IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1150/Mum/2024 (A.Y.2015-16)
ITA No. 1202/Mum/2024 (A.Y.2016-17)

DCIT (Exemptions) – 1(1),
6th Floor, MTNL Building,
Cumballa Hill, Dr. G.D.
Deshmukh Marg,
Peddar Road,
Mumbai- 400 026 ...... Appellant

Vs.

Indian Education Society
134/145 Raja Shivaji Vidyasankul,
L. N. Road, Hindu Colony,
Dadar (E), Mumbai-400 014
PAN: AAATI2540P ...... Respondent

&

C.O. No. 83/Mum/2024 (A.Y.2015-16)
C.O. No. 84/Mum/2024 (A.Y.2016-17)

Indian Education Society
134/145 Raja Shivaji Vidyasankul,
L. N. Road, Hindu Colony,
Dadar (E), Mumbai-400 014
PAN: AAATI2540P ..... Appellant

Vs.

DCIT (Exemptions) – 1(1),
6th Floor, MTNL Building,
Cumballa Hill, Dr. G.D.
Deshmukh Marg,
Peddar Road,
Mumbai- 400 026 ..... Respondent

Appellant by	:	Shri H. M. Bhatt, Ld. DR
Respondent by	:	Shri Devendra Jain, Ld. AR
Date of hearing	:	11/06/2024
Date of pronouncement	:	22/07/2024

O R D E R

PER GAGAN GOYAL, A.M:

These appeals by Revenue and CO filed by Assessee are directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 19.01.2024 respectively passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2015-16 and 2016-17. The revenue has raised the following grounds in ITA No. 1150/Mum/2024 for AY 2015-16:-

1. Whether on facts and circumstances of the case and in law the Ld. CIT(A) is right in allowing exemption u/s. 11(1)(d) of the Income-tax Act, 1961 and ignoring that specific directions was not received by the trust from the donors?

2. Whether on facts and circumstances of the case and in law the Ld. CIT (A) is right in allowing exemption to the trust without verifying the intent of the donors?

3. Whether on facts and circumstances of the case and in law the Ld. CIT(A) is right in allowing exemption u/s. 11(1)(d) of the Income-tax Act, 1961 ignoring that the discretion lies with the donor, not with the trust, whether the donation should be a corpus donation or not?

2. The assessee has raised the following grounds of appeal in CO No. 83/Mum/2024 for AY 2015-16:-

1) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeal) has erred in not adjudicating the ground raised by the Assessee that the Learned Assessing Officer had erred in initiating reassessment proceedings u/s 147 in violation of the first proviso to section 147.

2) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeal) has erred in not adjudicating the ground raised by the Assessee that the Learned Assessing Officer had erred in reopening the assessment merely for making verification or enquiry.

3) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeal) has erred in not adjudicating the ground raised by the Assessee that the learned Assessing Officer had erred in reopening the assessment, merely relying on the information ought to be received from credible department source without any independent application of mind on the information received, thus the assessment is reopened on the basis of borrowed satisfaction.

4) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeal) has erred in not adjudicating the ground raised by the Assessee that the Learned Assessing Officer had erred in not providing the reasons recorded for reopening and thus violating the law laid down by Honourable Supreme Court in the case of GKN Drive shafts (India) Ltd. v. D.C.I.T. (2003) 259 ITR 19 (SC).

5) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeal) has erred in not adjudicating the ground raised by the Assessee that the learned Assessing Officer had erred in reopening the assessment on the basis of incorrect, vague, unclear and ambiguous reasons.

6) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeal) has erred in not adjudicating the ground raised by the Assessee that the learned Assessing Officer had erred in initiating the assessment u/s 147 by obtaining a mere mechanical sanction u/s 151 from Joint Commissioner of Income Tax (Exemptions) and thus violating the law laid down by Honourable Supreme Court in the case of Chhugamal Rajpal v. SP Chaliha (1971) 79 ITR 603 and also in not providing the copy of satisfaction recorded by such sanctioning authority- prior to giving the sanction.

7) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeal) has erred in not adjudicating the ground raised by the Assessee that the learned Assessing Officer had erred in completing the assessment u/s 144 read with section 147, without providing opportunity of physical hearing thereby violating the provisions and procedures laid down in Section 144B of the Act.

8) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeal) has erred in not adjudicating the ground raised by the Assessee that the learned Assessing Officer had erred in completing the assessment u/s 144 read with section 147, without making any additions in respect of the issues mentioned in the reasons recorded for reopening the assessment thereby violating the laws laid down by the Bombay High Court in the case of CIT vs. Jet Airways (1) Ltd [2010] 195 Taxman 117 (Bombay).

9) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeal) has erred in not adjudicating the ground raised by the Assessee that the learned Assessing Officer had erred in completing the assessment u/s 144 read with section 147, without issuing notice u/s 143(2) of the Act.

010) the respondent-Assessee craves leave to add/alter/modify/delete all or any of the above grounds. All the above grounds raised are without prejudice to each other.

3. The brief facts of the case are that the assessee trust filed its return of income on 01.10.2015 for A.Y. 2015-16 declaring total income at Rs. NIL. The department was in possession of information that the assessee trust collected capitation fees and falsely claimed the exemption u/s. 10(23) of the Act. Based on this information, case of the assessee was reopened u/s. 148 of the Act and a notice was also issued vide dated 29.03.2021. In response to this notice, the assessee did not file any return of income. Ultimately, the case of the assessee was assessed at Rs. 2, 42, 95,650/-. The assessee being aggrieved with this order of the AO preferred an appeal before the Ld. CIT (A), NFAC – Delhi, who in turn allowed the appeal of the assessee on merits. Now the revenue is being aggrieved

with the order of Ld. CIT (A) preferred the present appeal before us and the assessee preferred a Cross Objection (CO) as per Rule 22 of the Appellate Tribunal Rules 1963.

4. We have gone through the order of the AO, order of the Ld. CIT (A) and the submissions and grounds taken by both the parties. The appellant is a Trust registered under the Bombay Public Trust Act, 1950, the Societies Registration Act, 1860; section 80G of the Income Tax Act, 1961. The Appellant has 13 campuses comprises of 65 schools, 3 colleges and 1 student hostel. It has been operating for more than 100 years with students' strength of more than 35000. For the relevant Assessment Year 2015-16; the Appellant had filed its return of income on 01.10.2015 declaring total income of Rs. NIL after claiming exemption under section 11. The Appellant had inter-alia received donations forming part of corpus fund amounting to Rs. 2, 42, 95,651/-. The said amount was claimed as not chargeable to tax pursuant to the provisions of clause (d) of sub section (1) of section 11 of the Act. The appellant's case was selected for assessment proceedings under section 143(3) of the Act. The assessment was concluded vide order dated 11.12.2017 accepting the income declared in the Income Tax Return However, as mentioned in Para-2 above, the case of the appellant was reopened u/s. 147 of the Act by issuance of a notice u/s. 148 of the Act Dated 31.03.2021.

5. As mentioned above, the appellant has received the corpus donation to the tune of Rs. 2, 42, 95,651/- from 113 persons, in the year under consideration. The Assessing Officer noted that all the donors have submitted confirmation letters to the effect that their donations were towards the Corpus Fund. The Assessing Officer, however, noted that no specific purpose of those donations to Corpus

Fund was mentioned, and hence, those funds could have been utilized for fulfilling the objects of the Trust.

6. We have gone through the order of AO, the order of Ld. CIT (A) and submission of the assessee. It is observed that the assessee had submitted all the requisite details about the corpus donors. Receipts were submitted on sample basis because such receipts were voluminous and there was size/space constrain in uploading the documents. However, each and every receipt along with the requisite details of all the 113 donations was submitted along with the submission to the show cause notice. This fact about submission of requisite information by the assessee is not under challenge.

7. We have gone through the grounds taken by the revenue, the only concern they have is that there was no specific direction by the donor and they simply stated that this donation is towards corpus of the trust. We have gone through the provisions of section 11(1) (d) of the Act also, which are reproduced hereunder;

> *"(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution, subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus.*
>
> *Explanation 2.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with Explanation 1, to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of* section 10 *or other trust or institution registered under* section 12AA *or* section 12AB, *as the case may be], being contribution with a specific direction that it shall form part of the corpus, shall not be treated as application of income for charitable or religious*

purposes."

8. In view of above, there is no requirement in the law to specify the purpose of corpus donation as such. Direction of contributor that it should become part of the corpus of the entity itself is enough to comply with the requirement of section 11(1) (d) of the Act. In our opinion, contributing towards corpus is like strengthening the capital base of the organisation on which organisation can earn interest, dividend, etc. for their further advancement in contrast to their general object and donations received which specific agenda.

9. We have gone through the balance sheet of the assessee for A.Y. 2015-16 and it is observed that the total amount under the head corpus fund was Rs. 18,55,76,857/- whereas the investment as per section 11(5) of the Act was Rs. 1,87,05,42,477/-. So it can be confirmed that assessee is maintaining the corpus as per the conditions prescribed u/s. 11(1) (d) r.w.s. 11(5) of the Act. To support our view we relied upon the following judicial pronouncement of coordinate bench as under:

> **"[2011] 12 taxmann.com 375 (Visakhapatnam) ACIT, Circle-2(1), Visakhapatnam v. Nagarjuna Educational Society**
>
> *On a perusal of the records, it was noticed that the assessment for the assessment year 2001-02 was reopened by the Assessing Officer with the impression that the assessee collected capitation fee in the guise of donation and he had a belief that the assessee-society could not be treated as carrying on charitable activities if it indulged in collection of capitation fee. However, during the course of reassessment proceeding, the assessee-society had given detailed explanations along with supporting documents and, accordingly, the Assessing Officer appeared to have been convinced that the impugned donations/receipts were not capitation fee, though he had not expressly stated so. However, the very fact that the Assessing Officer granted exemption to the assessee under section 11 clearly brought out the fact that he treated the assessee-society as a charitable*

institution and he was further convinced that the assessee-society was not indulged in the activity of collecting 'capitation fee'. However, the Assessing Officer alternatively chose to proceed to treat the 'corpus donations' as ordinary receipts and, hence, added the 'corpus donations' to the total receipts of the assessee. The Assessing Officer did not give any reason to support his action. Before the Tribunal, the revenue raised the question of 'capitation fee'. However, the case of the Assessing Officer was not that of 'capitation fee', but he was of the view that the donations received by the assessee were not 'corpus donations'. The real question was whether the Assessing Officer was right in law in treating the 'corpus donations' as 'ordinary donations'. [Para 4]

All donations received by charitable trusts/institutions are termed as 'voluntary contributions' under the Act. The term 'income' is given inclusive definition under section 2(24). Under clause (iia) of the said section, the voluntary contributions received by a trust or institution created wholly or partly for charitable purposes are treated as 'income'.

Under sections 11 and 13, the income from property held for charitable or religious purposes is exempted, subject to the conditions prescribed therein. Section 12A prescribes conditions for applicability of sections 11 and 12 and the primary condition is that the trust/institution should get registration from the concerned Commissioner under section 12A or as the case may be under section 12AA. [Para 5]

Section 12 states that the voluntary contributions (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall, for the purposes of section 11, be deemed to be 'income derived from property held under trust wholly for charitable or religious purposes'.

A careful reading of section 12 would reveal that the voluntary contributions ('Donations' under common parlance) are divided into two categories under the Act, viz.,

(a)	*Voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.*
(b)	*Voluntary contributions made without any such direction.*

The first category of voluntary contributions, i.e., those referred in (a) above are called 'corpus donations' in common parlance. [Para 5.1]

Voluntary contributions received with a specific direction as stated above, i.e., corpus donations enjoy exemption under section 11(1)(d); however, the said exemption is subject

to the provisions of sections 12A and 13, that is, the corpus donations are not required to be compulsorily applied or accumulated as in the case of other income of the charitable trust/institution. However, the voluntary contributions received without any such direction shall be deemed to be income derived from property held under the trust under section 12 and, accordingly, the conditions prescribed under section 11(1)(a) regarding accumulation and application of income shall apply to it. [Para 5.2]

The classification of the 'voluntary contributions' depends upon the specific direction. The group of words 'voluntary contributions made with a specific direction' implies that the direction should come from the person who is making the voluntary contribution, i.e., the concerned 'Donor'. If the concerned donor gives a specific direction that his donation shall form part of corpus of the trust, then such voluntary contributions are classified as 'corpus donations' exempt under section 11(1) (d). Since the Act refers to the specific direction of the 'donor', the option, whether a donation would be for the corpus or not, lies with the donor. Thus, it is clear that the classification of 'voluntary contributions' does not depend upon the sweet will and pleasure of the donee trust/institution. Hence, neither the assessee nor the Assessing Officer is authorized to change the character of voluntary contribution from 'corpus' to 'ordinary contribution' or vice versa. It is only the prerogative and privilege of the concerned donor to specify the purpose for which the voluntary contribution is given. However, any trust/institution is not precluded from soliciting donations towards the corpus of the trust/institution. [Para 6]

In the instant case, there was no dispute with regard to the fact that the impugned donations received by the assessee had been given with a specific direction that they would form part of the 'corpus' of the institution. The assessee was not denied exemption under section 11. The assessee-society had also furnished the names and addresses of the donors along with the photocopy of the receipts given by it. The assessee also filed confirmation letters from some of the donors to the effect that they had given the impugned corpus donations for the development of the institution. However, the Assessing Officer had failed to examine all those evidences to prove the point that the impugned donations were not given voluntarily. The Assessing Officer also did not examine the concerned donors in that regard. In the absence of examination of the evidences and donors, the view entertained by the Assessing Officer became baseless. Hence, in view of the foregoing discussions, the said voluntary contributions would remain as 'corpus donations' exempt under section 11(1)(d) and the Assessing Officer was not correct in changing the character of corpus donations as ordinary receipts in the facts and circumstances of the case. [Para 7]"

10. In *ITO (Exemptions)* v. *Serum Institute of India Research Foundation* [2018] 90 taxmann.com 229/169 ITD 271 (Pune) (Trib.), the assessee received corpus donations amounting to Rs. 3 crore and it was neither approved by CBDT under section 35(1)(*ii*) nor under section 12A/12AA of the Act. In the assessment, it was held that the corpus donation was not exempt income and since the provisions of section 11 could not be applied, the entire donation was charged to tax. The tribunal held that in various cases decided earlier, the corpus donation received by a trust was not taxable in spite of the trust being not registered under section 12A/12AA of the Act. It held that despite the detailed deliberations made by the Revenue, the principles relating to judicial discipline assumed significance and priority. It is well settled to uphold a view favourable to the assessee if there are divergent views on an issue. Accordingly, it was held that the corpus donation could not be taxed in the hands of the assessee.

11. In view of the above facts and law discussed (supra), we do not find any infirmity in the order of the Ld. CIT (A), hence the grounds raised by the revenue are dismissed.

12. **In the result, both the appeals filed by the revenue in ITA No. 1150/Mum/2024 (A.Y. 2015) and ITA No. 1202/Mum/2024 (A.Y. 2016-17) are dismissed.**

C.O. No. 83/Mum/2024 (A.Y.2015-16)
C.O. No. 84/Mum/2024 (A.Y.2016-17)

13. Both the Cross Objections (C.O.) filed by the assessee is identical in the nature. For the sake of brevity, we are adjudicating C.O. No. 83/Mum/2024 (A.Y. 2015-16) first and the findings will apply mutatis mutandis to C.O. No.

84/Mum/2024 (A.Y. 2016-17) also. Fact of the case has already been discussed (supra) in the appeal of the revenue. Here our focus will be on technicalities of the case and consequent facts applicable.

14. Before we decide the C.O. filed by the assessee, it is brought to our notice by the office of the Assistant Registrar that the C.O. filed by the assessee is time barred by 16 days and the same was brought to the notice of the assessee, but we have not find any explanation /reply filed by the assessee on this delay. Considering this fact, we find that the C.O. filed by the assessee is defective and there was no attempt by the assessee to remove the same, hence all the grounds taken by the assessee are dismissed.

15. In the result, both the C.O.s filed by the assessee are dismissed.

16. In nutshell, both the appeals of the revenue are dismissed and both the C.O.s of the assessee are also dismissed.

Order pronounced in the open court on 22nd day of July, 2024.

Sd/-	Sd/-
(ANIKESH BANERJEE) JUDICIAL MEMBER	(GAGAN GOYAL) ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 22/07/2024
Dhananjay, Sr. PS

<u>Copy of the Order forwarded to</u>:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai

5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Mumbai