner has acted contrary to the judgments of the Supreme Court which hold the field consequent upon which the impugned order would have to be set aside."

28. From the above, it is clear that the running of a pharmacy is a necessary requirement for running of a hospital. It is impossibility from medical point of view that the hospital can run without "pharmacy shop" in the premises of the hospital. Considering the same, the Hon'ble High Court has held that maintenance of a pharmacy shop is ancillary to the dominant object of running of a hospital and thus, it is an integral part of the hospital. Actually the pharmacy shop is being maintained by the hospital itself and not by any private contractor. Drawing the medicine from such pharmacy shop by the Doctors in respect of the patients is also evident from the records, commonly maintained in their medical reports. It is not the case of the revenue that the profits earned on pharmacy was not spent for the objects of trust. Therefore, we find, that the cited judgments (supra) are applicable squarely to the facts of the case so far as the argument relating to if the pharmacy is an integral part of the hospital business or not. Considering the above, we are of the opinion, the conditions of maintenance of books of account in respect of the business activity of trading of medicines, which is an integral part of the hospital activities, is not the requirement of the law on the facts of this case. Thus, we affirm the assessee's contention that the pharmacy shop is an integral part of the hospital business and the same is not hit adversely by the conditions specified in the provisions of section 11(4A) of the Act. Therefore, so long as the transactions of such pharmacy which ancillary/ incidental for the business of a hospital and objects of the trust, the conditions relating to maintenance of separate books of accounts are met within the meaning of section11(4A) of the Act. Accordingly, grounds raised by the Revenue are dismissed.

29. In the result, this ground in both the Revenue's appeals are dismissed."

15. The coordinate bench of the Tribunal also laid out that running the pharmacy is very much an integral part of running the hospital as per the objects of the trust and the conditions of maintenance of books of account in respect of the business activity of trading of medicines, which is an integral part of the hospital activities, is not the requirement of the law on the facts of the case. When running of the pharmacy is part and parcel of the main activity of running the hospital, the incidental sale of medicines to outside public cannot be considered as the criteria for the denial of exemption and such distinction of to whom the medicines are sold is of no relevance. In any case the assessee is maintaining separate ledger accounts from where the

profits are clearly identifiable and given that the transactions of pharmacy is incidental to the business of the hospital and the objects of the Trust, the conditions relating to maintenance of separate books of account are met within the meaning of section 11(4A) of the Act.

16. We respectfully follow the decision of the coordinate bench of the Tribunal in Karnataka Chinmaya Trust (supra) and the principle laid down by the Hon'ble Chennai Bench in M/s.Franciscan Sisters of St.Joseph Society (supra) and hold that the income from running the pharmacy which is integral part of the hospital is eligible for exemption u/s.11 and hence the AO is directed to delete the addition made in this regard. The appeal is allowed in favour of the assessee.

17. In the result, the appeal filed by the assessee is allowed."

Reference is drawn to order of Hon'ble Bombay High Court in the case of ***Baun Foundation Trust v. CCIT*** in W.P. no. 1206 of 2010, order dated 27.03.2012, wherein Hon'ble Bombay High court held as under:

"2. The sole ground on which the Chief CIT has denied his approval is/that the petitioner-conducts a chemist shop in the premises of the hospital. The Chief CIT has computed the net surplus from the chemist shop as a percentage of the income and came to the conclusion that it varied between 15 per cent for 2007-08 to 18 per cent for 2008-09. Moreover, it has been observed that 73 per cent of the total turnover is from in patients, while 27 per cent is from the general public which would include purchases made by the patients coming to the out patients' department (OPD). The percentage of surplus from the chemist shop to the total turnover is stated to range between 3.72 per cent to 5.19 per cent between 2006-07 and 2008-09. Having so observed, the Chief CIT in his impugned order has accepted the position that the surplus which is earned from the chemist shop is utilized for the purposes of the hospital Despite this, the Chief CIT has held that the nature of a chemist shop is not exclusive to the patients coming to the hospital and is commercial or akin to trading activity. Hence, it has been concluded that the trust does not exist solely for the purposes of philanthropy? As a result, the ' application has been rejected.

3. Counsel appearing on behalf of the petitioner submits that the fundamental test which is required to be adopted is whether the object of the trust is to make a profit

or contrariwise whether the trust exists solely for philanthropic purposes. Learned counsel submitted that it is the dominant nature of the purpose for which the trust exists that has to be borne in mind and if that is found to be philanthropic, any other object merely ancillary or incidental to the primary or dominant purpose would not detract from the true nature or character of the trust. Consequently, it was urged that the Chief CIT has misapplied himself in law. On the other hand counsel appearing on behalf of the Revenue has\supported the order passed by the Chief CIT.

4. In Aditanar Educational Institution Etc. v. Addl. CIT [1997] 224 ITR 310/90 Taxman 528, the Supreme Court has observed, while construing the provisions of s. 10(22) that the decisive or acid test is whether on an overall view of the matter the object is to make a profit. If after meeting the expenditure any surplus results incidentally from the activity lawfully carried on by the institution, it will not cease to be one existing solely for the statutorily stipulated purpose so long as the object is not to make a profit. Again, it is a well-settled position in "law that the dominant nature of the purpose for which the trust exists has to be dominant nature of the purpose for which the trust to be considered. The Chief CIT has not doubted the genuineness of the trust or the fact that if is conducting a hospital. Even if the figures which are taken into account by the Chief CIT are to be had regard to, it is evident that the activity of a chemist shop is an activity which is incidental or ancillary to the dominant object and purpose which is to man a hospital. The Chief CIT has accepted that the surplus which is earned from the operation of a chemist shop is utilized for the purposes of the hospital. 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 even 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 the members of the general public are not prohibited from using the facility, the crucial question to ask or the test to answer is whether the establishment of a chemist shop is incidental or ancillary to the dominant object and purpose which is to set up and conduct a hospital for philanthropic purpose. As a matter of fact, s. 10(23C) permits the accumulation of income upto a certain stipulated amount over a stipulated period. In our view, the Chief CIT has clearly misapplied himself in law by having regard to a clearly ancillary or incidental activity and elevating it to the status of the dominant purpose for which the hospital has been established Running the chemist shop in the present case is not the dominant object or purpose of the trust. Nor would the figures as disclosed indicate that the nature of the activity has assumed such a

dominating or overwhelming importance so as to cast doubt on the true nature and character of the hospital which is conducted by the petitioner. The Chief CIT has acted contrary to the judgments of the Supreme Court which hold the field consequent upon which the impugned order would have to be set aside.

5. We accordingly quash and set aside the impugned order of the Chief CIT dt. 29th April, 2010 and direct that the application filed by the petitioner under the provisions of s. 10(23C)(via) shall be considered in the light of the observations contained in the earlier part of this judgment. We clarify that it would not be open to the Chief CIT upon remand to reject the application on the grounds for rejection in the impugned order which has been quashed and set aside. The Chief CIT shall pass a fresh order after furnishing to the petitioner an opportunity of being heard and this exercise shall be completed within a period of two weeks from the date on which an authenticated copy of this order is produced by the petitioner. Rule is made absolute in these terms.

There shall be no order as to costs."

No contrary order or judgment has been brought to our notice by ld. Sr. DR. We are in agreement with the view taken by co-ordinate Benches. Principles of Res-judicate is not applicable to the income-tax proceedings, but rule of consistency is to be followed . Reference is drawn to judgment and order of Hon'ble Supreme Court in the case of ***Radhasoami Satsang v. CIT(1992) 193 ITR 321(SC).*** Following rule of consistency, we decide the issue in favour of the assessee and holds that income earned by the assessee from running the pharmacy within hospital premises, is to be allowed as deduction u/s. 11 of the 1961 Act. Thus, Ground No. 4 raised by the assessee is allowed. We order accordingly.

6. So far as ground no. 1, 2, 3 6 , 7 and 8 are concerned, the same are general in nature and does not require separate adjudication and hence dismissed. We order accordingly.

7. In the result appeal of the assessee in ITA no. 1266/Bang/2024 for assessment year 2012-13 is partly allowed.

ITA No.1265/Bang/2024-Assessment Year 2011-12

8. This appeal, in ITA No. 1265/Bang/2024, for assessment year 2011-12 has arisen from the appellate order dated 7.03.2024 passed by Ld. CIT(A) having DIN & Order No. ITBA/NFAC/S/250/2023-24/1062150198(1) for assessment year 2011-12, which in turn has arisen from the assessment order dated 25.03.2014 passed by the ld. Assessing Officer under section 143(3) of the Act.

9. The assessee has raised following grounds of appeal in memo of appeal filed with Income Tax Appellate Tribunal, Bangalore Benches, Bangalore in ITA No. 1265/Bang./2024 for assessment year 2011-12:-

> *"1. The order of the learned CIT is contrary to the law and facts of the case. Therefore, it may be set aside.*
>
> *2. The order of the Learned CIT in so far as it is against the appellant is opposed to law, equity and weight of evidence, probabilities, facts and circumstances of the case.*
>
> *3. The Appellant denies itself to be assessed to an income of Rs. 3,19,93,295 against the returned income of Nil on the facts and circumstances of the case.*
>
> *4. The learned CIT has erred in not allowing the deduction u/s 11(1)(a) at 15% on gross income in accordance with section 11 of the Income Tax Act 1961.*
>
> *5. Without prejudice, the CIT has erred in denying exemptions u/s 11 of surplus arising from Pharmacy amounting to Rs. 1,30,47,306. Where Pharmacy was set up under hospital which is integral part to facilitate patients to achieve the objects of 'Medical Relief".*
>
> *6. The Learned CIT has erred in denying the exemption of Corpus fund and Gurudakshina received amounting to 48,14,492.*
>
> *7. The Learned CIT erred in denying donation payment made by trust to another institution and brought to tax amounting to Rs. 7,55,506.*
>
> *8. The Learned CIT has erred in not allowing the donation receipt transferred from KCST Bangalore unit to Kolar unit amounting to Rs. 34,86,557.*
>
> *9. The Learned CIT erred in denying the exemptions of corpus fund and general donation received amounting to Rs. 81,30,574 treated as anonymous donation and taxed u/s 115BBC.*
>
> *10. Without prejudice, the Learned CIT is erred in interpreting the ratio held in the Supreme Court in case of CIT v. Programme for Community Organization (2001) 248 ITR 1.*

11. The learned CIT was not justified in law and on facts in appreciating that the appellant has applied the entire amount of receipts towards the objects of the trust and hence the denial of exemption under section11 and 12, was bad in law, on the facts and circumstance of the case.

12. In view of the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and appropriate relief be granted in the interest of justice and equity."

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10. At the outset, the ld. counsel for the assessee submitted that ground nos. 1-3 and 10-12 are general in nature and ought to be dismissed. The ld. counsel for the assessee further submitted that the ground no. 8 raised by the assessee in memo of appeal filed with the Tribunal is not pressed and should be dismissed. The ld. Sr. DR has no objection to the dismissal of grounds 1-3, 10-12 and 8. After hearing both the parties, We dismiss Ground nos. 1-3, 8 and 10-12. We order accordingly.

11. Ground No. 4 concerns itself with the claim of the assessee for allowability of deduction under section 11(1)(a) of the Act @ 15% of the gross receipts from property held under trust, instead of deduction @ 15% of the income after deducting for expenses incurred for earning income and related establishment expenses as was allowed by the AO and upheld by ld. CIT(A), within the provisions of Section 11(1)(a) of the 1961 Act. This issue has already been adjudicated by us in appeal in ITA No. 1266/Bang/2024 for assessment year 2012-13, vide this common order, in the preceding para's of this order. Both the parties agree that facts are similar in the instant appeal as were in the appeal for assessment year 2012-13 on this issue, which stood adjudicated by us in the preceding para's of this order. After hearing both the parties, we hold that our decision in ITA No. 1266/Bang/2024 for assessment year 2012-13 shall apply mutatis mutandis to this issue in ITA no. 1265/Bang/2024 for assessment year 2011-12. Thus, this issue is effectively decided in favour of the assessee wherein we hold that the assessee is entitled to accumulate income derived from property held under trust to the tune of 15% of the gross voluntary contribution received, without deducting of the expenditure incurred for earning the income and

related establishment expenses, under the provisions of Section 11(1)(a). Thus, Ground No. 4 is decided in favour of the assessee. We order accordingly.

12. Ground No. 5 concerns itself with the income arising from the Pharmacy unit to the tune of Rs. 1,30,47,306/- , set up under the hospital run by the assessee, which is claimed to be integral part to facilitate in-patients and out patients to achieve the object of medical relief. This issue has already been adjudicated by us in appeal in ITA No. 1266/Bang/2024 for assessment year 2012-13, vide this common order, in preceding para's of this order. Both the parties agree that facts are similar in the instant appeal as were in the appeal for assessment year 2012-13 on this issue, which stood adjudicated by us in the preceding para's of this order. After hearing both the parties, we hold that our decision in ITA No. 1266/Bang/2024 for assessment year 2012-13 shall apply mutatis mutandis to this issue in ITA no. 1265/Bang/2024 for assessment year 2011-12. Thus, the issue is effectively decided in favour of the assessee wherein we hold that the income earned by the assessee from running the pharmacy within hospital premises, is to be allowed as deduction u/s. 11 of the 1961 Act. Thus, Ground No. 5 raised by the assessee is allowed. We order accordingly.

13. The next issue concerns itself with the exemption claimed by the assessee towards Corpus fund and Gurudakshina received, amounting to Rs. 48,14,492/-. The ld. Assessing Officer observed that the assessee has claimed a sum of Rs. 86,14,992/- as Corpus fund donations exempt from tax under section 11(1)(d). The details of which are as under:-

Details of Corpus fund donations			
1.	*Gurudakshina received under KCST-Bangalore Unit*		*36,14,301/-*
2.	*Other corpus fund donations*		
	i. KCST – Mangalore Guru Dakshina	*3,58,500*	
	ii. Chinmaya Institute of Nursing – Corpus fund	*1,64,091*	

	iii. Chinmaya Institute of Nursing-Development fund	*6,77,600*	*12,00,191*
3.	*Chinmaya Vidyalaya A/c*		*38,00,500*
	Total		***86,14,992***

13.2. The ld. Assessing Officer observed that the assessee has claimed a sum of Rs. 36,14,301/- as Corpus fund donation being Gurudakshina received under the KCST, Bangalore Unit. The assessee was asked by the AO to furnish name and address of the parties alongwith donor letters specifying the purpose for which donation was given by the donors. The assessee furnished the list of donors containing the detail or name and address and amount paid, but could not produce the donor letters. The assessee also could not produce the bank account details maintained in respect of the Corpus fund donation received. Thus,the ld. Assessing Officer observed this donation cannot be treated as Corpus fund within the meaning of section 11(1)(d). The ld. Assessing Officer observed that with respect to corpus donations,recipient organization do not have any liberty to apply the Corpus donation as they wish but the same should be utilized for the purpose for which it is donated as directed by the donors so as to claim a donation to be a Corpus donation. It is necessary that a written direction from the donor is obtained for the purpose the corpus donations should be utilized, and in the absence of written direction from the donor, donations will not be treated as Corpus donation, consequently, same will be treated as a general donation for being part of the income of the assessee under section 11(1)(a) of the Act. Since, the assessee has failed to produce the donor letters indicating that the funds are given for the purpose of Corpus of trust to the tune of Rs. 36,14,301/- , the same was treated by the AO as general donation denying exemption under section 11(1)(d) of the Act. The ld. Assessing Officer further observed that the assessee has claimed a sum of Rs.12,00,191/- as Corpus fund donation received under Chinmaya Institute of Nursing and others. The assessee could not furnish the donation letter in support of the Corpus fund donation and hence the claim of the assessee to treat the said

donation as corpus donation was denied by the AO to the assessee and the same was brought to tax as general donation for the purpose of application under section 11(1)(a) of the Act.

13.3 Aggrieved, the assessee filed first appeal on this issue with ld. CIT(A), which was dismissed by Ld. CIT(A) by passing a cryptic and non-speaking order, and rather there is no adjudication of this issue by ld. CIT(A).

13.4 Still Aggrieved, the assessee filed second appeal with ITAT on this issue and it was submitted that the assessee is not maintaining separate bank account. It was submitted that the assessee is not utilizing the same for specific purposes but the same is used for the general purposes. Our attention was drawn to page 92 of the paper book in which instructions of CBDT vide letter No. 290/26/M(Inv.), dated 19.12.1978 is placed. The assessee has relied upon the judgment and order of Hon'ble Patna High Court in the case of CIT v. Rashtriya Swayam Sevak Sangh , reported in (1994) 207 ITR 04 79(Pat. HC).

13.5. We have considered rival contentions and perused the material on record. We have observed that the ld. CIT(A) has dismissed this issue of treating Corpus donation as General donation by the AO, as raised by the assessee in its appeal filed with ld. CIT(A) by passing a cryptic non speaking order, and rather there is no adjudication by ld. CIT(A) on this issue. The ld. CIT(A) is required to pass an speaking order as is required u/s 250(6), wherein he has to specify points for determination, his decision thereof and reasons for his decision. It is not emerging from the appellate order passed by ld. CIT(A) as to contentions raised by the assessee before ld. CIT(A), nor the assessee has filed submission made by it before ld. CIT(A) in its paper book filed with ITAT. The aforesaid issue requires investigation of facts. We are of the view that it is not necessary that there should be written directions for corpus donations, and the oral directions manifested by the donor could be sufficient. In the absence of written directions, It has to be seen in the context of the entire factual background about the receipt of such corpus donations, the manner the same was incorporated by recipient

in its books of account and the manner the same was dealt with/ utilized by the recipient. The whole factual circumstances surrounded are to be looked into , to identify the directions as manifested by the donor at the time of making the donations. Thus, it requires investigation of facts. The ld. CIT(A) did not delve into the issue by going through the entire factual background and simply dismiss the appeal of the assessee on this issue by passing a non speaking cryptic order. In the interest of justice and fairness to both the parties, the issue vide ground no. 6 is restored back to the file of ld. CIT(A) for fresh adjudication. Needless to say that ld. CIT(A) shall give proper opportunity of heard to the assessee in accordance with the principles of natural justice. Ground No. 6 raised by the assessee is allowed for statistical purposes. We order accordingly.

14. With respect to next ground raised by the assessee viz. ground No. 7, the AO observed that the assessee has claimed a sum of Rs. 31,21,506/- as donation paid to various organizations /institutions out of which , the AO after calling for the requisite information from the assessee concluded that the assessee has made donations to another trust's / institution's to the tune of Rs. 7,55,506/- , which trust's/institutions as per AO are not recognized, registered and approved under section 80G/12A/10(23C) of the Act. It was also observed by the ld. Assessing Officer that in most of the cases donees are religious organization such as Ragi Gudda Temple Trust, Bangalore, SJS Temple, Dakshina Kannada etc,. Thus, the ld. Assessing Officer disallowed the donation to the tune of Rs.755,506/- paid by the assessee to non-charitable organization and religious organization which were not recognized, registered and approved under section 80G/12A/10(23C) of the Act which was added back to the income of the assessee by the AO.

14.2 Aggrieved, the assessee filed first appeal with Ld. CIT(A) who dismissed the contentions of the assessee by passing a cryptic order , by holding as under:-

> *"3. Regarding ground no.7, the action of the AO is fully justified in not allowing donation of Rs. 755506 as it was given to various organizations*

which are not recognized/registered/approved under section 80G/12A/10(23C) of the IT Act. The ground no.7 is also dismissed."

14.3 Aggrieved, the assessee filed second appeal with the Tribunal. Our attention was drawn to the judgment and order of Hon'ble Karnataka High Court in the case of ***CIT(E) v. Maria Social Service Society*** (2018) 408 ITR 462 , and judgment and order of Hon'ble Madras High Court in the case of ***DIT(Exemption) v. Shanmuga Arts, Science, Technology & Research Academy*** in Tax Case Appeal No. 1059/2014. It was submitted that the donees are not registered and the assessee has not brought on record the trust deed of these donees before the ld. Assessing Officer, the Ld. CIT(A) as well as before the Tribunal. The ld. DR submitted that the trust deeds of donees were not brought on record before the authorities below as well before ITAT. Thus, it could not be said that these contribution are made for charitable purposes to the institutions / trust which are carrying out such objects as were carried out by the assessee. The decision of ITAT, Allahabad Bench, Allahabad in the case of *Nazrath Hospital Society v. DCIT(E) in ITA No. 165/Alld/2018*, dated 18.02.2021 was referred to (in which one of us ld. Accountant Member was part of the Division Bench who pronounced the order), wherein it was held that that donations to other charitable institution shall be allowed if the other institution is also in the same activity. There are no details available whether the said institutions to whom the donations were given by the assessee are engaged in the same activities as are of the assessee and whether the same are registered u/s 12A. the copies of the Trust Deeds/bye laws are not brought on record. This requires verification of facts. The ld. CIT(A) has passed non speaking cryptic order. Reference is drawn to provisions of Section 250(6) and 250(4). The powers of ld. CIT(A) are co-terminus with the powers of the AO. The assessee has also not filed the submissions made by it before ld. CIT(A), and there is no reference in the appellate order passed by ld. CIT(A) to the written submissions filed by the assessee or contentions raised by the assesee before ld. CIT(A). The matter is restored back to the file of ld. CIT(A) for verification of the above facts, and

pass speaking order. The onus is on the assessee to produce primary facts. The appeal on this issue is allowed for statistical purposes. We order accordingly.

15. The next issue concerns itself with the anonymous donations to the tune of Rs. 81,30,574/- received by the assessee which were brought to tax by the ld. Assessing Officer under section 115BBC of the Act. It was observed by the ld. Assessing Officer that the assessee has claimed a sum of Rs. 17,46,588/- as voluntary contribution under Deenabandhu Devasthanam unit but without giving the name and address of the donors who actually paid this amount to the assessee trust. The assessee has explained them to be Hundi collection. The details are under:-

Deenabandhu Devasthanam Hundi Collections	
April 2010	*1,65,368*
May	*2,06,339*
June	*1,31,951*
July	*1,16,756*
August	*1,60,863*
September	*88,275*
October	*1,00,788*
November	*119,880/-*
December	*183,403*
January	*106,895*
February	*101,790*
March	*1,14,652*
Total	*15,91,960*

The assessee has also claimed voluntary donation of Rs. 1,54,628/- received under the Deenabandhu Devasthanam and thus total amount of Rs. 17,46,588/- was claimed as voluntary donations. The assessee has also disclosed a sum of Rs. 14,89,685/- as other income under the Deenabandhu Devasthanam account shown as Centre Function Receipts and Miscellaneous Receipts. The assessee was asked to produce the name and address of donors in respect of Deenabandhu Devasthanam donation receipt as well as Centre Function Receipt and Miscellaneous Receipt of Rs. 14,89,685/- , but the assessee did not furnish the details, name and address of the donors alongwith donation receipts. The assessee submitted that the income of

Deenabandhu Devasthanam amongst other include a sum of Rs. 15,91,960/- receipt in Hundi, kept in the prayer hall. The contribution is from various devotees who visits the Devasthanam and come for prayer and hence the name and address of the people who contribute to Hundi is not available. The ld. Assessing Officer referred to provisions of Section 2(24)(iia) of the Act r.w.s. 115BBC(3) of the Act and observed that the assessee has not maintained the record of identity including name and address of a person making such contribution and these are anonymous donations which are chargeable to tax @ 30% without any exemption, notwithstanding anything contained in sections 11 and 12 of the Act. Similarly, donation under the KCST Sagar Unit, an amount of Rs. 5,77,163/- was donation received from general donors. The assessee was asked to submit the details of name and address of donors alongwith donation receipt. The assessee has submitted the list of donors and with respect to list of donors alongwith name and address with respect to donation of Rs. 4,61,557/- and hence assessee could not produce the balance donation to the tune of Rs. 1,15,606/- which was brought to tax as a anonymous donation under section 115BBC and brought to tax@30%. The assessee has submitted that the name and address of the balance donors are not available as they represent small amounts offered by several devotees. Similarly, Rs. 10,75,300/- was brought to tax as anonymous donation under section 115BBC claimed to be received from various devotees for Rural Clinic Project , for which full, complete and postal address, names, identity could not be given by the assessee with respect to the KCST unit i.e. for establishing clinics under the Rural Clinic Project and which are brought to tax by the ld. Assessing Officer under section 115BBC as anonymous donation.

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15.2. The assessee could not explain the amount of donation to the tune of Rs.32,03,721/-wherein complete name and address of the donor could not be furnished. The assessee stated that these donations were transferred from Chinmaya

Vidalaya Kolar A/c. Since no details ere furnished of the donors, the same was brought to tax as anonymous donation by the AO under section 115BBC.

Chinmaya Mission Hospital

15.3. Similarly, the ld. Assessing Officer brought to tax donation to the tune of Rs. 4,69,670/- for which assessee could not give the detail of name and address of the donors but only furnished monthly break up of donations received with respect of donations received under Chinmaya Mission Hospital. and hence the same are brought to tax under section 115BBC of the Act by treating the same as income of the assessee.

15.4 Aggrieved, the assessee filed first appeal with Ld. CIT(A) who dismissed the appeal of the assessee by passing a cryptic and non-speaking order.

15.5. Still aggrieved, the assessee filed second appeal with the Tribunal and submitted that these are the Corpus donations as well general donations, and these were allowed in the earlier year. It was submitted that rule of consistency is to be followed. The assessee relied upon the decision of Hon'ble Supreme Court in the case of ***Radhasoami Satsang v. CIT(1992) 193 ITR 321(SC)***. It was submitted that the assessee is a religious as well as charitable trust. Our attention was drawn to the decision of Hon'ble Delhi High Court in the case of ***CIT(Exemption) vs. India Habitat Centre, (2020) 424 ITR 0325(Del HC)***. Our attention was also drawn to the decision of Hon'ble Supreme Court in the case of ***CIT v. Excel Industries Limited (2013) 358 ITR 0295(SC)***. It was submitted that in the year 1986 , Temple Deenabandhu Temple was set up. It was set up within the Hospital premises. It was submitted that the assessee is both charitable cum religious trust. Reliance was placed on the ITAT, Mumbai Tribunal decision in the case of **DCIT v. Shree Sai Baba Sansthan Trust(Shirdi) 2023 TaxPub(DT) 7016(Mum. Trib.)** It was submitted that these donations cannot be brought to tax @30% being anonymous donation under Section 115BBC , as it is covered by exclusion clause as stipulated u/s 115BBC(2)(b). With

respect to the donation received with respect to Rural Clinic Project, the assessee submitted that the assessee has given the detail of the parties which is situated/located in rural areas and where there is no complete address available and the same is placed at paper book page no. 355-375. It was submitted that the donors are based in Kolar which is a small place like a village. Our attention was also drawn to donations received by Chinmaya Mission Hospital, which are placed in paper book/page 376-387. Our attention was also drawn to donorwise statement with respect to Rural Clinic , which are placed in paper book/page 388-428. The ld. DR submitted that sub section 3 of Section 115BBC is applicable and these are anonymous donation received in cash and assessee is hit by provisions of section 115BBC of the Act , and these are taxable @30% as provided u/s 115BBC. The ld. counsel for the assessee submitted that the assessee is a genuine trust, set up for religious and charitable purposes and carrying out his activities in the field of education and medical. The total receipts are more than Rs. 28 Crores and anonymous donations are merely around Rs. 81,00,000/-. It was submitted that the assessee is running a very big hospital under the name of Chinmaya Mission Hospital having around 250 beds and assessees activities are genuine and hence in view of this, it was prayed that the addition be deleted.

15.6. We have considered rival contentions and perused the material on record. The issue for consideration is as to taxability of donations to the tune of Rs. 81,30,574/- which were treated as anonymous donations u/s 115BBC by the AO and brought to tax. We have observed that ld. CIT(A) has passed cryptic non speaking order, and there is no reference to submissions made by the assessee before ld. CIT(A) in the appellate order passed by ld. CIT(A). The assessee has also not filed before ITAT , its contentions filed before ld. CIT(A). The claim of the assessee to treat the aforesaid donations being exempt from tax u/s 11 and 12 requires investigation of facts. In the appellate order passed by ld. CIT(A), there are no details findings but by cryptic non speaking order , ld. CIT(A) dismissed the claim of the assessee. These are factual

issues which requires investigation of facts . The powers of ld. CIT(A) is co-terminus with the powers of the AO. Reference is drawn to provisions of Section 250(4) , wherein the ld. CIT(A) is vested with powers to make inquiries or direct AO to make inquiries and submit remand report to ld. CIT(A). Thus, keeping in view provisions of Section 250(6) wherein ld. CIT(A) is required to state point of determination, his decision and reasons for his decisions, we have observed that the appellate order passed by ld. CIT(A) is not in consonance with provisions of Section 250(6). We are of the considered view that the appellate order passed by ld. CIT(A) is not sustainable and is liable to be set aside. The assessee has also not brought on record , its submission before ld. CIT(A). In fairness to both the parties and in the interest of justice, we set aside appellate order passed by ld. CIT(A) on this issue and restore the issue back to the file of ld. CIT(A) for fresh determination of the issue on merit in accordance with law. The appeal of the assessee on this issue is allowed for statistical purposes. The ground number 9 is allowed for statistical purposes. We order accordingly.

16. In the result, the appeal of the assessee in ITA No. 1265/Bang/2024 for assessment year 2011-12 is partly allowed, as indicated above.

17. In the result, both the appeals of the assessee in ITA no. 1265 & 1266/Bang/2024 for assessment years 2011-12 and 2012-13 are partly allowed.

Order pronounced in Open Court on 19/11/2024.

Sd/-	Sd/-
[BEENA PILLAI]	**[RAMIT KOCHAR]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: 19/11/2024
Sh (on tour)

Copy forwarded to:
1. Appellant –
2. Respondent –
3. CITDR ,
4. CIT,
5. The CIT(A)

By Order

Assistant Registrar,
ITAT, Bangalore