

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A' CHANDIGARH**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 797 & 798/CHD/2024
निर्धारण वर्ष / Assessment Year: 2014-15, 2015-16

Kandi Friends Educational Trust, Bhaddal Campus, Village – Bhaddal, Roopnagar.	Vs	The DCIT, Circle-1, Exemption, Chandigarh.
स्थायी लेखा सं./PAN NO: AAATK2935N		

Shri Ashok Goyal, CA
Revenue by : Shri Manav Bansal, CIT DR

Date of Hearing : 20.05.2025
Date of Pronouncement : 15.07.2025

PHYSICAL HEARING

ORDER

PER RAJ PAL YADAV, VP

The present two appeals are directed at the instance of the assessee against the separate orders of ld. Commissioner of Income Tax (Appeals) [in short 'the CIT (A)'] dated 22.05.2024 and 24.05.2024 passed for assessment year 2014-15 and 2015-16 respectively.

2. The facts on all vital points are common in both the years, therefore, we heard both the appeals together and deem it appropriate to dispose of them by this common order.

3. Before adverting to the specific grievance, we deem it appropriate to take note of certain basic facts. The assessee is a Charitable Trust imparting education. It was registered under Societies Registration Act vide Registration No. 974 of 1997-98 dated 30.09.1997. There is no dispute with regard to the fact that assessee enjoys the registration under the Income Tax Act u/s 12A(a) of the Income Tax Act, which was granted on 25.01.2001 vide CIT/CHD,TECH 3812A7869. The assessee Trust has filed its return of income on 30.09.2014 and 28.09.2015 declaring 'nil' income for assessment year 2014-15 and 2015-16 respectively. The case of the assessee for both the years was selected for scrutiny assessment and notices u/s 143(2) were issued on 31.08.2015 and 06.09.2016 which were duly served upon the assessee. The AO, thereafter issued questionnaires u/s 142(1) of the Income Tax Act on 16.03.2016 and 01.02.2017 listing the cases for hearing on 18.05.2016 and 06.03.2017 for assessment year 2014-15 and

2015-16. The AO has made a detailed analysis and thereafter determined the taxable income of the assessee at Rs.5,23,74,106/- in assessment year 2014-15 and Rs.10,47,74,451/- in assessment year 2015-16. The assessments have been passed u/s 143(3) on 23.12.2016 and 26.12.2017 respectively.

4. Appeals to the CIT (Appeals) did not bring any relief to the assessee. The ld. counsel for the assessee has briefly filed the details in tabular form exhibiting the amounts added by the AO in each year and the head under which these additions have been made. For the facility of reference, these details read as under :

Assessment year 2014-15

Particular	Amount (In INR)
Returned Income	Nil
Disallowance of Honorarium	37,80,000
Disallowance of Travelling Expenses	3,11,689
Disallowance of Interest on Advances related to AME Course	12,09,345
Disallowance of Revenue Expenditure on AME Course	14,23,348
Non-utilisation of accumulated Funds (FY 2013-14)	2,90,55,422
Excess income over expenditure	1,65,94,302
Total Taxable income	5,23,74,106

Assessment year 2015-16

Particular	Amount (In INR)
Returned Income	Nil
Disallowance of Honorarium (Rs. 30,61,129/-) and travelling and conveyance expense along with cost of vehicles (Rs. 76,78,685/-)	1,07,39,814
Disallowance of Interest on Advances	13,90,153
Non-utilisation of accumulated Funds (AY 2010-11)	6,27,75,303
Disallowance of Revenue Expenditure on AME Course	15,17,461
Disallowance of Donation	1,10,000
Depreciation disallowed and excess of income over expenditure	2,82,41,720
Total Taxable Income	10,47,74,451

5. The assessee has taken eight grounds of appeal in assessment year 2014-15 and ten grounds of appeal in assessment year 2015-16. In brief, its grievance revolves around the additions noticed by us in the above table and rest are peripheral arguments in support of its grounds of appeal challenging the above additions.

5.1 The first common ground in both the appeals relates to denial of exemption u/s 11 of the Act. Thus, we take this ground in both the years first. As observed earlier, the assessee is a Trust engaged in charitable activity by imparting education which is one of the four limbs provided in the

definition of a 'Charitable Institution' u/s 2(15) of the Income Tax Act. In other words, if an Institution is imparting education, then this activity is per-se charitable as contemplated in the definition of 'Charitable Purpose'. This definition further contemplates that 'Charitable Purpose' includes relief of the poor, education (yoga, medical relief) preservation of environment including water sheds, forests and wildlife and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility. Thus, the activities of the assessee do not fall in the ancillary object contemplated in the definition under the head 'Advancement of any other object of general public utility', rather its activity falls under the main compartment of the definition which if carried out by an Institution, then it will be per-se charitable.

6. With the assistance of ld. Representative, we have perused the record carefully. We find that ld. AO independently did not point out as to how assessee is not performing charitable objectives. He has only narrated 2-3 circumstances vide which he has observed that assessee has violated Section 13(1)(c) read with Section 13(3) by making

payments of honorarium to the Chairperson, Vice Chairperson, General Secretary, Finance Secretary of the assessee Trust. He has also observed that assessee has provided travelling facility to these persons and therefore, this is not part of its objectives. Similarly, he has pointed out one more circumstance vide which incurrence of expenditure on start of an Aviation Maintenance Engineering Course is not covered under 'Charitable Activities'. On accumulative setting of these 2-3 circumstances, which we will be adverting upon in the subsequent part of this order, he harboured the belief that assessee is not acting for charitable objective, hence not entitled for benefit of Section 11 of the Act.

7. The appeal to the CIT (Appeals) did not bring any relief to the assessee on this part.

8. Before us, it was submitted by the ld. counsel for the assessee that since inception, these activities have never been doubted. There is no change in the activity from the inception. Assessments in assessment year 2011-12, 2012-13 and 2013-14 were passed u/s 143(3) and the benefit has been granted to the assessee by the AO. The ld. counsel for the

assessee drew our attention towards copies of the assessment orders for these assessment years which are placed on page 100 to 103, 113 to 114 and 127 to 131. In assessment year 2013-14, order of the CIT (Appeals) is also available on page 132 to 184. Every year, the AO has asked for the details of honorarium paid to the members of the Management Committee and these honorariums have been allowed to the assessee. Thus, according to the ld. counsel for the assessee, the AO has committed an error by denying the benefit of Section 11. He put reliance upon the judgement of Hon'ble Punjab & Haryana High Court in the case of CIT Vs Idicula Trust Society, Faridabad 223 taxman 66. He also relied upon order of the ITAT Delhi in the case of Dy. CIT (Exemption) Vs M/s Yug Nirman Yojna Vistar Trust (ITA No. 7687/Del/2018). Apart from these decisions, he further contended that even on the principle of consistency, this benefit cannot be denied to the assessee. He relied upon judgement of Hon'ble Supreme Court in the case of Radhasoami Satsang Vs CIT (1992) 193 ITR 321.

8.1 On the other hand, ld. DR relied upon orders of the AO. He pointed out that since assessee has extended undue benefit to the Chairman, Vice Chairman, General Secretary etc. which is not allowable under Section 13(1)(c) read with Section 13(3), therefore, he has rightly disallowed the benefit of Section 11 in toto.

9. We have duly considered the rival contentions and gone through the record carefully. As observed earlier, assessee enjoys registration u/s 12A(a) of the Income Tax Act. This registration has not been cancelled to the assessee until now. Consistently in the past, benefit of Section 11 has been allowed to the assessee. It is pertinent to note that if any undue benefit is granted which deserves to be disallowed u/s 13(1)(c) read with Section 13(3), then the disallowance is to be restricted qua that amount and benefit of Section 11 cannot be denied in total to the assessee. The AO has not pin-pointed as to how assessee has violated its objectives while imparting education. The circumstances referred in the assessment order which we will be taking independently in the subsequent part is not sufficient to say that assessee is not entitled for

the benefit of Section 11 and 12 of the Income Tax Act. Thus, this finding of both the Revenue Authorities is set aside. It is held that assessee is entitled for the benefit of Section 11 and 12 of the Income Tax Act.

10. The Ground Nos. 2 and 3 of assessment year 2014-15 are inter-connected with Ground No.3 and 4 of assessment year 2015-16. We take all these grounds of appeal together. The assessee has pleaded that Id. CIT (Appeals) has erred in confirming the disallowance of Rs.37,80,000/- and Rs.30,61,129/- which were added by the AO with the aid of Section 13(1)(c) read with Section 13(3) and 164(2) of the Income Tax Act in assessment year 2014-15 and 2015-16 respectively. Similarly, in Ground No. 3 of assessment year 2014-15 and Ground No.4 of assessment year 2015-16, it has been pleaded that CIT (Appeals) has erred in confirming the disallowance of Traveling Expenses amounting to Rs.3,11,689/- and Rs.76,78,685/- in assessment year 2014-15 and 2015-16 respectively. These disallowances have also been made with the aid of Section 13(1)(c) read with Section 13(3) and 164(2) of the Income Tax Act.

10.1 While impugning the disallowances, ld. counsel for the assessee took us through the Paper Book. He submitted that details of honorarium paid to different individuals in all these years is being placed on page 191 of the Paper Book, which reads as under :

Name	F.Y 2009-10	F.Y 2010-11	F.Y 2011-12	F.Y 2012-13	F.Y 2013-14	F.Y 2014-15	F.Y 2015-16
Dr. G. S Chaha!	5,20,000						
Dr. S.P Singh	4,40,000						
S.KJoshi	2,25,000						
Ujagar Singh	4,40,000	5,85,000	65,000	3,99,193	9,00,000	8,25,000	9,00,000
Kulwinder Gurcharan Singh	2,35,000	9,60,000	8,80,000	10,93,225	10,80,000	5,66,129	15,24,194
Sukhpreet Singh	97,500	7,80,000	7,15,000	8,98,225	9,00,000	4,05,000	
Surinder Singh				3,99,193	9,00,000	8,85,000	10,80,000
Mandeep kaur						3,80,000	3,58,065
BALDEEP SINGH							4,72,500
	19,57,500	23,25,000	16,60,000	27,89,836	37,80,000	30,61,129	43,34,759

10.2 He submitted that in every assessment year, a particular question was raised by the AO qua these expenses. He took us through page No. 92 to 96 of the Paper Book wherein questionnaire issued u/s 142 for assessment year 2011-12 has been placed on the record. At Sr.No. 19 of this questionnaire, AO has asked as under :

“File details of payments made to specified persons in last three years as well as in the year under consideration.”

10.3 Similarly, identical question has been asked in assessment year 2012-13 at Sr.No. 19 itself and the copy of

the questionnaire is available at page No. 110 to 112 of the Paper Book. This questionnaire is dated 31.03.2014 whereas the questionnaire in assessment year 2011-12 was dated 30.01.2013. Identical question has been asked in assessment year 2013-14. In all these three years, ultimately no disallowance was made. Thus, remuneration paid to specified persons contemplated in the list u/s 13(3) has been continuously allowed in the past, for the first time, AO has disallowed it.

11. The ld. DR, on the other hand, relied upon the orders of the AO.

12. We have duly considered the rival contentions and gone through the record carefully. If scheme of Section 11 is being perused, then it would reveal that income derived from the property held under the Trust wholly for charitable or religious purpose, if applied to the extent of 85% on its objectives, then such income will not fall in the total income assessable of an assessee. In other words, if Rs.100/- is being derived from the property held under the Trust and Rs.85/- is being applied towards the charitable objective of the Trust,

then nothing will be taxable upon such a 'Charitable Society' or Trust. However, Section 13 has contemplated certain exceptions. Therefore, for the facility of reference, we are taking note of relevant part of Section 13, which reads as under :

Section 11 not to apply in certain cases.

13. (1) Nothing contained in section 11 or section 12] shall operate so as to exclude from the total income of the previous year of the person in receipt thereof-

x x x
(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 enures, or

(ii) if any part of such income or any property of the trust or the 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): [such part of income as referred to in sub-clauses (i) and (ii)]

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;

x x x

(2) Without prejudice to the generality of the provisions of clause (c)[and clause (d)] 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),-

x x x

(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 reasonably paid for such services;

x x

(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely:-

(a) the author of the trust or the founder of the institution;

(b) any person who has made a substantial contribution to the trust or institution, [that is to say, any person whose total contribution up to the end of the relevant previous year exceeds [fifty] thousand rupees];

(c) where such author, founder or person is a Hindu undivided family, a member of the family;

(cc) any trustee of the trust or manager (by whatever name called) of the institution;]

(d) any relative of any such author, founder, person, [member, trustee or manager] as aforesaid;

(e) any concern in which any of the persons referred to in clauses (a), (b), (c), [(cc)] and (d) has a substantial interest.

x x x

12.1 A perusal of the above provision would indicate that if the assessee society has availed the services or purchased any object from any specified person contemplated in sub-clause (3) and paid to such specified person in excess of what may be paid reasonably for such service in open market, then excess would be disallowed. In other words, for example, if assessee society has availed the services of an Engineer who happened

to be a specified person under sub-clause (3) and paid him the service charges which he could not command in the open market, then such excess amount will be disallowed to the assessee and benefit of Section 11 would not be available on such an amount. It will be taxable. For example, assessee can purchase an item for Rs.100/- but from a specified person, it has purchased at Rs.120/-, then this excess Rs.20/- will be added to the taxable income of the assessee and benefit of Section 11 will not be available to the assessee Society. A perusal of the complete assessment order reveals that AO has nowhere made analysis of the remuneration/honorarium paid to the members of the Management Committee vis-à-vis their services utilized for the benefit of the Society. All the persons are qualified persons, they have devoted their time for managing the affairs of the Society and it has paid only honorarium, not regular salary. Similarly, it has provided traveling facility to them which was only for fulfilling the objects of the Society. In other words, in assessment year 2015-16, a little higher amount is being incurred by the assessee because the member of the

Management Committee has to travel outside India for inspection of a plane which was to be used in Aviation Wing of the Engineering College. The AO has not examined this aspect as to how this type of facilities can be availed from the open market and the price of such services. He has simply narrated that these persons are gainfully implied in their other activities also and therefore, payment of honorarium to these persons is not in accordance with law. To our mind, this cannot be a logic for denying the benefit to them. The intention of the Section is not as such. It is the assessee who has to manage its affairs and to decide what is necessary for its functioning. The AO can only examine whether excess is being paid or not, but he has not carried out any Investigation in that area. The AO has not assigned any reason as to why he is departing from the principle of consistency where such honorarium has been allowed to these persons. Similarly Traveling Expenses has been allowed to the assessee in earlier years. The CIT (Appeals) failed to record any finding qua this aspect in right perspective and blindly up held the assessment order. Therefore, we allow all these grounds of appeal.

13. Ground No. 5 in assessment year 2014-15 is inter-connected with Ground No. 6 in assessment year 2015-16. The grievance of the assessee in both these grounds is that CIT (Appeals) has erred in confirming the addition of Rs.2,90,55,422/- and Rs.6,27,75,303/-. These additions have been made on the ground that funds accumulated in the past have not been used within five years as contemplated in sub-clause (2) of Section 11 of the Income Tax Act. The ld. counsel for the assessee while impugning the orders of Revenue Authorities contended that similar question was asked by the AO in assessment year 2012-13 wherein it was contended by the assessee that on account of stay granted by the Addl. District Judge, Ropar, these amounts could not be applied by the assessee. The explanation given by the assessee in assessment year 2012-13 read as under :

Assistant Commissioner of Income Tax Circle -
[(Exemptions). Aayakar Bhawan,
Chandigarh

Dear Sir.

Re.: M/s. Kandi Friends Educational Trust (Regd.), SCF 9, Phase 5, Mohali
Sub.: Furnishing information u/s 143(2) of the Income Tax Act, 1961 for the
Assessment Year 2012-13

With reference to your queries regarding non-utilization of surplus/accumulated funds set aside for specific purposes in the earlier years and the year under assessment, it is submitted that the Court of Sh. Sukhdev Singh, Additional District Judge, Ropar vide Order dated 14.06.2006 in Civil appeal No. 77 of 2005 in civil suit No[^] 190 of 2005, directed the Chairman, Finance Secretary and the Principal (Defendants) "Not to make any major investment in the institution run by the Trustees in the shape of purchasing new land or constructing a new building without prior permission of the Court".

In view of the above restrictions placed by the Court, the assessee refrained from making any fresh investments in immovable assets as declared in Form No. 10 tiled for each assessment year from the year 2006 onwards during which the order of the Hon'ble Court was passed. Any violation of the Court Order would have resulted in contempt of the Court resulting in criminal proceedings etc. against all concerned. The assessee-Trust was fully aware of the Form No. 10 filed each year alongwith the Income Tax Return which was in full compliance with the provisions of the Income Tax Act. Nevertheless, in the stated circumstances, the order of the Court was supreme and equally binding on the Trust which was, thus, constrained to accord secondary consideration to the undertakings given in Form No. 10 for various previous years.

As a result of this estoppel on further major construction activity, the Trust also suffered losses by not being able to provide upgraded infrastructure to the students, considered vital for imparting quality education over subsequent years.

However, the Trust shall, in future, again start utilizing the surplus funds for the objects of the Trust as soon as all litigations come to an end.

Thus, in view of the above Court sanctions, it is requested that the non-utilization of accumulated funds in the earlier years and, more particularly, in the year under assessment may kindly be condoned as the same could not be utilized on account of reasons beyond the control of the assessee-Trust.

Although there is no fulfillment of Section 11(2) of the Act and in order to avoid contempt proceedings from the Court the violation has been made, and it is requested that the non-compliance of the provisions may be ignored.

*Sd/
Chairman*

13.1 The AO did not make any disallowance in assessment year 2012-13 in assessment order passed u/s 143(3) of the Income Tax Act but took a contrary stand in these years. He submitted that as per the proviso to Section 11(2), the period of the stay is required to be excluded from the alleged

period of five years, therefore, assessee is protected by the proviso appended with the Section.

13.2 The ld. CIT DR, on the other hand, was unable to controvert the contention of the assessee as he relied upon the orders of the Revenue Authorities.

14. We have duly considered the rival contentions and gone through the record carefully. As observed earlier, the scheme of Section 11 contemplates that a charitable institution is required to apply the income derived under the Trust to the extent of 85% on its objective in order to avoid levy of taxes. In case an assessee is unable to incur the income to the extent of 85% on its objective, then assessee can apply for accumulation of such funds for future application. The procedure is being contemplated in sub-clause (2) of Section 11, therefore, for the facility of reference, we take note of the relevant part of sub-section 2 of Section 11, which reads as under :

[(2)] Where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be

included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—

[(a)] such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;

x x x

x x x

Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.”

14.1 A perusal of the above provision would indicate that if 85% of income referred to in clause (a) and (b) of sub-section (1) of Section 11 is not applied or is not deemed to have been applied to ‘charitable’ or ‘religious purposes’, then assessee can accumulate or set apart for future application, but such accumulated fund is to be applied within five years, as contemplated in sub-clause (a) of sub-section (2) of Section 11. However, the proviso appended thereto further contemplates that in computing the period of five years referred to in clause (a), period during which the income could not be applied for the purpose for what it is so accumulated or set apart, due to

an order or injunction of any Court, shall be excluded. In other words, during the period if some restraint is being put by a Court for spending such money, then that period is to be excluded. It is demonstrated before us that a litigation arose between the Management Committee which ultimately travelled to the First Appellate Authority before Addl. District Judge, Ropar, who has granted status-quo and restrained incurrence of any major expansion in capital field, therefore, assessee is protected by the proviso appended to the Section itself. If that period is to be excluded, then it has incurred the accumulated fund and no disallowance ought to be made. Even on the principle of consistency, this plea has been accepted by the AO in the assessment year 2012-13 but we fail to understand as to why AO has taken a different stand in these two years. Accordingly, we allow this ground of appeal in both the years and delete the disallowance made by the AO and confirmed by the CIT (Appeals). The relevant documents are placed on page No. 206 to 238 of Volume-III of the Paper Book. The assessee has placed on record details of relevant forms whereby accumulation was made.

15. The Miscellaneous Appeal bearing No. 77 was filed on 05.08.2005 and injunction was granted under Order 39 Rule 1 and 2 of the CPC. The concluding paragraphs of the judgement are available from page 239 to 241. This order was pronounced on 14.06.2006. The litigation was relegated to the Trial Court for disposal of the suit and ultimately it travelled to the Hon'ble High Court vide RSA No. 689 of 2011. Thus, after going through all these documents, we are of the view that AO has failed to appreciate the facts and circumstances in right perspective. Similarly, CIT (Appeals) has erred in confirming the finding of the AO. The assessee was prevented by the Court in not utilizing the accumulated funds on its objectives by an injunction of the Court. Thus, both the grounds are allowed and disallowances are deleted.

Ground Nos. 4 and 6 of A.Y. 2014-15 and
Ground Nos. 5 and 7 of A.Y. 2015-16

16. The grievance of the assessee in these grounds is that ld. CIT (Appeals) has erred in confirming the addition of Rs.12,09,345/- and Rs.13,90,153/- and Rs.14,23,344/- and Rs.15,17,461/- in assessment year 2014-15 and 2015-

16 respectively. These additions have been made by the AO on the ground that assessee failed to charge interest on advances made by it, hence, according to him, a notional rate of interest required to be applied which ought to have been charged by the assessee on giving advance. Similarly, the assessee has erred in claiming revenue expenditure for Aviation Maintenance Engineering Courses.

16.1 The brief facts of the case are that as to commence an Aviation Maintenance Engineering Course as well as a Flying School, it has approached DGCA for this purpose for taking necessary approvals. Ultimately, it has constructed a Hanger, roads, Airport Strip etc. It has also paid advances for purchase of aircraft. The AO was of the view that since DGCA has not granted approval for these years, therefore, these expenditures are not admissible to the assessee. The discussion has been made by the AO in paragraph 11 of the assessment order. The ld. counsel for the assessee drew our attention towards Paper Book-1 from page Nos. 198 to 270 which contains Purchase Agreement with DHK Defence and aerospace for purchase of two Aircrafts, NOC to import

heavy aircraft for education purpose by DGCA, the letter inviting officials of DGCA for Inspection and various other details including High Sea Sale Agreement for aeroplane.

16.2 The brief summary is being noticed by the AO while taking note of the reply of the assessee in paragraph No. 4 of the assessment order for assessment year 2014-15. The ld. AO did not accept the contention of the assessee and the reason assigned by him is that assessee has started the working of this course without any approval of DGCA, therefore, these expenses are to be considered not incurred towards fulfilment of the objective of the assessee.

16.3 The appeal to the CIT (Appeals) did not bring any relief to the assessee.

17. With the assistance of ld. Representative, we have gone through the record carefully. It is pertinent to note that assessee is a Charitable Institution who got registration u/s 12A on 25.01.2001. It has explored new area of imparting education in the Branch of Aviation Maintenance Engineering Course. The AO failed to appreciate that approval to start a course would not be

granted to any Institution unless infrastructure is placed in order. Thus, even for getting approval, assessee has to first develop the infrastructure, only then approval would be admissible. The assessee had a correspondence with DGCA. It has invited its officials for Inspection of the development made by it. The DGCA has granted NOC to the assessee for entering into Agreement for purchase of heavy aircraft. The assessee got authorization to import aircraft for education purpose. It has placed on record copy of High Sea Sale Agreement for aeroplane. We have been informed that DGCA has granted the approval also. The AO failed to appreciate the fact that even without actual starting of education in a particular year, the preparatory work for starting Educational Institution falls within the ambit of 'education' contemplated in Section 2(15) of the Income Tax Act. The AO cannot expect charging of interest on a sum given by the assessee towards advance. In other words, a notional interest cannot be calculated for making addition. Hence, the disallowance made by the AO in both the counts are not sustainable. The assessee has started a new course in a new line but, it is part of imparting education which is

otherwise covered by Memorandum of Association of the assessee Trust. Therefore, we allow both these grounds and delete disallowances made by the AO on both the counts i.e. denial of AMC Expenses as Revenue Expenses as well as charging of notional interest.

18. No other ground is left in assessment year 2014-15, hence, this appeal is treated as allowed.

19. In Assessment Year 2015-16, assessee has made a donation to a local Gurudwara, amounting to Rs.1,10,000/- This donation is disallowed to the assessee by the AO on the ground that assessee has incurred expenditure for religious activity. The grievance of the AO is that assessee's main activity is of imparting education, whereas donation to a Gurudwara is a religious activity which is not in the line of assessee's objective. The donation of Rs.1,10,000/- is less than 5% of total expenditure. It will, otherwise, fall within the ambit of 15% because assessee has achieved the application of income derived from the Trust property to the extent of 85%, as contemplated in Section 11. Thus, this addition is not sustainable and accordingly deleted.

Ground No.2 in A.Y. 2015-16

20. In this ground, grievance of the assessee is that CIT (Appeals) has erred in confirming the disallowance of depreciation amounting to Rs.2,44,78,010/-. The ld. AO has discussed this issue in paragraph No.11 of the assessment order. The scheme of Section 11 would contemplate that income derived from the Trust property is to be applied to the extent of 85% on the objective of the Trust. This application would also include purchase of capital asset or construction of building. For example, the assessee has Rs.100/- as an income. It has spent Rs.60/- for purchase of a capital asset or construction of a building, then prior to 01.04.2015, assessee was entitled for claiming the depreciation on such capital asset or building because income of the assessee was to be determined according to the principle of determination of business income. However, w.e.f. 01.04.2015, sub-clause (6) has been appended in Section 11 which prohibits claim of depreciation on such capital asset whose cost was claimed towards application of income. In other words, if 85% of

the income of the Trust is applied on its objective, then it will not be taxable. Hence, if a capital asset is being purchased from that money, which was claimed as exemption being 85% of the receipts, then again assessee will not be entitled to claim the depreciation on it. The AO was of the view that assessee has claimed application of income and also claimed depreciation. Therefore, he disallowed the alleged depreciation. However, ld. counsel for the assessee controverted this understanding of the AO. He took us through page 55 of the Paper Book-1 where computation of income has been placed. The gross income is Rs.14,64,17,334/-. The expenses are Rs.14,71,16,505/- Thus, the expenditures are more and assessee has not included claimed depreciation in this expenditure. Depreciation has been calculated separately. The AO has not looked into this angle. He has simply carved out total receipts, then 85% of such receipts and revenue expenditure without consideration of depreciation. The AO ought to have find out how much is the total expenditure incurred including capital which has been claimed by application of income and if some balance is there out of

which depreciation stated to be claimed, only then he would be justified but here the assessee has not claimed depreciation from the gross receipts, therefore, separately depreciation cannot be disallowed to the assessee because net is over-spent. In other words, the net balance is in negative. Hence, the finding of the AO which has been confirmed by the CIT (Appeals) is set aside and the addition is deleted.

21. In the result, both the appeals are allowed.

Order pronounced on 15.07.2025.

Sd/-

(KRINWANT SAHAY)
ACCOUNTANT MEMBER

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File