IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.335, 336 & 337/Nag./2023
(Assessment Year : 2017–18, 2018–19 & 2019–20)

Dy. Commissioner of Income Tax
Central Circle–2(1), Nagpur ……. Appellant

v/s

Jaymahakali Shikshan Sanstha
Bapuchiwadi, Ramnagar, Wardha 442 201 ……. Respondent
PAN – AAATJ1449G

Assessee by : Shri Mahavir Atal
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 28/01/2025	Date of Order – 03/04/2025

O R D E R

PER V. DURGA RAO, J.M.

These appeals by the Revenue are directed against the impugned orders of even date 11/08/2023, passed by the learned Commissioner of Income Tax (Appeals)–3, Nagpur, ["*learned CIT(A)"*], for the assessment year 2017–18, 2018–19 and 2019–20 respectively.

ITA no.335/Nag./2023
Revenue's Appeal – A.Y. 2017–18

2. Following grounds have been raised by the Revenue:–

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing the exemption under section 11 of IT. Act, on the ground that the AO cannot disallow exemption of section 11 of I.T. Act merely on the addition of

Rs.1,80,000/-received on rent, when the it is a violation of 13(1)(c)/13(1)(d) of the I.T. Act.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing the exemption under section 11 of I.T. Act, on the ground that the AO cannot disallow exemption of section 11 of IT. Act merely on the addition of Rs.1,80,000/-received on rent, when the provisions of section 13(1)(c)(ii) read with section 13(3). states that if any part of income or any property of the trust is applied directly or indirectly for the benefit of any trustee, then the benefit of exemption under section 11 of the Act will not be available to the trust.

3. On the fact and in the circumstances of the case, the Ld. CIT(A) erred in considering the addition of Rs.43,50,000 as regular income of the assessee, ignoring the facts that addition was made by the AD as undisclosed income u/s 69A of the Act which was based on the impounded Document as per Annexure B-4, and the said document have the evidentiary value.

4. On the fact and in the circumstances of the case, the Ld.CIT(A) erred in allowing the exemption u/s.11 to the assessee ignoring the fact that the AO during the course of assessment proceedings has clearly demonstrated the entire trail by way of which the assessee has advanced money in the garb of property transactions just to get the exemption u/s.11 of the I.T. Act.

5. Any other ground that may be raised during hearing."

2. Facts in Brief:– The assessee respondent is an Educational Trust registered under section 12A of the Income Tax Act, 1961 (*"the Act"*) vide F–713 dated 16/10/1965. During the financial year 2019–20, a survey under section 133A of the Act was conducted in Vedsiddha Products Pvt Ltd and also a search action was conducted under section 132 of the Act in the premises of its Director, Shri Prabhu Das Vyas. Both the above parties are third parties not directly or indirectly connected to the assesse trust. During the course of survey proceedings which was conducted in the premises of M/s Vedsiddha Procducts Pvt. Ltd, it was found that the assessee trust has paid an advance for purchase of land to the sister concern of M/s. Vedsiddha Products P. Ltd. The assessee trust, for the year under consideration, filed its return of income on 30/12/2017, claiming exemption under section 12A of the Income Tax Act,

1961 (*"the Act"*). The assessments were completed under section 143(3) of the Act.

3. Insofar as ground no.1, is concerned, during the course of assessment proceedings, it was observed that the assessee trust has provided an residential accommodation to the trustee of the trust and has recovered an annual rent of ₹ 1,20,000, from the trustee of the trust Shri Sachin Agnihotri. The Assessing Officer was of the opinion that fair rent of the residential accommodation was ₹ 3,00,000 per annum and accordingly, the assessee trust has charged rent on reduced rate to the extent of ₹ 1,80,000 per annum. However, the Assessing Officer not only disallowed the difference amount of ₹ 1,80,000, but also denied the assessee trust complete exemption claimed under the provisions of section 11 of the Act and accordingly brought to tax the entire surplus of trust of ₹ 5,07,32,612, as income taxable as per the provisions of section 164(2) of the Act i.e., in the status of AOP (Association of Persons) at the maximum marginal rate. The relevant findings of the Assessing Officer vide Para–3.9 is hereby extracted below for ready reference:–

> *"3.9 In the instant case, it is seen that Shri. Sachin Agnihotri is the Joint secretary of the trust and the property belonging to the trust has been made available to him during the year under consideration. The contention that the trustees have given non-interest bearing advances to the trust or they are rendering managerial services cannot be a ground for lending the trust property to a interested person without adequate compensation. In the case of a trust, unlike a business entity, the trustee is vested with the responsibility of being a custodian of the funds/property. Therefore, the argument put forth by the assessee trust in this regard is found unacceptable. The assessee has not furnished any rental agreement or details of rental advance taken, if any. Due to paucity of time, the fair market value of the bungalow let out to the trustee could not be verified from the records of the prescribed authority. In the assessee's own Income statement, it is seen that the Bank ATM is paying a monthly rent of Rs. 12,000/- to the trust. A monthly rental of Rs.25,000/- is*

considered as the fair market value and the annual lettable value is taken at Rs.3,00,000/- accrues to the assessee trust. Hence, the income of the trust has to be brought to tax as per the provisions of sec. 164 (2), i.e., in the status of AOP at the Maximum marginal rate."

5. On appeal, before the learned CIT(A), the assessee trust furnished detailed reply which was recorded by the learned CIT(A) on his order vide Page–3 to 30. The learned CIT(A), considering the submissions made by the assessee trust, confirmed the addition of ₹ 1,80,000, but negated the Assessing Officer's action of denying exemption under section 11 of the Act of ₹ 5,07,32,612, to the surplus of the trust. The learned CIT(A), drawing reference to the CBDT Circular No.387, dated 06/07/1984, restricted the disallowance only to the extent of ₹ 1,80,000, and allowed the balance claim of exemption. Consequent upon issuance of the first appellate order by the learned CIT(A), the Revenue filed appeal before the Tribunal.

6. Before us, the learned Departmental Representative vehemently opposed the part relief granted by the learned CIT(A).

7. On the other hand, the learned Counsel for the assessee trust, assailing the impugned order passed by the learned CIT(A), reiterated the submissions made before the authorities below. He further submitted that the Assessing Officer during, assessment proceedings, denied the assessee trust benefit of exemption and assessed the income of the trust as an AOP and brought to tax the total surplus of the trust at the maximum marginal rate as per section 164(2) of the statute. He further submitted that the sole reason on which the exemption was disallowed is the underlying observation of the Assessing Officer that the assessee trust has provided residential accommodation to the

Managing Trustees in the building premises owned by the assessee trust and the rent charged from the trustees are below the fair market value. He submitted that according to the Assessing Officer, the fair rental should have been ₹ 3,00,000 per annum and the assessee trust has charged only ₹ 1,20,000, per annum from the trustee. The Assessing Officer not only disallowed difference amount of ₹ 1,80,000, but also denied the assessee trust benefit of exemption as per the provisions of section 11 of the Act and brought to tax the entire surplus of the trust of ₹ 5,07,32,612, as income taxable under section 164(2) of the Act which have been recorded by the Assessing Officer in his assessment order vide Para–3.9. The learned Counsel further relied on the order of the CIT(A) and prayed before the Bench to upheld the order of the first appellate authority.

8. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. We find that the Joint Secretary of the assessee trust was residing in the Bungalow belonging to the assessee trust by paying monthly rent of ₹ 10,000. The Assessing Officer was of the opinion that it ought to have been ₹ 25,000 per month. According to the Assessing Officer, the fair market value was ₹ 25,000. We find that the Joint Secretary who is working for the assessee trust, has been provided a residential accommodation by charging a nominal rent. The Assessing Officer added the difference amount of ₹ 15,000 per month i.e., ₹ 1,80,000 per annum and the same was confirmed by the learned CIT(A). The assessee trust has not challenged an addition of ₹ 1,80,000. Therefore, the issue of short charging of rent from the trustee is not in dispute before us.

However, a question arose before us is that whether or not there remains any violation of provisions of the statute in charging rent in reduced rate and to what extent the addition ought to have been made.

9. Now, on the other hand, the ground no.2, raised by the Revenue relates to the disallowance of exemption should have been made in light of provisions of section 13(1)(c)(ii) read with section 13(3) of the Act. The relevant provisions of section 13 of the Act are reproduced below.

> *Section 13*
>
> *(1) Nothing contained in section 11 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—*
>
> *(a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;*
>
> *(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste*
>
> *(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—*
>
> *(i) if such trust or institution has been created or established after the, commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income ensures, or*
>
> *(ii) if any part of such income or any property of the trust or institution (whenever created or established) is during the previous year used or applied, directly Or indirectly for the benefit of any person referred to in sub-section (3):*
>
> *Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution:*
>
> *Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of*

this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3) in so far as such use or application relates to any period before the 1st day of June, 1970.

(2) Without prejudice to the generality of the provisions of clause (c) of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—

(a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3) for any period during the previous year without either adequate security or adequate interest of both;

(b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;

(c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reason-ably paid for such, services;

(d) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;

(e) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;

(f) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in subsection (3) during the previous year for consideration which is less than adequate;

(g) if a substantial portion of the income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3); or

(h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971) in any concern in which any person referred to in sub-section (3) has a substantial interest.

10. Provisions of section 11 of the Act provides that the income derived from the property held for charitable or religious purposes, subject to the

fulfillment of the conditions of section 11 will be exempt from taxation. However, the statute while providing exemption has placed certain embargos under section 13 for claiming exemption. Provisions of section 13 further provide that exemption under section 11 will not be available in cases of violation of the provisions of section 13 of the statute. There are a total of 9 clauses in section 13. The relevant clause for the present appeal is section 13(1) and Section 13(2). The relevant section pressed by the Revenue in the present appeal is section 13(1)(c)(ii) of the Act. As per the said clause, if any part of income or property of the trust is applied directly or indirectly for the benefit of the persons referred in section 13(3), then the same will not be entitled to exemption under section 11.

11. In the given case, the assessee trust is an educational trust, running schools and colleges. The assessee trust has provided accommodation to the Managing Trustee Shri Sachin Agnihotri, in the college campus. The assessee trust has charged rent of ₹ 1,20,000 from Shri Sachin Agnihotri and according to the Assessing Officer, the fair rental income was ₹ 3,00,000. Therefore, according to the Assessing Officer, the assessee trust has charged at reduced rate of ₹ 1,80,000. It was for the sole reason that in charging of rent in reduced rate, the learned Assessing Officer has opined that the assessee trust has applied income of the trust for the benefit of assessee trustee and, therefore, there is violation of section 13(1)(c)(ii) and accordingly the assessee trust is ineligible for exemption under section 11. Therefore, the question, which came before us for the adjudication whether entire income of trust will be stripped of entire exemption under section 11

of exemption will be denied only to the extent of the violation of provisions of section 13(1)(c)(ii).

12. Whenever the exemption under section 11 is to be denied the income of the trust is to be computed as per the specific provisions of section 164(2) provided in the statute, which are reproduced below for ready reference:–

> *"164(2) In the case of relevant income which is derived from property held under trust wholly for charitable or religious purposes, [or which is of the nature referred to in sub-clause (iia) of clause (24) of section 2,] [or which is of the nature referred to in sub-section (4A) of section 11,] tax shall be charged on so much of the relevant income as is not exempt under section 11 [or section 12] as if the relevant income not so exempt were the income of an association of persons :*
>
> *[Provided that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (c) or clause (d) of sub-section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.]]"*

13. The section 164(2) is statute provides application of Maximum Marginal rate only on the relevant income and not on the entire income. The computation section clearly stated that the denial of exemption under section 11 should be limited only to the amount which was connected in violation of section 13. Therefore, the statute has unambiguously stated that only relevant income which is not exempt under section 11 can be brought to tax, as the income of an AOP and the balance income of the charitable trust, will be entitled to exemption. The learned CIT(A) rightly relied on the CBDT Circular No.387, dated 06/07/1984 [152 ITR (St)1]: issued by the CBDT, under the heading *"Levy of income-tax at the maximum marginal rate in the case of charitable and religious trusts which forfeit tax exemption"* is relevant. For our purpose, Para–28.6 of the aforesaid Circular is relevant, which is reproduced herein below:–

> *"28.6 It may be noted that new sub-section (1A) inserted in section 161 of the IT Act, which provides for taxation of the entire income received by trusts at the maximum marginal rates is applicable only in the case of private trusts having profits and gains of business. So far as public charitable and religious trusts are concerned, their business profits are not exempt from tax, except in the cases falling under clause (a) or clause (b) of section 11(4A) of the IT Act. As the maximum marginal rate of tax under the new proviso to section 164(2) applies to the whole or a part of the relevant income of a charitable or religious trust which forfeits 8 exemptions by virtue of the provisions of the IT Act in regard to investment pattern or use of the trust property for the benefit of the settlor, etc., contained in section 13(1)(c) and (d) of that Act, the said rate will not apply to the business profits of such trusts which are otherwise chargeable to tax. In other words, where such a trust contravenes the provisions of section 13(1)(c) or (d) of the Act, the maximum marginal rate of income-tax will apply only to that part of the income which has forfeited exemption under the said provisions. [Emphasis supplied]*

14. The aforesaid Circular, clarifies the stand of the CBDT as to where such a trust contravenes the provisions of section 13(1)(*c*) or 13(1)(*d*) of the Act, the maximum marginal rate of income-tax will apply only to that part of income, which has forfeited exemption under the said provisions. Even the jurisdictional Bombay High Court in the DIT (E) v/s Sheth Mafatlal Gagalbahai Foundation Trust [2001] 249 ITR 533 (Bom) and CIT(E) v/s Audyogik–shikshan Mandal [2019] 101 taxmann.com 247 (Bom.) has upheld the interpretation that the legislature did not contemplate the denial of the benefit of section 11 of the Act to the entire income of the trust/charitable institution. If the interpretation sought by the Revenue is accepted, it would lead to grave injustice as any mistake minor or contravention of provisions will lead to complete denial of the benefit of exemption which otherwise a trust registered under section 12A is legally allowed to claim. In view of the forgoing discussions, we hold that the maximum marginal rate shall be levied to the extent of relevant income, which has contravened provisions of section 13 and in the present case as contravention is of ₹ 1,80,000 only. The

Assessing Officer erred in denying entire claim of exemption under section 11 and 12 of the Act. Therefore, we uphold the impugned order passed by the learned CIT(A) and the grounds no.1 and 2, raised by the Revenue are dismissed.

15. The next issue involved in ground no.3, raised by the Revenue is addition of ₹ 43.50 lakh.

16. In the assessment order, the Assessing Officer noted that based on documents impounded, the addition made by the learned Assessing Officer is based on the document impounded from the premises of the third party (M/s. Vedsiddha Products Pvt Ltd). The said document was found during the survey conducted under section 133A of the Act conducted at the office premise of M/s Vedsidha Products Pvt. Ltd. (unrelated third party). During the survey, few handwritten documents were found in the premises of M/s Vedsidha Products Pvt Ltd. which were impounded and were marked as Annexure–B/4. The Assessing Officer, on a perusal of the said Annexure-B/4, noticed that the assessee trust has given an unsecured loan of ₹ 3 crore in July 2016 to M/s. Harmony Homes, which is a related concern of M/s Vedsidha Products Pvt Ltd, through Shri Sachin Agnihotri, the Joint Secretary of the assessee trust. M/s. Harmony Homes, has been paying interest @ 11% on the said sum of ₹ 3 crore in cash to the assessee trust through Shri Sachin Agnihotri, and thus the Assessing Officer sought explanation on the this transaction. The assessee trust in response to the query raised by the Assessing Officer, filed reply dated 27/12/2019, by stating that the sum of ₹ 3 crore was given as advance for future purchase of land for building an education institution on

the said land. The assessee said transaction of ₹ 3 crore, which was made by account payee cheques is reflected in Schedule–H of the Balance Sheet. The Assessing Officer, on a perusal of Page–3 to 9 of the impounded documents marked as Annexure–B/4, noted that there are entries of cash transaction of Shri P.D. Vyas, promoter of M/s. Vedsiddha Products P. Ltd. and he has been paying interest in cash to the trust through Shri Sachin Agnihotri. The Assessing Officer further noted that Shri Sachin Agnihotri was receiving interest on behalf of the assessee trust. It was further opined that the transactions were corroborated from the impounded diary found during the survey premises of M/s. Vedisddha Products Pvt ltd. These diaries were in the form of daily cash diaries in the handwritten format. Therefore, the Assessing Officer held that it has to be construed that the handwritten cash books reflect the true picture of Shri P.D. Vyas, and his related concerns with the respondent trust. Accordingly, the Assessing Officer as per these documents, opined that the assessee trust has received interest income from M/s. Harmony Homes. The Assessing Officer assessed interest income as unexplained income under section 69A to the tune of ₹ 43,50,000.

17. On appeal, the first appellate authority granted part relief and confirmed the addition of the interest income. However, the learned CIT(A) reclassified the interest income, which was earlier classified as unexplained money under section 69A to the interest income under head income from other sources, assessable as per normal provisions of the statute. The learned CIT(A) was of the opinion that invoking provisions of section 69A of the Act is

unjustified as the source of interest is known and the deeming provisions of section 69A can be invoked only when source is unknown.

18. The learned Departmental Representative supported the impugned order passed by the learned CIT(A).

19. The learned Counsel for the assessee submitted that the books of accounts were seized from the possession of third party based on the loose sheets found from the third party. The addition was made in the hands of the assessee which are contrary to law. The learned Assessing Officer simply made addition which is based on the basis of dumb document marked as Annexure–B/4 impounded during survey which is not correct according to law.

20. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. The case of the Assessing Officer is that, assessee trust has given an unsecured loan of ₹ 3 crore and interest was received in cash through Shri Sachin Agnihotri, the Joint Secretary of the assessee trust. In the assessment order, the Assessing Officer has noted that the assessee trust has advance ₹ 3 crore to M/s. Harmony Homes, which is related concern of Shri P.D. Vyas. M/s. Harmony Homes, paid interest @ 16% in cash to the respondent trust through its Joint Secretary, Shri Sachin Agnihotri. When the Assessing Officer sought explanation, the assessee trust submitted that it is in fact an advance for purchase of property and same has been duly reported in the audited financial statements. It was further submitted that all payments were made through account payee cheque and no interest was received from M/s.

Harmony Homes. However, the Assessing Officer has noted that during the survey under section 133A of the Act in the premises of M/s. Vedshida Products Pvt. Ltd., the Department has found evidences of interest paid by M/s. Harmony Homes, in cash to the trust through the joint secretary Shri Sachin Agnihotri. Based on Annexure–B/4, the Assessing Officer came to the conclusion that the assessee trust has received income of ₹ 43.50 lakh as an interest on loan in the guise of advances for the purchase of property. The Assessing Officer brought to tax same as income under section 69A. We are of the opinion that the document is a dumb document found in the possession of third party as it was not backed by any independent corroborative evidence. The Assessing Officer has recorded nothing about what is the explanation of M/s Vedshida Products Pvt. Ltd. Nothing is available in the assessment order. In our opinion, once the documents are impounded and seized, the same has to be confronted with the persons in whole possession it was found. There is nothing on record which shows that such exercise has been done by the Assessing Officer. In our view, the Assessing Officer has simply made addition on the basis of loose sheet found in the premises of third party, which according to our opinion is incorrect. That apart, in the remand report called for by the learned CIT(A), it is clear that the assessee trust entered into an agreement for purchase of property in a stamp paper. It was the explanation of the assessee that the assessee trust could not purchase the property because there is an encroachment. Keeping in view the overall facts and circumstances of the case, we are of the opinion that impounded documents which were found in the possession of third party, are neither signed nor authenticated by anyone cannot be simply relied to make

an addition under section 69A of the Act. Insofar the application of provisions of section 69A of the Act is concerned, the addition was based on the impounded documents marked as Annexure–B/4, which is in our opinion is not a sufficient material to make an addition in the absence of any independent corroborative evidence. Provisions of section 69A of the Act being a special provision can be invoked only when in any financial year the assessee is found to be owner of any money, bullion, jewellery or any other such valuable articles and there is doubt about source of same and the explanation offered by the assessee in the opinion of the Assessing Officer is not satisfactory. In the given case, it is the case of the Assessing Officer, that the assessee trust has received interest income. Therefore, as the source is known, provisions of section 69A cannot be invoked. Therefore, invoking provisions of section 69A of the Act is unwarranted. Even though we held that the document on the basis of which addition is made is not a speaking or dumb document and worthy of making an addition, however, the assessee has not challenged the addition by way of cross appeals, confirming the addition of ₹ 43,50,000 by the learned CIT(A) was indeed justified and it is rightly allowed as interest income to the tune of ₹ 43,50,000. In other words, such addition shall be subject to normal rate of taxation and need not be governed by the provisions of section 115BBE of the Act. Accordingly, ground no.3, raised by the Revenue is dismissed.

21. Ground no.4, relates to denial of exemption under section 11 of the Act. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. The facts of the case

reveal that the assessee trust had advanced certain amount to related concern of M/s. Vedsiddha Products Pvt Ltd, for purchase of land for further development of the assessee trust. However, the assessee trust was not able to purchase the property due to encroachment. We have already opined that the impugned document in the absence of any corroborative evidence is not worthy of making an addition. However, even otherwise there is no there is no violation of provisions of section 13(1)(c) and section 13(1)(d) of the Act, as the said provisions are attracted in relation to trustees of the trust. The aforesaid property transaction is with the third party. The fact that M/s. Harmony Homes, have given a property advance is apparent from the balance sheet of the assessee trust, therefore it is also not in violation of any provisions of section 11(5). The opinion of the Assessing Officer is that the trust has invested in the modes other than the one provided under section 11(5) is not tenable as the assessee trust have invested in the purchase of property, wherein the assessee trust has advanced the said amount for purchase of property. The assessee also submitted agreement to sale before authorities below. The said investment in immovable property is allowable as per section 11(5)(x) of the Act. Even otherwise also, if the view of the Assessing Officer is considered that the trust has given loan to the M/s. Harmony Homes (third party) and has received interest on same. Question of investment does not arise when loan has been provided which has been admitted by Department also and hence there is no breach of provisions of investment under section 11(5) of the Act.

22. Accordingly, nothing merits in the Revenue's submission that entire exemption under section 11 of the Act should be revoked. Accordingly, we direct the Assessing Officer to grant exemption under section 11 of the Act to the assessee trust as already directed by the learned CIT(A). Keeping in view the overall facts and circumstances of the case, ground no.4, raised by the Revenue is dismissed.

23. Ground no.5, being general in nature hence no separate adjudication is required.

24. In the result, appeal by the Revenue for A.Y. 2017–18 is dismissed.

ITA no.336/Nag./2023
Revenue's appeal – A.Y. 2018–19

25. The grounds raised by the Revenue are as follows:–

"1. Ground on the fact and in the circumstances of the case the Id. CIT(A) erred in allowing the depreciation of Rs.5,57,40,754/- when the claim of depreciation on assets, already applied against the receipts of the trust. The depreciation cannot be allowed as deduction as per the provision of section 11(6) of I.T. Act as double application of income.

2. On the fact and in the circumstances of the case, the Ld. CIT(A) erred in considering the addition of Rs.37,50,000/- as regular income of the assessee, ignoring the facts that addition was made by the AO as undisclosed income u/s 69A of the Act which was based on the impounded Document as per Annexure B-4, and the said document have the evidentiary value.

3. On the fact and in the circumstances of the case, the Ld. CIT(A) erred in allowing the exemption u/s 11 to the assessee ignoring the fact that the AO during the course of assessment proceedings has clearly demonstrated the entire trail by way of which the assessee has advanced money in the garb of property transactions just to get the exemption u/s 11 of the IT Act.

4. Any other ground that may be raised during the hearing."

26. Ground no.1, raised by the Revenue relates to whether or not the learned CIT(A) was justified in allowing depreciation of ₹ 5,57,40,754.

27. As culled out from the facts available on record, the total receipts of the trust is to the tune of ₹ 51,20,41,731, and out of this total amount expended towards object of the trust is ₹ 46,55,68,022 which includes depreciation of ₹ 5,57,40,754. The Assessing Officer invoking provisions of section 11(6) of the Act disallowed depreciation by holding that the assessee trust had already claimed the purchase of asset as an application of income.

28. Before the learned CIT(A), it was the submissions of the assessee trust that it only claimed depreciation as an application of income and has not claimed the capital as an application of income. The assessee trust submitted that if the depreciation as per the Assessing Officer is disallowed, then the assessee trust may be allowed benefit of the investment which is not barred by any provisions of the statute and the assessee trust has not claimed the same as an application of income. The remand report furnished by the Assessing Officer did not mention any reservation on the said issue. The learned CIT(A) allowed the claim of the assessee by holding as under:–

> *"It is a trite law, that the appellant can claim an application of income either with related to purchase of capital asset or either claim depreciation on the said capex as an application of income. The appellant is barred by the law to claim double benefit. In a given case, the Assessing Officer has pressed into service, the section 11(6) of the statute. The said section debars appellant from claiming double application of income vis-à-vis depreciation, if the appellant has already claimed capital expenditure as an application of income.*
>
> *It was submitted as well as demonstrated by the appellant, that in a given year the appellant has only claimed depreciation as an application of income and in the given year also they have claimed depreciation as an application of income and the capital expenditure incurred during the year was not claimed as an expenditure. The representative during the appellate proceedings, made*

a request that if the contention of the Assessing Officer is accepted, then at least the benefit of capital expenditure which was not claimed by them as an application of income, should be allowed to them. I' have perused the computation of income and tax return, the appellant has indeed not claimed, investment in capital asset as an application of income. Therefore, as the depreciation is disallowed, the appellant has an obvious right to claim the capital expenditure as an application of income. The appellant cannot be devoid of claiming at least one as an application of income, doing so will defeat the mandate of the Income Tax Act, 1961, which provides either capital investment or depreciation as an application of income. Therefore, this ground of appeal is hereby allowed."

The Revenue being aggrieved is in appeal before the Tribunal.

29. Before us, the learned Departmental relied on the order of the Assessing Officer.

30. The learned Counsel for the assessee, on the other hand, submitted that the Assessing Officer has disallowed the claim of depreciation stating that the assessee trust already claimed the capital for purchase of asset as an application of income. He submitted that if not depreciation, then the assessee trust should be allowed benefit of the investment.

31. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. The assessee trust during the year has only claimed depreciation as an application of income and the capital expenditure towards fixed assets were not claimed as an application of income. The statute provides allowance of either deprecia–tion or application of income towards capital expenditure. Therefore, if the Assessing Officer disallows depreciation, he is duty bound to allow benefit of allowance towards application of income vis-à-vis capital expenditure. The learned CIT(A) was absolutely correct in in allowing the depreciation in

holding that the assessee trust cannot be devoid of claiming at least one as an application of income, doing so will defeat the mandate of the Act, which provides either capital investment or depreciation as an application of income. Consequently, nothing warrants us to disturb the impugned order passed by the learned CIT(A). Accordingly, ground no.1, raised by the Revenue is dismissed.

32. The ground no.2, relates to the addition of ₹ 37,50,000, on account of undisclosed income under section 69A of the Act.

33. After hearing both the parties and on a perusal of the material available on record, we find that identical issue has been raised by the Revenue in its appeal being ITA no.335/Nag./2023, for the assessment year 2017–18, vide ground no.3, wherein, we have decided this issue in favour of the assessee and against the Revenue in Para-20 of this order. Since the issue for our adjudication being identical, except variation in figures, consistent with the view taken therein in assessee's case cited supra and following the findings given therein, similar directions are issued on this issue as well. Accordingly, ground no.3, raised by the Revenue is dismissed by upholding the impugned order passed by the learned CIT(A).

34. Ground no.3, relates to allowance of exemption under section 11.

35. Having heard both the parties and while going through the material available on record, we find that identical issue has been raised by the Revenue in its appeal being ITA no.335/Nag./2023, for the assessment year 2017–18, vide ground no.4, wherein, we have decided this issue in favour of

the assessee and against the Revenue in Para-21 and 22 of this order. Since the issue for our adjudication being identical, except variation in figures, consistent with the view taken therein in assessee's case cited supra and following the findings given therein, similar directions are issued on this issue as well. Accordingly, ground no.3, raised by the Revenue is dismissed by upholding the impugned order passed by the learned CIT(A). Ground no.3, raised by the Revenue is dismissed

36. Ground no.4, being general in nature hence no separate adjudication is required.

37. In the result, Revenue's appeal for A.Y. 2018–19 stands dismissed.

ITA no.337/Nag./2023
Revenue's appeal – A.Y. 2019–20

38. The grounds raised by the Revenue are as follows:–

"1. On the fact and in the circumstances of the case the Id. CIT(A) erred in directing the AO to consider the addition of Rs. 1,41,50,000/- as business income instead of the addition made under section 69A of I.T. Act, when the Id. CIT(A) itself confirmed the notings made on the impounded documents as per annexure B-4, on the basis of which the addition was made

2. On the facts and in the circumstances of the case, the Id., ÇIT(A) erred in directing the AO to consider the income of Rs. 1,41,50,000/- as business income and allow the exemption under section 11 of I.T. Act, when the advances given for purchase of land partakes the character of investment and such investment being in the mode other than the modes authorized u/s 11(5) of I.T. Act, violates the provisions of section 11(5), and its comes within the ambit of the provisions of section 13(1) (c) and 13(1)(d).

3. On the fact and in the circumstances of the case the Id. CIT(A) erred in allowing the exemption u/s 11 to the assessee ignoring the fact that the AO during the course of assessment proceedings has clearly demonstrated the entire trail by way of which the assessee has advanced money in the garb of property transactions just to get the exemption u/s 11 of the IT Act."

39. Ground no.1, raised by the Revenue relates to whether or not the learned CIT(A) was justified in deleting the addition under section 69A to the tune of ₹ 1,41,50,000.

40. After hearing both the parties and on a perusal of the material available on record, we find that identical issue has been raised by the Revenue in its appeal being ITA no.335/Nag./2023, for the assessment year 2017–18, vide ground no.3, wherein, we have decided this issue in favour of the assessee and against the Revenue in Para-20 of this order. Since the issue for our adjudication being identical, except variation in figures, consistent with the view taken therein in assessee's case cited supra and following the findings given therein, similar directions are issued on this issue as well. Accordingly, ground no.1, raised by the Revenue is dismissed by upholding the impugned order passed by the learned CIT(A).

41. Grounds no.2 and 3, raised by the Revenue relate to denial of exemption under section 11 of the Act.

42. Having heard both the parties and while going through the material available on record, we find that identical issue has been raised by the Revenue in its appeal being ITA no.335/Nag./2023, for the assessment year 2017–18, vide ground no.4, wherein, we have decided this issue in favour of the assessee and against the Revenue in Para-21 and 22 of this order. Since the issue for our adjudication being identical, except variation in figures, consistent with the view taken therein in assessee's case cited supra and following the findings given therein, similar directions are issued on this issue

as well. Accordingly, ground no.2 and 3, raised by the Revenue are dismissed by upholding the impugned order passed by the learned CIT(A).

43. In the result, Revenue's appeal for A.Y. 2019–20 stands dismissed.

44. To sum up, all the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court on 03/04/2025

Sd/-	**Sd/-**
K.M. ROY	**V. DURGA RAO**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

NAGPUR, DATED: 03/04/2025

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Nagpur; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Sr. Private Secretary
ITAT, Nagpur