

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIALMEMBER**

**ITA No.2591/DEL/2023
(Assessment Year : 2015-16)**

**ITA No.2586/DEL/2023
(Assessment Year : 2016-17)**

Artificial Limbs Manufacturing Corporation
of India,
G.R. Road,
Kanpur – 209 217 (Uttar Pradesh).

vs.

Addl.CIT,
Exemption Range,
Ghaziabad.

(PAN: AABCA8899F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sanjay Garg, CA
Shri Akarsh Garg, Advocate
REVENUE BY : Shri Javed Akhtar, CIT DR

Date of Hearing : 26.09.2024
Date of Order : 18.12.2024

ORDER

PER S. RIFAUR RAHMAN, AM :

1. The assessee has filed two appeals against the order of ld. Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to 'Ld. CIT (A)') dated 17.07.2023 for AYs 2015-16 and 2016-17.

2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order. We take up the AY 2015-16 as lead case to adjudicate the issues under consideration.
3. In both the years, similar grounds are raised by the assessee and in Assessment Year 2015-16, following grounds of appeal were raised by the assessee :-

“(1) NFAC/ld. CIT(A), on a due consideration of undisputed/undisputable facts that jurisdictional notice under section 143(2), for initiating the assessment related proceedings had been issued without there being any of expression of opinion by the Assessing Officer, a mandatory requirement, should have held that assessment order dated 19.12.2017 itself, was void ab-initio.

(2) On a due consideration of the facts and circumstances of the case, NFAC/ld. CIT(A) should have quashed the reassessment order dated 19.12.2017, on the grounds that Accumulation of 15% was to be computed on the basis of gross receipts and not net income.

(3) In any case, the NFAC/ld. CIT(A) has erred in law and on facts, in upholding the validity of method adopted by the ld. Assessing Officer, in computing 'accumulation' under section II, as the same was not based on methodology as laid down in Act;

(4) the authorities below have erred in law and on facts in holding/upholding that

(i) loans aggregating Rs.22,00,00,000/- as had been received by the appellant under ADIP Scheme, from Banks, were applied for Charitable Purposes and were taken as part of "Receipt" when the same had been raised;

(ii) repayment of the same was taken as "Application" in subsequent years as and when they were repaid; and

(iii) application of such repayment was valid in law as upheld by various judgments of Hon'ble Courts as well as per CBDT Circular No. 100 [F. No. 195/1/72-I.T. (A.I.) - Dated - 24.01.1973 issued by CBDT].

(5) the appellant's contention about the 'methodology', is fully covered by various judicial pronouncements, particularly in the cases of :

(i) appellant's own case for earlier years;

(ii) Addl. Commissioner of Income Tax and Another Vs. A.L.N Rao Charitable Trust reported in (1995) 216 ITR 697 (SC);

(iii) Commissioner of Income Tax V s. Programme for Community Organization reported in (2001) 248 ITR 1 (SC);

(iv) Society of the Servants of the Holy Spirit Vs. Dy. Commissioner of Income Tax (Exemption) - ITA No. 975/Bang/2015 (ITAT Bangalore); and

(v) DCIT Vs. Rashthrohana Parishat - ITA No. 896 & 897/Bang/2014 (ITAT Bangalore)."

4. With regard to ground no.1 which is the jurisdictional issue under section 143(2) of the Income-tax Act, 1961 (for short 'the Act'), at the time of hearing, no submissions were made in this regard. Accordingly, ground no.1 is not adjudicated and dismissed as such.

5. With regard to ground no.2, brief facts of the case are, assessee filed its return of income at Rs.Nil on 28.09.2015. The case was selected for compulsory scrutiny and notices under section 143(2) and 142(1) were issued and served on the assessee along with questionnaire. In response, ld. AR for the assessee attended from time of time and submitted the relevant information as called for. Assessee also furnished tax audit report in Form 10A.
6. Assessee is a Corporation, a Government of India Undertaking, established with the main objects are to promote, encourage and develop the availability, use, supply and distribution at reasonable cost, the artificial limbs and accessories to needy persons particularly the disable ones. It is to establish facilities for the manufacture of artificial limbs, accessories and constituents thereof and all other things which can be used for manufacture of such articles. The business activities carried on by the assessee are same as in the preceding years. The assessee is incorporated u/s 25 of the Companies Act, 1956 and it also granted registration u/s 12AA of the Act vide order dated 05.12.2008. During assessment proceedings, the Assessing Officer considered the computation of income submitted by the assessee and he noticed that the assessee has computed claim of deduction u/s 11(1) of the Act on the total sales receipts, grants received from the Government and

other income earned by the assessee in the form of interest etc. He found that the above method of computation was not correct and observed that the assessee is required to compute deduction on the income derived from its properties and grants etc. The Assessing Officer reproduced income and expenditure for the year ended on 31.03.2015 as under :-

<i>S.No.</i>	<i>Particulars</i>	<i>Note No.</i>	<i>For year ended 31.03.15</i>	<i>For year ended 31.03.14</i>
	<i>Continuing operations</i>			
<i>A</i>	<i>Income</i>			
<i>(i)</i>	<i>Revenue from Operations</i>	<i>14</i>	<i>16270.26</i>	<i>16,507.62</i>
<i>(ii)</i>	<i>Less : Discount</i>	<i>14</i>	<i>55.66</i>	<i>55.24</i>
<i>(iii)</i>	<i>Revenue from Operations</i>		<i>16,214.60</i>	<i>16,452.38</i>
<i>(iv)</i>	<i>Other income</i>	<i>15</i>	<i>1,070.79</i>	<i>772.22</i>
	<i>Total Revenue</i>		<i>17,285.39</i>	<i>17,224.60</i>
<i>B</i>	<i>Expenses</i>			
<i>(i)</i>	<i>Cost of material consumed</i>	<i>16a</i>	<i>8372.30</i>	<i>8424.77</i>
<i>(ii)</i>	<i>Changes to inventories of finished goods & work in progress</i>	<i>16b</i>	<i>1.19</i>	<i>(530.18)</i>
<i>(iii)</i>	<i>Employee benefits expenses</i>	<i>17</i>	<i>2934.66</i>	<i>3262.61</i>
<i>(iv)</i>	<i>Depreciation</i>	<i>8</i>	<i>154.88</i>	<i>107.88</i>
<i>(v)</i>	<i>Financing cost</i>		<i>58.00</i>	<i>0.00</i>
<i>(vi)</i>	<i>Other expenses</i>	<i>18</i>	<i>2598.98</i>	<i>2812.10</i>
	<i>Total Expenses</i>		<i>14120.01</i>	<i>14077.18</i>
	<i>Income</i>		<i>3165.38</i>	<i>3147.42</i>

7. He observed that the assessee itself has shown its income derived from the activities of manufactures and supplies of the artificial limbs at Rs.31,65.38 lacs during this year. Further he observed that assessee has received some grants of Government of India which are not shown in its account. These

grants are received by the assessee from the Government and the same are spent. As per Note-6 of the Notes forming part of the financial statements, it was stated that the assessee is working as nodal agency of Government of India under its ADIP (Assistance to disabled persons) Scheme and as a sole implementing agency under ADIP-SSA (Assistance to disabled persons – Sarv Shiksha Abhiyan) Scheme. In these Schemes, assessee was receiving two types of grants, some are pure grants and others are the loans. In computing the total income for the purpose of claim of deduction, the assessee has also taken into consideration the loans of these schemes. From the computation of income furnished by the assessee along with Form 10B, it was found that assessee has included the grants of the Government which also includes loans and the same are reproduced as under :-

<i>Income</i>		<i>FY 2014-15</i>	
<i>Receipts</i>			
<i>Revenue from Operation</i>			<i>1621459947</i>
<i>Other income</i>			<i>107079454</i>
<i>Government Grant received</i>			
<i>Grant under ADIP Scheme</i>	<i>From Government</i>	<i>50,22,10,000</i>	
	<i>Interest transferred</i>	<i>1,28,66,998</i>	
	<i>Loan u/s 12(ix) of ADIP Scheme</i>	<i>9,00,00,000</i>	<i>60,50,76,998</i>
<i>Grant under ADIP-SSA Scheme</i>	<i>From Government</i>	<i>20,50,00,000</i>	
	<i>Loan u/s 12(ix) of ADIP-SSA Scheme</i>	<i>13,00,00,000</i>	<i>33,50,00,000</i>
<i>Total receipts</i>			<i>266,86,16,399</i>

8. From the above, the AO observed that it is clear the assessee has also considered in its income the loan amounts of ADIP and ADIP-SSA Schemes. From the above chart, assessee has received loan of Rs.9 crores in ADIP Scheme and Rs.13 crores in ADIP-SSA Scheme. The assessee has received total loan of Rs.22 crores from the above schemes. The AO observed that in Note 6.4 of Notes forming part of financial statements, it is noted that *“in accordance to ADIP Scheme of Government of India, a loan of Rs.22 crores was taken by the corporation and receipts of such loan which was repaid from the ADIP Funds released in the Financial Year 2015-16 was considered as receipts against the receivable grant-in-aid to be released by Ministry and has been disclosed as liability accordingly.”* The AO observed that the assessee has itself clarified that this amount of Rs.22 crores was loan and not the grant which can be included in the income for the purpose of claim of deduction of 15%.
9. Further he observed that from the plain reading of section 11 (1) of the Act that the assessee should compute 15% on entire turnover of the activities as carried out by it but the same is needed to be recomputed on the income derived from the properties held by the assessee as well as voluntary donations/grants etc.. Therefore, the computation of 15% deduction was

recomputed by the AO as under :-

<i>S.No.</i>			
<i>1</i>	<i>Income as per Income Expenditure account</i>	<i>31,65,38,000</i>	
<i>Addition</i>	<i>(i) Depreciation</i>	<i>1,54,88,000</i>	
	<i>(ii) Provision against bad and doubtful debt</i>	<i>6,26,000</i>	
	<i>Total income from artificial limb making activities</i>		<i>33,26,52,000</i>
<i>2</i>	<i>(i) ADIP Scheme Grants</i>	<i>50,22,10,000</i>	
	<i>(ii) ADIP interest transferred</i>	<i>1,28,66,998</i>	
	<i>Total income from ADIP</i>		<i>51,50,76,998</i>
<i>3</i>	<i>(i) ADIP-SSA Scheme Grants</i>	<i>20,50,00,000</i>	
	<i>Total income from ADIP-SSA</i>		<i>20,50,00,000</i>
<i>4</i>	<i>Grant for SIPDA Scheme</i>	<i>42,96,000-18,11,000 (Closing – opening balances)</i>	<i>24,85,000</i>
<i>5</i>	<i>Grant for ADIP Awareness Camp</i>	<i>5,00,000 – 92,000</i>	<i>4,08, Learned CIT</i>
	<i>Total income</i>		<i>105,56,21,998</i>
	<i>15% for deduction</i>		<i>15,83,43,300</i>
	<i>Balance income for application</i>		<i>89,72,78,698</i>

10. The AO rejected the above method of computation computed by the assessee and he observed that the assessee has entered turnover and loans taken on account of ADIP and ADIP-SSA schemes for computation of deduction @ 15%. However, the same need to be separated while working the application of income. With the above observation, he reworked the calculation as under :-

<i>A</i>	<i>Revenue Applications</i>		
<i>(i)</i>	<i>ADIP Scheme</i>	<i>7,93,18,000</i>	
	<i>Opening balance</i>	<i>50,22,10,000</i>	
	<i>Grant received during the year</i>	<i>3,22,45,000</i>	
	<i>Closing balance</i>		
	<i>Application</i>		<i>54,92,83000</i>
<i>(ii)</i>	<i>ADIP-SSA Scheme</i>		
	<i>Opening balance</i>	<i>24,70,000</i>	
	<i>Grant received during the year</i>	<i>20,50,00,000</i>	
	<i>Closing balance</i>	<i>1,95,97,000</i>	
	<i>Application</i>		<i>18,78,73,000</i>
<i>B</i>	<i>Capital Applications</i>		
	<i>(i) Addition in Fixed assets</i>		<i>1,93,98,269</i>
	<i>(ii) Addition in CWIP</i>		<i>47,04,254</i>
	<i>Total Application</i>		<i>76,12,58,523</i>
	<i>Balance income for application (as shown above)</i>		<i>89,72,78,698</i>
	<i>Balance income for taxation</i>		<i>13,60,20,175</i>

11. With the above charts, he observed that the assessee has short application of Rs.13,60,20,175/- and he treated the above difference as taxable income of the assessee for the current year. Accordingly he rejected the computation proposed by the assessee and proceeded to make the addition of Rs.13,60,20,175/-.
12. Aggrieved, assessee preferred an appeal before the NFAC, Delhi and filed grounds of appeal and detailed submissions which is reproduced by the Id. CIT(A) in his order at para 6.1. After considering the detailed submissions, Id. CIT (A) sustained the additions made by the AO with the following observations :-

“I have perused the penalty order and other relevant orders, grounds of appeal and submissions filed by the appellant. I find from the assessment order that the AO has computed the 15% amount eligible for deduction i.e. allowable accumulation Rs.15,83,43,300/- whereas the appellant has computed the same at Rs.40,02,92,460/-. I find that the AO has computed the allowable accumulation amount on the profit and gains derived from the incidental business of the charitable trust whereas the appellant has computed the same on the gross receipts of the trust. I find that the approach adopted by the AO is as per the provisions of section 11 (1)(a) of the IT Act and is found to be correct. In this regard I find that Hon’ble ITAT Ahmadabad in the very recent decision dated 13.02.2023 in the case of Shree Bhartimaiya Memorial Foundation Vs ACIT (ITA No.369/Ahd/2020) for AY 2016-17 held that only profit and gains derived from the incidental business of charitable-trust would qualify as income for computing statutorily allowed accumulation of 15% in terms of section 11(1)(a) of the Income Tax Act. In view of the above the addition made by the AO is confirmed and the grounds of appeal raised by the appellant are dismissed.”

13. Aggrieved, assessee is in appeal before us.
14. At the time of hearing, ld. AR for the assessee submitted oral as well as filed detailed submissions before us. For the sake of clarity, the same is reproduced as under :-

“ The appellant namely Artificial Limbs Manufacturing Corporation of India, in short known as "ALIMCO" is a corporation fully owned by the Government of India, as its entire 'issued capital' is held by the President of India through Ministry of Social Justice & Empowerment, New Delhi.

2. It came into existence with the following as its main objects:-
 - (1) To promote, encourage and develop the availability, use, supply and distribution at reasonable cost in the country of Artificial Limbs and

accessories and constituents thereof to needy persons particularly disabled defence personnel, hospitals and such other welfare institution.

- (2) To establish facilities for the manufacture of Artificial Limbs and accessories and constituents thereof and all other things which can be or may conveniently be used for the manufacture of or in connection with such articles, things as aforesaid.
- (3) To carry on the business of manufacturers, buyers, sellers, importers, exporters, dealers in and of Artificial Limbs and accessories and constituents thereof and all other things which can be or may conveniently be used for the manufacture of or in connection with such articles, 'things as aforesaid.

Explanation: Artificial Limbs, accessories and constituents thereof appearing in the aforesaid clauses include Orthosis, Prosthesis, Orthotic Components, Prosthetic Components, Rehabilitation Aids, Associated Special Tools and Orthotic and Prosthetic Supplies.

3. Looking to such objects, the appellant was granted license, to be registered under section 25 of the Companies Act 1956, vide notification issued by the Government of India, Ministry of Finance late Department of Company Affairs & Insurance No. G.5.R. 71 dated 1st January, 1966.

4. As per the mandate of the said notification, income and property of the company, wheresoever derived, shall be applied solely for the promotion of the objects as set forth in its Memorandum of Association and that no portion thereof shall be paid or transferred directly or indirectly to its members (100% share holding in the company is that of the Central Government). It filed its return under section 139(1), in time, showing income at Rs. NIL, after claiming exemption under section 11 of the Act, on the strength of the registration u/ s. 12AA granted by the Ld. Commissioner of Income-tax-II, Kanpur vide certificate dated OS.12.2008 w.e.f. 30.11.1972 in pursuance of an order dated 1S.09.2008 passed by the Hon'ble Tribunal in ITA No.579jLUC/2008. It is stated that said order of Hon'ble ITAT has since been affirmed, on revenue's appeal, by the Hon'ble Allahabad High Court also, vide judgment and order dated 06.11.2017.

5. The appellant was set up with a noble and benevolent objective which fall in the category of "relief to the poors", "medical relief", and "education" as explained hereinafter.

6.1 Relief to the poors: The ALIMCO was established by the Government of India with the facility of production of artificial limbs and components and rehabilitation aids and associated appliance for disabled people to rehabilitate them

on low cost and by providing quality products. Such production facilities and auxiliary production centres are at Kanpur, Bhubaneswar, Jabalpur, Bangalore and Chanalon alongwith facility of Limb Fitting Centres having Orthotist and Prosthetist medical officer who are having good knowledge for fitting of limbs to patients.

6.2 Through these production centres, ALIMCO has been producing standard size of products in the shape of components which are being fabricated by Prosthetist and Orthotist medical officer of the corporation on the basis of patient measurement taken for preparation of required limbs which are being fitted to patients like leg below knee, above knee or loss of both leg and polio effected children, old or young disable people. Similarly short of hand from elbow or short of hand from shoulders are also being fitted/supplied. Considering the requirement, hearing aids to patients are also providing after measurement with Audio Meter and various types of suitable products, on the basis of measurement and proper assessment by the medical officer.

6.3 Working of the Limbs Fitting Centres situated at various places are briefly stated as under:-

The Limbs Fitting Centre contains the strength of following personnel employed by ALIMCO in each Limb Fitting Centre with its production centre and Regional Marketing Centre situated in different parts in the country for proper function of centre to serve disable people of the country.

- i) Medial Officer
- ii) Prosthetist and Orthotist Medical Officer
- iii) Surgical Shoe Maker
- iv) Fitter/Technician

When patients enter in the campus in the limb fitting centre Prosthetist and Orthotist medical officer of the corporation will check the patient and will prepare prescription etc. as required limbs to be fitted to the patients.

Posthetist and Orthotist Medical Officer will take the measurement of patients on paper or plaster cast as the case with prescribed tools and prepare the sketch of limb to be prepared for patient and will prepare/fabricate assistive device and a date will be given to patients for trial purpose for fabricated device to be fitted to patient.

On the prescribed date provided by Posthetist and Orthotist medical officer in the limb fitting centre of ALIMCO to the patients the effort to fit prepared device and necessary correction, if any required in prepared device as per patient will also be done on the basis of trial and as per his movement on the parallel bar platform. If minor correction is required in the prepared assistive device then medical officer will do otherwise he will be provided next date for device to be fitted.

As per norms the patient will move for registration and complete the required informations etc. for free cost appliances on the basis of income group:-

- i) Patient ID and proof of address;
- ii) Income certificate;
- iii) Disability certificate issued by Chief Medical Officer of related district; and
- iv) 2 Nos. photograph showing disability.

6.4 Income certificate is being considered to provide the modern assistive devices for all categories of patients both physical and mental and multiple disability of patient on free of cost. The amount of assistance will be as follows accordingly to the scheme 'Assistance to Disabled Persons' (ADP), for purchase/fitting of aids/ appliance of Government of India, Ministry of Social Justice and Empowerment, New Delhi.

	Total Income	Amount of Assistance
a)	Upto Rs. 15,000/- per month	Full cost of aid/appliance
b)	Rs. 15,000/- to Rs. 20,000/- per month	50% of the cost of aid/appliance

7.1 Rehabilitation (Medical Relief): Rehabilitation dictionary meaning apart, is a branch of medicine, which is a specialty and which deals with physical disabilities. These may be congenital or acquired diseases or trauma. Neurological disease forms a substantial part of the case load as does locomotor disease and disorders. Amputee rehabilitation is also a major part of the specialty. It is concerned with specialist management of disabled persons suffering from brain injuries (both traumatic and non-traumatic) including stroke, spinal cord Injury, chronic neurological disease, chronic locomotor disease and amputations (congenital and acquired). It is primarily aimed at people with complex needs with regard to physical disabilities. For example, the first step towards prosthesis rehabilitation would be to make a model of the area on which the prosthesis is to be fitted. Then a plaster cast or a digital image would be made which would then be modeled to produce a safe and comfortable fit. Then, this assembly of prosthesis is supervised by a team of expert technicians. During fitting, advice is offered on how to use the prosthesis and make adjustments to maximize its performance.

THE AIM OF REHABILITATION IS TO ENABLE THE PATIENT TO LEAD A NORMAL LIFE AT WORK AND AT LEISURE.

(a) PROTHESIS AIDS:

These aids are provided to the patients who require an artificial limb. The best possible artificial replacement is provided to the patients who have lost or were born without a limb or who have lost use of a limb due to some disease

like polio, etc,. A prosthetic limb feels, looks and works like a natural limb. The use of these aids is made in cases where the disability in the patients may have been due to an accident or amputation or any other natural or unnatural cause.

(b) ORTHOTIC AIDS:

These aids are provided to the patients as a device to support or control a part of the body. These aids include a range of products like splints, braces and special footwear to aid movement, correct deformity and relieve discomfort.

(c) HEARING AIDS:

These aids are provided as a measure of comprehensive rehabilitation service to the patients who have hearing difficulties and/or associated physical disorders. These aids assist them in improving their communication skills and to maintain work and make social contacts. These include:

- Helping with hearing aids.
- Auditory training.
- Counselling individuals with hearing impairments
- Advice about environmental aids
- Lip reading instructions
- Tinnitus management.

Further 'aids' would include matters relating to Balance Rehabilitation, Cochlea Implants, working with people with hearing disabilities or Dual Sensory Loss.

THE BASIC AND OVERALL OBJECTIVE OF PROVIDING ALL THESE AIDS AND APPLIANCES IS TO COVER ALL THE AREAS OF REHABILITATION - SOCIAL VOCATIONAL AND MEDICAL, THUS MAKING THE QUALITY OF LIFE SIGNIFICANTLY BETTER AND BETTER FOR THE PATIENTS.

7.2 To meet the objective of Rehabilitation, a branch of 'Medical Science', a manufacturing facility was established at 13 Km stone at G.T. Road, Kanpur and the factory was equipped with sophisticated plant and machinery required for manufacture. The production was planned in a scientific manner. A Quality Control department adequately equipped with testing facilities ensured that the products of the company were in keeping with the specifications laid down by the Bureau of Indian Standards (BIS) and other International agencies. For attainment of the said objects, it has been manufacturing following products:-

Sl.No.	Name of the product
(i)	Tricycle
(ii)	Wheel Chairs
(iii)	Crutches
(iv)	Prosthetic Upper
(v)	Prosthetic Lower
(vi)	Orthotic Lower (Kits)
(vii)	Hearing Aids (Pocket type)
(viii)	Digital Type Hearing Aids (BTE)

and providing the same at a much reasonable price as per norms of the Ministry of social justice & empowerment, (Government of India), as compared to the prevalent market price, by way of "relief of poors" and "medical relief" which is covered by the definition of "charitable purposes" as given in section 2(15) of the Act.

8.1. Education: However, the overall objective of rehabilitation would have stood defeated without there being an adequate arrangement for fitting of these products to the patients to their complete satisfaction. To make such a system in place, it was needed to set up centres equipped with training facilities and technical knowhow. With this object, the concept of Limb Fitting Centers was mooted, and it was proposed to set up many such centres across the country in order to ensure adequate availability of this facility to the patients. It was decided that ALIMCO would be actively involved in setting up these Centres by providing them required funds, technical know-how on fitment procedures and also the tools and material required for the fabrication of Orthosis / Prosthesis.

8.2. The Orthotic/Prosthetic devices have to be fabricated from the modules and fitted on to the disabled persons. Such a fitment called for a need of a Prosthetic and Orthotic Technician who is trained in this profession. In India, the training 'of the Bio- Technicians was being done by All India Institute of Physical Medicine and Rehabilitation, Bombay along with some other institutions. With a large number Of trained Prosthetic and Orthotic technicians (POTs) required, it became essential to enlarge the training facilities in the field of Bio-Engineering to fit them as Development, Design and Research Engineers and also some highly specialized Orthopaedic Surgeons.

9. To substantiate the claim that ALIMCO has been carrying on philanthropic activities in the field of providing 'relief to the poor' medical relief and 'education', the following points may also be usefully mentioned:

- (a) By its order no. ST-I/-64611X-II (23)-76 - U. P. Act XV/48 - Order - 78 dated 28th February, 1978, the Governor of State of Uttar Pradesh was pleased to pass an order that with effect from March 01, 1978, no tax under the Sales Tax Act would be payable on the sale of Artificial

Limbs and Rehabilitation aids by the Artificial Limbs Manufacturing Corporation of India, Kanpur.

- (b) Similarly, the aids and appliances manufactured by the company are not liable to levy of excise duty under the Excise Law.
- (c) A scheme of Assistance to Disabled Persons" ADIP" for short for purchase/ fitting of aids/appliances (popularly named "ADIP") was launched by - the Central Government through ALIMCO as one of its implementing agency. The main objective of this scheme was to assist the needy disabled person in procuring durable, sophisticated and scientifically manufactured, modern, standard aids and appliances that can promote their physical, social and psychological rehabilitation by reducing the effects of disabilities and enhance their economic potential.
- (d) The following agencies were given entitlement for implementing the ADIP scheme:-
 - (i) Societies registered under the Societies Registration Act; Registered Charitable Trusts District Rural Development Agencies, Indian Red Cross Societies and other autonomous bodies headed by District Collector/Chief Executive Officer / District Development Officer of Zila Parishad;
 - (ii) National/Apex Institutes including ALIMCO functioning under administrative control of Ministry of Social Justice and Empowerment/Ministry of Health and Family Welfare; State Handicapped Development Corporations; Local Bodies - Zila Parishad, Municipalities, District Autonomous Development Councils and Panchayats; Nehru Yuvak Kendras.

In view of the above, ALIMCO is providing relief to the poor patients having the disability in various field as required free of cost on the basis their income group certificate as per ADIP Scheme.

10. Conclusion:

From the discussions made in the foregoing paragraphs 6.1, 6.2, 6.3, 6.4, 7.1, 7.2, 8.1, 8.2 & 9 it is fully borne out and established that ALIMCO is an integrated medical institution, which has been established with the main object of providing "relief to the poor", "medical relief" which involve attention and rehabilitation to the patients who are physically disabled and also 'education'.

Over the past several years of its existence, the appellant has been manufacturing and providing prosthetic and orthotic aids and appliances and their components and hearing aids at very reasonable price as compared to price prevailing in the market and for this purpose training centres (for giving necessary education) have been set up.

From a brief resume of objects and activities carried out by the ALIMCO, it is evident that the same are in the categories of (i) 'Rehabilitation' (means Medical Relief) (ii) 'Relief to Poors' and (iii) 'education'. The manufacture of limbs and accessories is inextricably connected and intertwined with 'medical relief', 'education', and 'relief to the poors. In fact, these objectives cannot be achieved, unless appellant carries out 'manufacturing'.

ASSESSMENT IN THE CASE OF THE APPELLANT (AY 2015-16 under appeal)

11. The assessment made by the Addl. CIT (Exemption) Range, Ghaziabad and affirmed by ld. CIT (Appeal) in the instant case, is erroneous being-

- (i) not in accordance with the specific provisions of law as contained in section 11(1)(a) of the Act; and
- (ii) due to incorrect and arithmetical infirmities in the working made for application of income.

12.1 As regards (i) of para 11 above, while passing assessment order for AY 2015-16 the Assessing Officer in para 6.1 of the assessment order after reproducing the Income and Expenditure Account of the appellant for the year ended on 31.03.2015 observed that -

"The assessee has itself shown its income derived from the activities of manufactures and supplies of the artificial limbs at Rs.3165.38 lacs this year."

Further, in para 6.3 of the assessment order after reproducing the provisions of section 11(1), the Assessing Officer observed as under:

"From the plain reading of the above section, it is clear that the assessee should not compute 15% on entire turnover of the activities as carried out by it, but the same is needed to be computed on the income derived from the properties held by the assessee as well as the voluntary donations/grants etc."

12.2 Thus, Assessing Officer held that the accumulation of 15% as provided in the Act should be computed on the net income of Rs. 33,26,52,000 (Table in para 6.3 at page 6 of assessment order) instead of gross revenue from operation of Rs. 172,85,39,401 . (162,14,59,947 + 10,70,79,454) at page 12 of PB. Consequently, the

Assessing Officer ignored the application of income towards expenditure of Rs. 139,58,87,401 (172,85,39,401 - 33,26,52,000) incurred by the appellant for the attainment of its objective.

12.3 The aforesaid observation/ findings of the Assessing Officer were sustained by the Id. CIT(A). The relevant finding of CIT(A) are in para 6.2 at page 16 of his order which reads as under:

"6.2 Decision:-

I have perused the penalty order and other relevant orders, grounds of appeal and submissions filed by the appellant. I find from the assessment order that the AO has computed the 15% amount eligible for deduction i.e. allowable accumulation at Rs.15,83,43,300/- whereas the appellant has computed the same at Rs.40,02,92,460/-. I find that the AO has computed the allowable accumulation amount on the profit and gains derived from the incidental business of the charitable trust whereas the appellant has computed the same on the gross receipts of the trust. I find that the approach adopted by the AO is as per the provisions of section 11(1)(a) of the IT Act and is found to be correct. In this regard I find that Hon'ble ITAT Ahmadabad in the very recent decision dated 13/02/2023 in the case of Shree Bhartimaiya Memorial Foundation Vs ACIT (ITA No. 369/Ahd/2020) for AY 2016-17 held that only profit and gains derived from the incidental business of charitable-trust would qualify as income for computing statutorily allowed accumulation of 15% in terms of section 11(1)(a) of the Income Tax Act. In view of the above the addition made by the AO is confirmed and the grounds of appeal raised by the appellant are dismissed."

12.4 In relation to aforesaid finding of CIT(A) and decision of Hon'ble ITAT, Ahmedabad (at page 133-139 of PB) relied upon, it is submitted that we have no quarrel or dispute with the ratio of said decision. Because in the said case, running of pharmacy store was business incidental to charity as defined in section 11(4A) of the Act. It was under such circumstances that accumulation of income of such incidental business was to be computed on the profit and gain of the business only. Whereas, in the instant case, manufacturing activity as well as the expenditure incurred on facility of limb fitting centres having orthotist and prosthetist medical officers having good knowledge of fitting of limbs and training to patients is an integrated process and cannot be said to be business incidental to charity. Therefore, the decision relied upon by the Id. CIT(A) has no application in the facts of the present case. Wherein, the manufacturing and distribution activity of the appellant is inextricably linked up and intertwined with 'medical relief', 'education' and 'relief to the poors' and not an incidental activity.

12.5 It will not be out of place to mention that more than 90% of appellant's revenue from operation is from State/Central Government agencies only and only a

very small fraction is through dealers who pursued and procure the orders from the States where the appellant is not able to reach.

12.6 Further, in support of appellant's contention reliance is placed on the decision of Hon'ble Apex Court in the case of CIT vs. Programme for Community Organization [2001] 248 ITR 1 (SC) wherein the issue at hand was explained very lucidly in para 3 & 4 as under:

"3. The question that really requires consideration is whether, for the purposes of section 11 (1)(a) of the Income-tax Act, 1961 ('the Act'), 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 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. Income from property held for charitable or religious purposes-(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;"

4. 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."

12.7 Further, reliance is placed on the decision dated 27.11.2015 of IT AT, Bangalore in the case of Society of the Servants of the Holy Spirit vs. DCIT (Exemption) [ITA No.975/Bang/2015] wherein after relying upon para 10 & 11 of the judgment of Hon'ble Apex Court in the case of ACIT vs. A.L.N. Rao Charitable Trust [1995] 216 ITR 697 (SC) it was held in para 7 as under:

"07. Accordingly we are of the opinion that assessee's claim for accumulation under section 11(1)(a) of the Act, could not have been restricted

and was eligible for accumulation of 15% of gross receipt from all streams of its income. Ordered accordingly."

12.8 Further, reliance is placed upon the decision dated 22.09.2004 of Hon'ble Special bench of IT AT Mumbai in the case of Bai Sonabai Hirji Agiary Trust vs. ITO [2005] 93 ITD 70 (Mum)(SB). In this case relying upon the decision of Kerala High Court in CIT vs. Programme for Community Organization [1997] 228 ITR 620 (Ker.) which was upheld by the Hon'ble Supreme Court since reported in [2001] 248 ITR 1 (SC), it was observed and held in para 9 as under:

"9. Coming to the merits of the issue, we are of the view that the same is clearly covered by the decision of the Hon'ble Supreme Court in the case of Programme for Community Organization (supra). In the decision, Their Lordships, after taking note of provisions of section 11 (1)(a) have held as under:

"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 thereof. 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."

It is clear from the above that deduction of twenty five per cent was held to be allowable not on total income as computed under the Income-tax Act. Any amount or expenditure, which was application of income, is not to be considered for determining twenty five per cent to be accumulated. Their Lordships, as noted earlier, affirmed the decision of Kerala High Court in CIT v. Programme For Community Organisation [1997] 228 ITR 620 wherein it is held as under:

"At the outset, the statutory language of section 11(1)(a) of the Income- tax Act, 1961, relates to the income derived by the Trust from property. The trust is required to be wholly for charitable or religious purposes, and the income is expected to have relation to the extent to which such income is applied to such purposes in India. It is thereafter the statutory provision proceeds further that such income is not to be understood to be in excess of 25% of the income from such properties. In other words, the very language of the statutory provision under consideration sets apart 25% of the income from the source of property with reference to the extent to which such income is applied for such

purposes, charitable or religious. In other words, for the purpose of the section 11(1)(a) of the Act, the income in terms of relevance would be the income of the trust from and out of which 25% is set apart in accordance with the spirit of the statutory provision."

This means that when it is established that trust is entitled to full benefit of exemption under section 11 (1), the said trust is to get the benefit of twenty five per cent and this twenty five per cent has to be understood as income of the trust under the relevant head of section 11 (1). In other words, income that is not to be included for the purpose of computing the total income would be the amount expended for purposes of trust in India. Their Lordships in the above case have emphasized on the clear and unambiguous language of section 11(1)(a) and decided the matter on the basis of the same. It has been held that as per the statutory language of the above section the income which is to be taken for purpose of accumulation is the income derived by the trust from property.

If both the decisions are carefully read, it becomes evident that any expenditure which is in the shape of application of income is not to be taken into account. Having found that trust is entitled to exemption under section 11 (1), we are to go to the stage of income before application thereof and take into account 25% of such income. Their Lordships have pointed that the same has to be taken on "Commercial" basis and not "total income" as computed under the Income-tax Act. Their Lordships in the decided case rejected the contention of the Revenue that the sum of Rs. 1,70,369 which was spent and applied by the assessee for charitable purposes was required to be excluded for purpose of taking amount to be accumulated.

Having regard to the clear pronouncement of Their Lordships of the Supreme Court it is difficult to accept that outgoings which are in the nature of application of income are to be excluded. The income available to the assessee before it was applied is directed to be taken and the same in the present case is Rs. 3,42,174. Twenty five per cent of the above income is to be allowed as a deduction. Similar view has also been taken by the Hon'ble Madhya Pradesh High Court in *Parsi Zoroastrian Anjuman Trust v. CIT* [1987] 163 ITR 8321. No reason on whatsoever has been given by the revenue authorities for deducting Rs. 2,17,126 in this case for purposes of section 11(1)(a). The decision cited on behalf of the revenue did not take into account the decision of the Supreme Court referred to above. The circular of CBDT has also been considered by the Hon'ble Kerala High Court in its decision referred to above. Accordingly the question referred to us is answered in the affirmative and in favour of the assessee."

12.9 Further, reliance is placed upon the decision dated 04.10.2017 of Hon'ble ITAT Bangalore in the case of *DCIT vs. M/s B S & G Foundation* [IT A No.

884/Bang/2016] wherein relying upon the decision dated 23.06.2015 of coordinate bench in the case of Mary Immaculate Society [ITA No. 240 & 241/Bangl2015] and the decision of the Special bench in Bai Sonabai Hirji Agiary Trust vs. ITO [2005] 93 ITD 70 (Mum)(SB) it was observed and held as under:

"4.3.3 The issue to be decided by us is as to whether for the purpose of accumulation of income for application for charitable purposes u/s. 11(1)(a) of the Act is to be allowed at 15% of gross receipts or net receipts i.e.; gross receipts less Revenue expenditure. We find that the issue in question was considered and adjudicated by a co-ordinate bench of the Tribunal in the case of Mary Immaculate Society and in its order in ITA Nos. 240 & 2411Bang/2015 dated 23.06.2015 held that the assessee is to be allowed accumulation of income for application for charitable purposes u/s. 11 (1)(a) of the Act at 15% of gross receipts following the decision of the ITAT Special Bench in the case of Bai Sonabai Hirji Agiary Trust v ITG, 93 ITD 0070 (SB). In its order (supra), the co-ordinate bench has held as under at paras 15 and 16 thereof:-

" 15. The issue to be decided is therefore as to whether for the purpose of computing accumulation of income of 15% under Sec.11(1)(a) of the Act, one has to take the gross receipts or gross receipts after expenditure for charitable purpose i.e., the net receipts. This issue is no longer res integra and has been decided by the Special Bench Mumbai in the case of Bai Sonabai Hirji Agiary Trust Vs. ITO, 93 ITD 0070 (SB). The facts in the aforesaid case were that the assessee was a public charitable trust enjoying exemption under s. 11 of the IT Act. As per the requirement of s. 11 (1) of the IT Act, as it prevailed at that point of time, the assessee had to apply 75 per cent of its income for the objects and purposes of the trust and the assessee was permitted to accumulate or set apart up to 25 per cent of its income, which was subject to fulfillment of other conditions. While calculating the aforesaid 25 per cent, the important question which arose was as to whether for this purpose, the gross income earned by the assessee is relevant or the income as computed in accordance with the provisions of IT Act. In other words, whether outgoings from out of gross income which are in the nature of application of income, should be first deducted from the gross income and 25 per cent of only the remaining amount should be allowed to be accumulated or set apart. The Special Bench of the IT AT on the issue held as follows:-

"9. Coming to the merits of the issue, we are of the view that the same is clearly covered by the decision of the Hon'ble Supreme Court in the case of CIT vs. Programme for Community Organization (supra). In the decision, their Lordships, after taking note of provisions of s. 11 (1) (a), have held as under:

"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.2,57,346/- would constitute its property and it is entitled to accumulate twenty-five per cent thereof. 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.

It is clear from the above that deduction of twenty-five per cent was held to be allowable not on total income as computed under the IT Act. Any amount or expenditure, which was application of income, is not to be considered for determining twenty five per cent to be accumulated. Their Lordships, as noted earlier affirmed the decision of Kerala High Court in (1997) 141 CTR (Ker) 502: (1997) 228 ITR 620 (Ker) (supra) wherein it is held as under:

At the outset, the statutory language of s. 11 (1)(a) of the IT Act, 1961, relates to the income derived by the trust from property. The trust is required to be wholly for charitable or religious purposes, and the income is expected to have relation to the extent to which such income is applied to such purposes in India. It is thereafter the statutory provision proceeds further that such income is not to be understood to be in excess of 25 per cent of the income from such properties. In other words, the very language of the statutory provision under consideration sets apart 25 per cent of the income from the source of property with reference to the extent to which such income is applied for such purposes, charitable or religious, In other words, for the purpose of s. 11 (1)(a) of the Act, the income in terms of relevance would be the income of the trust from and out of which 25 per cent is set apart in accordance with the spirit of the statutory provision."

This means that, when it is established that trust is entitled to full benefit of exemption under s. 11 (1), the said trust is to get the benefit of twenty-five per cent and this twenty-five per cent has to be understood as income of the trust under the relevant head of s. 11 (1), In other words, income that is not to be included for the purpose of computing the total income would be the amount expended for purposes of trust in India. Their Lordships in the above case have emphasized on the clear and unambiguous language of s. 11 (1)(a) and decided the matter on the basis of the same. It has been held that as per the statutory language of the above section the income which is to be

taken for purpose of accumulation is the income derived by the trust from property.

If both the decisions are carefully read, it becomes evident that any expenditure which is in the shape of application of income is not to be taken into account. Having found that trust is entitled to exemption under s. 11 (1), we are to go to the stage of income before application thereof and taken into account 25 per cent of such income. Their Lordships have pointed that the same has to be taken on "commercial" basis and not "total income" as computed under the IT Act. Their Lordships in the decided case rejected the contention of the Revenue that the sum of Rs.1,70,369 which was spent and applied by the assessee for charitable purposes was required to be excluded for purpose of taking amount to be accumulated.

Having regard to the clear pronouncement of their Lordships of the Supreme Court, it is difficult to accept that outgoings which are in the nature of application of income are to be excluded. The income available to the assessee before it was applied is directed to be taken and the same in the present case is Rs.3,42,174. Twenty five per cent of the above income is to be allowed as a deduction. Similar view has also been taken by the Hon'ble Madhya Pradesh High Court in *Parsi Zorastrian Anjuman Trust vs. CIT (supra)*. No reason whatsoever has been given by the Revenue authorities for deducting Rs.2,17,126 in this case for purposes of s. 11 (1)(a). The decision cited on behalf of the Revenue did not take into account the decision of the Supreme Court referred to above. The circular of CBDT has also been considered by the Hon'ble Kerala High Court in its decision referred to above. Accordingly the question referred to is answered in the affirmative and in favour of the assessee."

16. The aforesaid decision clearly supports the plea of the Assessee. Following the same, we hold that the accumulation u/s. 11(1)(a) of the Act should be allowed as claimed by the Assessee."

4.3.4 Respectfully following the decision of the co-ordinate bench in the case of *Mary Immaculate Society (supra)*, we hold and direct the AO that the accumulation u/s. 11(1)(a) of the Act is to be allowed at 15% of gross receipts, as claimed by the assessee. Consequently, grounds raised by the Revenue are dismissed."

12.10 Similar view has been taken by the Hon'ble ITAT Calcutta in its decision dated 10.01.2020 in the case of *Kanehialall Lohia Trust vs. ITO (Exemption) [2020] 185 ITD 498 (Kolkata - Trib.)* in this case also after referring to the decision of Kerala High Court which was upheld by the Hon'ble Supreme Court in the case of

CIT vs. Programme for Community Organization it was held that 15 per cent accumulation for application in future has to be calculated on gross receipt and not on net receipt after deduction of revenue expenditure.

12.11 Finally, the reliance is placed upon the decision dated 12.01.2022 of Hon'ble IT AT, Ahmedabad in the case of ACIT (Exemption) vs. Vyakti Vikas Kendra India [ITA No. 687/Ahdj2019] wherein after referring to the decision of Hon'ble Apex Court in the case of Escorts Ltd. 199 ITR 43 (SC), CIT vs. Programme for Community Organization 248 ITR 1 (SC), Kanehialall Lohia Trust vs. ITO (Exemption) (supra) and ITAT Pune bench in the case of Maharishi Karve Stree Shikshan Samstha Karvenagar VS. ITO [2019J 101 taxmann.com 175 (Pune-Trib.) it was held in para 10 as under:

"10. It is settled law therefore that the accumulation of income to the extent of 15% of the income is to be calculated on the gross receipts. We therefore see no reason to interfere in the order passed by the Ld. CIT(A) holding so. The decision referred to by the Ld.DR in the case of Escorts Ltd. (supra) , we find has been dealt with by the Ld.CIT(A) pointing out that it pertained to a different issue relating to deduction u/s 35(2)(iv) of the Act. Ld.DR did not controvert this finding of the Ld.CIT(A) before us. Therefore the case law relied upon by the Ld.DR merits no consideration.

10.1 The grounds of appeal raised by the Revenue are therefore dismissed."

12.12 It is also significant to mention here that in a recently completed assessment order passed under section 143(3) r.w.s. 254 of the Act relating to AYs 2013-14 and 2014-15 dated 11.12.2019 & 12.12.2019 (page 67-68 & 69-70 of PB) respectively, the Assessing Officer himself computed and allowed the benefit of exemption under section 11(1)(a) on gross income of the appellant.

12.13 Similarly, even in the regular assessment order for the AY 2017-18 passed under section 143(3) on 10.12.2019 (after the passing of assessment orders in the present appeal), the Assessing Officer himself computed and allowed the benefit of exemption under section 11(I)(a) on gross income of the appellant, copy of which appears at page 71-80 of PB.

12.14 Accordingly, looked from whatever angle, the exemption @ 15% in the instant case deserves to be allowed on gross income of the appellant and your humble appellant prays for the same.

13.1 Further, without causing any prejudice to the submission made above, as regards (ii) of para 11 above, it is pointed out that the Assessing Officer in para 6.2 of the assessment order after reproducing the working of gross receipts, as per appellant, observed that Rs. 2200 lacs (22 crores) being loan amount of ADIP and ADIP-SSA schemes be reduced from the gross receipts. The relevant observation reads as under:

"From the above it is clear that the assessee has also considered in its income the loan amounts of ADIP and ADIP-SSA schemes. From above it is seen that the assessee has received loan of Rs. 9 crores in ADIP Scheme and Rs. 13 crores in ADIP-SSA scheme. The assessee has received total of Rs. 22 crores as loan in these schemes. In Note 6.4 of Notes Forming part of financial statements, the assessee has written that "in accordance to the ADIP Scheme of Government of India, a loan for Rs. 2200.00 Lacs was taken by the corporation and receipt of such loan, which has been repaid from the ADIP funds released in the financial year 2015-16, has been considered as receipts against the receivable Grant-in-aid to be released by Ministry and has been disclosed as liability accordingly. ". Thus it is clear that the assessee has itself clarified that this amount of Rs. 22 crores was loan and not the grant, which can be included in the income for the purpose of claim of deduction of 15%.

This approach can not be justified in the accounting, since a grant before its receipt can not be claimed as grant and thus can not increase the income of the assessee. Hence this loan amount is excluded from the total receipts of the assessee."

13.2 It is undisputed fact on record that appellant raised loan of Rs. 22 crores, as permitted under ADIP Scheme framed by the Government, and the loan raised was specifically recouped by the Government in the next year i.e., in P.Y. 2015-16. Under such circumstances appellant assessee in a very bona fide manner itself treated the said loan as grant and has shown as its income while filing its return. However, in the assessment order Assessing Officer has held that such loan cannot be considered as income. With utmost respect it is submitted that the treatment given by the appellant is correct particularly when the government itself has disbursed the funds in the next financial year on this score by terming it as "For recoupment loan taken during 2014-15: Rs. 2200.00 Lakh" vide letter dated 12.06.2015. Accordingly, no fault should have been found in the treatment given by the appellant during the year under appeal.

13.3 In any case, while reducing receipts on account of aforesaid loan of Rs. 22 crores, Assessing Officer also reduced the utilization of grant/ application of funds, without appreciating that under such circumstances the actual application for charitable purposes will not be affected, as the application for charitable purposes would be out of loan funds instead of grant. Besides, Assessing Officer failed to consider the ADIP interest transferred of Rs. 1,28,66,998/- while computing 'Revenue Application' in the Table given in para 6.4 at page 7 of the assessment order.

13.4 After excluding the aforesaid infirmities from the working made by the Assessing Officer, the income for taxation for the AY 2015-16 works out to Rs. Nil, made up as under:

A	Revenue Application	As per Assessing Officer		Corrected	
(i)	ADIP Scheme				
	Opening balance	7,93,18,000		7,93,18,000	
	Grant received during the year	50,22,10,000		50,22,10,000	
	Interest transferred	Wrongly taken Nil		1,28,66,998	
	Total	58,15,28,000		59,43,94,998	
	Deduct : Closing Balance	3,22,45,000		3,22,45,000	
	Application		54,92,83,000		56,21,49,998
	Application of loan				9,00,00,000
(ii)	ADIP-SSA Scheme				
	Opening Balance	24,70,000		24,70,000	
	Grant received during the year	20,50,00,000		20,50,00,000	
	Total	20,74,70,000		20,74,70,000	
	Deduct : Closing Balance	1,95,97,000		1,95,97,000	
	Application		18,78,73,000		18,78,73,000
	Application of loan				13,00,00,000
B	Capital Application				
	(i) Addition in Fixed assets		1,93,98,269		1,93,98,269
	(ii) Addition in SWIP		47,04,254		47,04,254
	Total Application		76,12,58,523		99,41,25,521
	Balance Income (for Application (As shown in table in para 6.3)		89,72,78,698		89,72,78,698
	Balance Income for taxation		1360,20,175		(9,68,46,823) i.e. Nil

13.5 Accordingly, even on removing the infirmity in the working made by the Assessing Officer, there is no income liable for taxation during the year under appeal.

ASSESSMENT IN THE CASE OF THE APPELLANT (AY 2016-17 under appeal)

14. The assessment made by the Addl. CIT (Exemption) Range, Ghaziabad and affirmed by Id. CIT (Appeal) in the instant case, is erroneous being-

- (i) not in accordance with the specific provisions of law as contained in section 11(l)(a) of the Act;
- (ii) not allowing the benefit of accumulation and set apart Rs. 8.00 crores for which Form No. 10 was filed on 12.10.2016, in time; and

- (iii) due to incorrect and arithmetical infirmities in the working made for application of income.

15.1 As regards (i) of para 14 above, while passing assessment order for AY 2016-17 the Assessing Officer in para 7.1 at page 4-5 of the assessment order after reproducing the Income and Expenditure Account of the appellant for the year ended on 31.03.2016 observed that-

"The assessee has itself shown its income derived from the activities of manufactures and supplies of the artificial limbs at Rs.4619. 94 lacs this year."

Further, in para 7.3 at page 6-7 of the assessment order after reproducing the provisions of section 11(1), the Assessing Officer observed as under:

"From the plain reading of the above section, it is clear that the assessee should not compute 15% on entire turnover of the activities as carried out by it, but the same is needed to be computed on the income derived from the properties held by the assessee as well as the voluntary donations/grants etc."

15.2 Thus, Assessing Officer held that the accumulation of 15% as provided in the Act should be computed on the net income of Rs. 59,72,82,000 (Table in para 7.3 at page 8 of assessment order) instead of gross revenue from operation of Rs.207,92,11,541 (188,58,13,464 + 19,33,98,077) at page 13 of PB. Consequently, the Assessing Officer ignored the application of income towards expenditure of Rs.148,19,29,541 (207,92,11,541 - 59,72,82,000) incurred' by the appellant for the attainment of its objective.

15.3 The aforesaid observation/findings of the Assessing Officer were sustained by the Id. CIT(A). The relevant finding of CIT(A) are in para 5.2 at page 13-14 of his order which reads as under:

"5.2 Decision:-

I have perused the penalty order and other relevant orders, grounds of appeal and submissions filed by the appellant. I find from the assessment order that the AO has computed the 15% amount eligible for deduction i.e. allowable accumulation at Rs.24,67,64,1001- whereas the appellant has computed the same at Rs.50,92,72,1101-. I find that the AO has computed the allowable accumulation amount on the profit and gains derived from the incidental business of the charitable trust whereas the appellant has computed the same on the gross receipts of the trust. I find that the approach adopted by the AO is as per the provisions of section 11(l)(a) of the IT Act and is found to be correct. In this regard I find that Hon'ble ITAT Ahmadabad in the very

recent decision dated 13/02/2023 in the case of Shree Bhartimaiya Memorial Foundation Vs ACIT (ITA No. 369/Ahd/2020) for AY 2016-17 held that only profit and gains derived from the incidental business of charitable-trust would qualify as income for computing statutorily allowed accumulation of 15% in terms of section 11(I)(a) of the Income Tax Act. In view of the above the addition made by the AO is confirmed and the grounds of appeal raised by the appellant are dismissed."

15.4 In relation to aforesaid finding of CIT(A) and decision of Hon'ble ITAT, Ahmedabad (at page 121-127 of PB) relied upon, it is submitted that we have no quarrel or dispute with the ratio of said decision. Because in the said case, running of pharmacy store was business incidental to charity as defined in section 11(4A) of the Act. It was under such circumstances that accumulation of income of such incidental business was to be computed on the profit and gain of the business only. Whereas, in the instant case, manufacturing activity as well as the expenditure incurred on facility of limb fitting centres having orthotist and prosthetist medical officers having good knowledge of fitting of limbs and training to patients is an integrated process and cannot be said to be business incidental to charity. Therefore, the decision relied upon by the Id. CIT(A) has no application in the facts of the present case. Wherein, the manufacturing and distribution activity of the appellant is inextricably linked up and intertwined with 'medical relief', 'education' and 'relief to the poors' and not an incidental activity.

15.5 It will not be out of place to mention that more than 90% of appellant's revenue from operation is from State/Central Government agencies only and only a very small fraction is through dealers who pursued and procure the orders from the States where the appellant is not able to reach.

15.6 Further for the sake of brevity, submission made in para 12.6 to 12.14 above, are reiterated and relied upon here.

16.1 As regards (ii) of para 14 above, while passing assessment order for AY 2016-17 the Assessing Officer failed to allow the benefit of accumulation and set apart Rs. 8.00 crores for which Form No. 10 stood filed by the appellant (page 56-58 of PB).

16.2 The aforesaid infirmity was agitated by the appellant before the Id. CIT(A) by way of Grounds of Appeal No.8. However, Id. CIT(A) did not deal with the said ground.

16.3 On a due consideration of facts on record, it is submitted that as the appellant has complied with all the requisite formalities, therefore, the said sum of Rs. 8.00 crores deserve to be considered as application of income for charitable purposes during the year under appeal.

16.4 Accordingly, suitable direction to allow the appellant's contention be given to the Assessing Officer.

17.1 Further, without causing any prejudice to the submission made above, as regards (iii) of para 14 above, it is pointed out that the Assessing Officer in para 7.2 at page 5-6 of the assessment order after reproducing the working of gross receipts, as per appellant, observed that Rs. 2163 lacs (21.63 crores) being loan amount of ADIP and ADIP-SSA schemes be reduced from the gross receipts. The relevant observation reads as under:

"From the above it is clear that the assessee has also considered in its income the loan). amounts of ADIP and ADIP-SSA schemes. From above it is seen that the assessee has received loan of Rs. 5.5 crores in ADIP Scheme and Rs. 16.13 crores in ADIP-SSA scheme. The assessee has received total Rs. 21.63 crores as loan in these schemes. In Note 6.4 of Notes Forming part of financial statements, the assessee has written that "in accordance to the ADIP Scheme of Government of India, a loan for Rs. 2163.16 lacs was taken by the corporation and receipt of such loan, which has been repaid from the ADIP funds released in the financial year 2016-17, has been considered as receipts against the receivable Grant-in-aid to be released by Ministry and has been disclosed as liability accordingly. ". Thus it is clear that the assessee has itself clarified that this amount of Rs. 21.63 crores was loan and not the grant, which can be included in the income for the purpose of claim of deduction of 15%.

This approach can not be justified in the accounting, since a grant before its receipt can not be claimed as grant and thus can not increase the income of the assessee. Hence this loan amount is excluded from the total receipts of the assessee."

17.2 It is undisputed fact on record that appellant raised loan of Rs. 2163.16 lacs, as permitted under ADIP Scheme framed by the Government, and the loan raised was specifically recouped by the Government in the next year i.e., in F.Y. 2016-17. Under such circumstances appellant assessee in a very bona fide manner treated the said loan as grant and has shown it as its income while filing its return. However, in the assessment order Assessing Officer has held that such loan cannot be considered as income. With utmost respect it is submitted that the treatment given by the appellant is correct particularly when the government itself has disbursed the funds in the next financial year on this score by terming it as "For recoupment loan taken during 2015-16. Accordingly, no fault should have been found in the treatment given by the appellant during the year under appeal.

17.3 In any case, while reducing receipts on account of aforesaid loan of Rs. 21.63 crores, Assessing Officer also reduced the utilization of grant/ application of funds, without appreciating that under such circumstances the actual application far

charitable purposes will not be affected, as the application for charitable purposes would be out of loan funds instead of grant. Besides, Assessing Officer failed to consider the ADIP interest transferred of Rs.39,36,000/- while computing 'Revenue Application' in the Table given in para 7.4 at page 9 of the assessment order.

17.4 After excluding the aforesaid infirmities from the working made by the Assessing Officer, the income for taxation for the AY 2016-17 works out to Rs.2,00,29,900, made up as under:

A	Revenue Application	As per Assessing Officer		Corrected	
(i)	ADIP Scheme				
	Opening balance	3,22,45,000		3,22,45,000	
	Grant received during the year	84,11,87,000		84,11,87,000	
	Interest transferred	Wrongly taken Nil		39,36,000	
	Total	87,34,32,000		87,73,68,000	
	Deduct :				
	Closing Balance	8,78,80,000		8,78,80,000	
	Application		78,55,52,000		78,94,88,000
	Application of loan				5,50,00,000
(ii)	ADIP-SSA Scheme				
	Opening Balance	1,95,97,000		1,95,97,000	
	Grant received during the year	20,45,00,000		20,45,00,000	
	Total	22,40,97,000		22,40,97,000	
	Deduct :				
	Closing Balance	2,89,12,000		2,89,12,000	
	Application		19,51,85,000		19,51,85,000
	Application of loan				16,12,13,000
B	Capital Application				
	(i) Addition in Fixed assets		66,97,000		66,97,000
	(ii) Addition in CWIP		8,16,17,000		8,16,17,000
C	Form No.10				
	Total Application		106,90,51,000		137,83,00,000
	Balance Income (for Application (As shown in table in para 7.3)		139,83,29,900		139,83,29,900
	Balance Income for taxation		13,60,20,175		2,00,29,900

17.5 Accordingly, on removing the infirmity in the working made by the Assessing Officer, the income liable for taxation during the year under appeal works out to Rs.2,00,29,900.”

15. Further, at the time of hearing, ld. AR of the assessee was asked to submit the pattern of receipts from revenue operation at the Bar. In response, ld. AR submitted as under:-

<i>Buyer Category</i>	<i>Sales of 2014-15</i>	<i>%age share 2014-15</i>	<i>Sales of 2015-16</i>	<i>%age share 2015-16</i>
<i>National Institute</i>	<i>11.13</i>	<i>6.84%</i>	<i>5.93</i>	<i>3.13%</i>
<i>ADIP & Cochlear</i>	<i>65.21</i>	<i>40.08%</i>	<i>84.45</i>	<i>44.60%</i>
<i>SSA (60%)</i>	<i>31.79</i>	<i>19.54%</i>	<i>35.65</i>	<i>18.83%</i>
<i>SSA (40%)</i>	<i>21.79</i>	<i>13.02%</i>	<i>22.83</i>	<i>12.06%</i>
<i>State Govt. Direct Purchases</i>	<i>9.47</i>	<i>5.82%</i>	<i>7.09</i>	<i>3.74%</i>
<i>Dealers, Fabrication</i>	<i>7.63</i>	<i>4.69%</i>	<i>12.74</i>	<i>6.73%</i>
<i>CSR Export, Bilateral, Scrap & Others</i>	<i>16.28</i>	<i>10.01%</i>	<i>20.67</i>	<i>10.91%</i>
<i>%TOTAL</i>	<i>162.70</i>	<i>100.00%</i>	<i>189.36</i>	<i>100.00%</i>

16. On the other hand, ld. DR for the Revenue objected to the submissions of the ld. AR for the assessee and he submitted and supported the findings of lower authorities. In this regard, he relied on the decision of ITO vs. Secretary, Agriculture Produce Marketing Committee (2011) 128 ITD 166 (Bang.) and he submitted that the facts in the above case are that assessee has computed income available for accumulation u/s 11(1)(a) of the Act on gross receipts. Further the AO recomputed the gross receipts with reference to income computed in commercial basis/sense and not with reference to gross receipts. Accordingly, he computed the income available for accumulation u/s

11(1)(a) on commercial principles and accordingly allowed the deduction to the assessee. The above measure of computation of income available for accumulation u/s 11(1)(a) of the Act was considered by the ITAT, Bangalore and approved the same. He placed the relevant decision on record.

17. Considered the rival submissions and material placed on record. We observed from the record that the assessee a GOI undertaking established with the sole purpose of making the artificial limbs and its accessories to needy persons in particular to the disable persons at reasonable cost. In this process, it has established the charitable institution u/s 25 of the erstwhile Companies Act, 1956 and also grants substantial amounts as grants and also grants loans to modernize the facilities. With this back ground we observed that the assessee has achieved manufacturing of artificial limbs and accessories to the extent of Rs. 162.15 crores and other income of Rs. 10.71 crores. As per the chart submitted by the assessee, the majority of the artificial limbs are sold under SSA scheme. For this main purpose of the institution, the assessee has incurred material consumptions and installed new fixed assets. The main issue raised by the AO with regard to application of revenue for the purpose of availing deduction u/s 11(1) of the Act, as per which the assessee is allowed to accumulate 15% of the income of the trust or its total income determined for the purpose of Income Tax. The AO has

considered the net income generated by the assessee i.e., total revenue of the manufacturing activities less manufacturing expenditure and recomputed the eligible amount of 15% considering the Government Grants. It is relevant to notice that he has treated the manufacturing activities as incidental to main object of the entity. The question raised before us is whether the main revenue from activities of manufacturing carried on by the assessee has to be treated as eligible to be included for the purpose of determining the income of the entity or not. The revenue has relied on the various decisions in which the issue under consideration was considered by the various courts and held that the main revenue like donations, income from the assets held under the trust and any incidental activities carried on by the institution to generate additional revenue for the purpose of charitable purpose can be considered as gross income of the trust/institution. For the purpose of section 11(1) of the Act, the various courts have held that the direct revenue generated by the institution and net income from the incidental activities has to be considered for the purpose of applying provisions of section 11(1) of the Act. Therefore, from the various decisions rendered by the various courts, the controversy of determining the eligible income for the purpose of section 11(1) is settled. However, the same cannot be applied universally and it will change according to the relevant facts in the particular case.

18. In the given case, we observed that the main activities and purpose of establishing the institution is to serve the disabled persons with affordable prices of various artificial limbs. If that be the case, the whole operation carried on by the assessee and the revenue generated is to be considered as applied for the charitable purpose. We observe that the Special Bench of ITAT Mumbai Bench in the case of Bai Sonabai Hirji Agiary Trust (supra) in which the Special bench has relied on the decision of Hon'ble Supreme Court in the case of Programme for Community Organization (supra) held that the donations received by the assessee would constitute its property and it is entitled to accumulate 25% thereout. Therefore, in the given case also the relevant sale of artificial limbs in the concessional rates has to be treated as income derived from the property held under the trust. It is settled facts on the record that the assessee has manufactured the artificial limbs from the property held in the trust. One cannot deny the above facts on record. It is relevant to point out that the main purpose of existence of the institution is to serve the disabled persons by providing the limbs at affordable purpose. Without this purpose, there is no existence of this institution and also it operates as nodal agency on behalf of the GOI. Therefore in our considered view, the revenue generated out of the manufacturing activities has to be treated as eligible income for the purpose of accumulation u/s 11(1) of the

Act. It cannot be considered as gross income.

19. Further, what is relevant is the income available for the purpose of applying the same for the purpose of charitable purpose. We intend to explain the above aspect by an example: Let's say the institution has earned Rs. 1000 from the property in the trust and also undertakes certain additional services to generate income for the trust, wherein it generate gross sales of Rs. 2000 and incurs expenditures of Rs. 1500. The eligible income for the purpose of section 11(1) of the Act is:

Income from the property	Rs. 1000
--------------------------	----------

Net income from the additional services:

Gross sales	Rs. 2000
-------------	----------

Expenses	Rs. 1500
----------	----------

Net income for the purpose of

Charity	Rs. 500
---------	---------

The eligible income u/s 11(1)	Rs. 1500
-------------------------------	----------

20. The above issue is well settled on the basis of various decisions of Courts. However, the above method of determining the eligible income which is available for the main activities of the institution whereas the situation changes when we determine the eligible income for the main activities has to determine the income available for the main activities, in the given case, the whole revenue available for

the purpose of achieving the main purpose has to include the gross revenue along with the grants of GOI. Therefore, the eligible income has to be determined as under:

Revenue from operation	Rs. 17285.39 Lakhs
(in place of net profit taken by AO)	
Grants from ADIP Scheme	Rs. 5150.77 Lakhs
Grants from ADIP- SSA Scheme	Rs. 2050.00 Lakhs
Grants from SIPDA Scheme	Rs. 24.85 Lakhs
Grants from ADIP Awareness Camp	Rs. 4.08 Lakhs
Total Income as per Section 11(1)	Rs. 24515.09 Lakhs
15% allowable accumulation	Rs. 3677.26 Lakhs

The Application of income: (extracted from Profit and loss Statement)

Cost of material and establishment	Rs. 14120.01 Lakhs
Less: Depreciation	Rs. 154.88 Lakhs
Net cost of production	Rs. 13965.13 Lakhs
ADIP Scheme	Rs. 5492.83 Lakhs
ADIP-SSA Scheme	Rs. 1878.73 Lakhs
Addition of Fixed assets	Rs. 193.98 Lakhs
Addition in CWIP	Rs. 47.04 Lakhs
Total Application of Income	Rs. 21577.71 Lakhs

Net Accumulation for the year Rs. 2937.38 Lakhs

From the above it is clear that the assessee has actually utilized the income of trust more than the 85% of the income earned by the assessee during the year. The stand of the lower authorities on this issue is not as per the various judicial precedents. In our view, the above view was supported by the decision of ITAT Bangalore Bench in B S & G Foundation (ITA No. 884/Bang/2016). The relevant ratio is reproduced below:

“4.3.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements referred to. The issue for adjudication before us is whether the ld. CIT(A) was right in directing the AO to allow the assessee accumulation of income for application to the extent of 15% of gross receipts u/s. 11(1)(a) of the Act.

4.3.2 The assessee claimed accumulation of income for application for charitable purposes u/s, 11(1)(a) of the Act at 15% of gross receipts for the year under consideration. The Assessing Officer ('AO') however, was of the view that accumulation will be allowed only to the extent of 15% of the net receipts i.e.; gross receipts less revenue expenditure and not on the gross receipts as claimed by the assessee. On appeal, the Id. CIT(A) allowed the assessee's claim that it is to be allowed accumulation of income for application for charitable purposes to the extent of 15% of gross receipts u/s. 11(1)(a) of the Act and not 15% of net receipts as held by the AO. 4.3.3 The issue to be decided by us is as to whether for the purpose of accumulation of income for application for charitable purposes u/s. 11(1)(a) of the Act is to be allowed at 15% of gross receipts or net receipts i.e.; gross receipts less Revenue expenditure. We find that the issue in question was considered and adjudicated by a co-ordinate bench of the Tribunal in the case of Mary Immaculate Society and in its order in ITA Nos. 240 & 241/Bang/2015 dated 23.06.2015 held that the assessee is to be allowed accumulation of income for application for charitable purposes u/s. 11(1)(a)

of the Act at 15% of gross receipts following the decision of the ITAT Special Bench in the case of Bai Sonabai Hirji Agiary Trust v ITO, 93 ITD 0070 (SB). In its order (supra), the co-ordinate bench has held as under at paras 15 and 16 thereof:-

"15. The issue to be decided is therefore as to whether for the purpose of computing accumulation of income of 15% under Sec.11(1)((a) of the Act, one has to take the gross receipts or gross receipts after expenditure for charitable purpose i.e., the net receipts. This issue is no longer res integra and has been decided by the Special Bench Mumbai in the case of Bai Sonabai Hirji Agiary Trust Vs. ITO. 93 ITD 0070 (SB). The facts in the aforesaid case were that the assessee was a public charitable trust enjoying exemption under s. 11 of the IT Act. As per the requirement of s. 11(1) of the IT Act, as it prevailed at that point of time, the assessee had to apply 75 per cent of its income for the objects and purposes of the trust and the assessee was permitted to accumulate or set apart up to 25 per cent of its income, which was subject to fulfillment of other conditions. While calculating the aforesaid 25 per cent, the important question which arose was as to whether for this purpose, the gross income earned by the assessee is relevant or the income as computed in accordance with the provisions of IT Act. In other words, whether outgoings from out of gross income which are in the nature of application of income, should be first deducted from the gross income and 25 per cent of only the remaining amount should be allowed to be accumulated or set apart. The Special Bench of the ITAT on the issue held as follows:-

"9. Coming to the merits of the issue, we are of the view that the same is clearly covered by the decision of the Hon'ble Supreme Court in the case of CIT vs. Programme for Community Organization (supra). In the decision, their Lordships, after taking note of provisions of s. 11(1)(a), have held as under:

"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. 2,57,346/- 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.

It is clear from the above that deduction of twenty-five per cent was held to be allowable not on total income as computed under the IT Act. Any amount or expenditure, which was application of income, is not to be considered for determining twenty five per cent to be accumulated. Their Lordships, as noted earlier affirmed the decision of Kerala High Court in (1997) 141 CTR (Ker) 502: (1997) 228 ITR 620 (Ker) (supra) wherein it is held as under:

At the outset, the statutory language of s. 11(1)(a) of the IT Act, 1961, relates to the income derived by the trust from property. The trust is required to be wholly for charitable or religious purposes, and the income is expected to have relation to the extent to which such income is applied to such purposes in India. It is thereafter the statutory provision proceeds further that such income is not to be understood to be in excess of 25 per cent of the income from such properties. In other words, the very language of the statutory provision under consideration sets apart 25 per cent of the income from the source of property with reference to the extent to which such income is applied for such purposes, charitable or religious, In other words, for the purpose of s. 11(1)(a) of the Act, the income in terms of relevance would be the income of the trust from and out of which 25 per cent is set apart in accordance with the spirit of the statutory provision."

This means that, when it is established that trust is entitled to full benefit of exemption under s. 11(1), the said trust is to get the benefit of twenty-five per cent and this twenty-five per cent has to be understood as income of the trust under the relevant head of s. 11(1). In other words, income that is not to be included for the purpose of computing the total income would be the amount expended for purposes of trust in India. Their

Lordships in the above case have emphasized on the clear and unambiguous language of s. 11(1)(a) and decided the matter on the basis of the same. It has been held that as per the statutory language of the above section the income which is to be taken for purpose of accumulation is the income derived by the trust from property.

If both the decisions are carefully read, it becomes evident that any expenditure which is in the shape of application of income is not to be taken into account. Having found that trust is entitled to exemption under s. 11(1), we are to go to the stage of income before application thereof and taken into account 25 per cent of such income. Their Lordships have pointed that the same has to be taken on "commercial" basis and not "total income" as computed under the IT Act. Their Lordships in the decided case rejected the contention of the Revenue that the sum of Rs. 1,70,369 which was spent and applied by the assessee for charitable purposes was required to be excluded for purpose of taking amount to be accumulated.

Having regard to the clear pronouncement of their Lordships of the Supreme Court, it is difficult to accept that outgoings which are in the nature of application of income are to be excluded. The income available to the assessee before it was applied is directed to be taken and the same in the present case is Rs. 3,42,174. Twenty five per cent of the above income is to be allowed as a deduction. Similar view has also been taken by the Hon'ble Madhya Pradesh High Court in Parsi Zorastrian Anjuman Trust vs. CIT (supra). No reason whatsoever has been given by the Revenue authorities for deducting Rs. 2,17,126 in this case for purposes of s. 11(1)(a). The decision cited on behalf of the Revenue did not take into account the decision of the Supreme Court referred to above. The circular of CBDT has also been considered by the Hon'ble Kerala High Court in its decision referred to above. Accordingly the question referred to is answered in the affirmative and in favour of the assessee."

16. The aforesaid decision clearly supports the plea of the Assessee. Following the same, we hold that the accumulation u/s. 11(1)(a) of the

Act should be allowed as claimed by the Assessee."

4.3.4 Respectfully following the decision of the co-ordinate bench in the case of Mary Immaculate Society (supra), we hold and direct the AO that the accumulation u/s. 11(1)(a) of the Act is to be allowed at 15% of gross receipts, as claimed by the assessee. Consequently, grounds raised by the Revenue are dismissed."

21. Respectfully following the above decisions and the cases relied by the revenue authorities including Ld DR are distinguishable to the facts on record as discussed in the above paragraphs. Hence, the ground no 2 and 3 raised by the assessee are allowed.

22. Coming to the ground no 4, we observed that the assessee has included the loan granted thru ADIP funds and ADIP-SSP schemes cannot be included for the purpose of income u/s 11(1) of the Act. This loan may be utilized by the assessee for the charitable purpose and it can be considered as application of income during the year of utilization and the assessee has to claim them as excess utilization and can adjust the same in the year of generation of income. It cannot be claimed as application of income for the purpose of section 11(1) of the Act for the year under consideration. In the result, we are inclined to accept the findings of Ld CIT(A) and AO. Accordingly, the ground no 4 raised by the assessee is dismissed.

21. In the result, the appeal filed by the assessee is partly allowed.

22. The facts in the AY 2016-17 are exactly similar and the decision rendered in

the AY 2015-16 are applicable mutatis mutandis. In the result, appeal filed by the assessee is partly allowed.

23. In the result, both the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on this 18th day of December, 2024.

**Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated : 18.12.2024
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-26, New Delhi.
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**