

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

**Before Shri Satbeer Singh Godara, Judicial Member
And
Shri Manish Agarwal, Accountant Member**

ITA No. 7254/Del/2017 : Asstt. Year: 2011-12

ITA No. 7255/Del/2017 : Asstt. Year: 2012-13

ITA No. 4465/Del/2017 : Asstt. Year: 2011-12

ITA No. 4466/Del/2017 : Asstt. Year: 2012-13

Mahavira Pupil Educational Society, Lochan & Co. (Chartered Accountant), 415, Krishna Apra Plaza, Sector-18, Noida (UP) (PAN: AABTM3865E)	Vs	JCIT, RANGE-1, NOIDA
(APPELLANT)		(RESPONDENT)

Assessee by : Shri Akshit Goel, CA

Revenue by : Ms. Harpreet Kaur Hansra, Sr. DR.

Date of Hearing: 17.07.2025

Date of Pronouncement: 28.07.2025

ORDER

PER SATBEER SINGH GODARA, JM:

The assessee has filed its instant four appeals i.e. twin quantum and as many corresponding penalty appeals ITA No. 4465/Del/2017 & 4466/Del/2017 with ITA No. 7254/Del/2017 & 7255/Del/2017 against the CIT(A)-I, Noida's common orders dated 25.09.2017 passed in Appeal No. 91/2014-15/Noida and 234/2014-15/Noida in assessment years 2011-12 and 2012-13,

involving proceedings u/s. 143(3) and section 271(1)(c) of the Income Tax Act, 1961 (hereinafter "the Act"); respectively.

2. Heard both the parties. Case files perused.

3. We advert to the assessee's first and foremost quantum appeal ITA No. 4465/Del/2017 (AY 2011-12) raising the following "revised" grounds of appeal:

1. On the facts and circumstances of the case, the Ld. CIT(A) has erred, in law, in issuing the notice u/s. 251(2) of the Act.
2. On the facts and circumstances of the case, the Ld. CIT(A) has erred, in law in enhancing the assessed income to Rs. 4,21,15,375/- considering the gross receipts of Rs. 3,46,98,475/- and donations of Rs. 74,16,900/- as a taxable income without giving any deduction and denying the benefit of sections 11 & 12 of the Act.
3. On the facts and circumstances of the case, the Ld. CIT(A) has erred, in law, in holding that income of educational institutions is to be dealt with for exemption from the incidence of tax u/s. 10(23)(C) only and not under the provisions of sections 11 & 12 of the Act.
4. On the fact and circumstances of the case, the Ld. CIT(A) has erred, on facts and in law, in holding that income of the appellant society by way of fees and other charges from the students cannot be said to be income from property held

under trust and therefore, not eligible for exemption u/s. 11 of the Act.

5. On the facts and circumstances of the case, the Ld. CIT(A) has erred on facts and in law, in holding that cost of education cannot be recovered by educational institutions from the students by way of fees and therefore cannot be adjusted against the expenditure incurred.
6. On the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming the disallowance of depreciation amounting to Rs. 38,62,562/- and failing to appreciate that the assessee cannot be said to have claimed double deduction and otherwise, to the depreciation is allowable to it as provided u/s. 32(1)(ii) of the Act as has been held by the Hon'ble High Court of Delhi in the case of DIT vs. Vishwa Jagriti Mission reported in 262 CTR 558. The depreciation claim of Rs. 38,62,562/- is liable to be allowed as a deduction.
7. On the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming the addition of Rs. 52,38,500/- made by the AO is treating the development receipts as revenue receipts instead of capital receipts. The Ld. CIT(A) has failed to appreciate that the receipts were collected for specific purposes and, therefore, are not liable to be taxed under section 11(1)(d) of the Act.

8. On the facts and circumstances of the case, the Id. CIT(A) has erred in confirming the addition of Rs. 19,05,400/- made by the AO, treating the library fund as revenue receipts instead of capital receipts. The CIT(A) has failed to appreciate that the receipts are collected for specific purposes and, therefore, are not liable to be taxed under section 11(1)(d) of the Act.
9. That Id. CIT(A) has erred in holding that donations received by the appellant amounting to RS. 2,73,000/- are not eligible for exemption violating the provisions of section 11(1)(d) in as much as such observations have been made contrary to facts and without application of mind.
10. That on the facts and circumstances of the case, the Ld. CIT(A) has ignored the CBDT Circular No. 14 of 1995 dated 11.04.1955, which obligates the AO not to take advantage of the assessee's ignorance, and his duty is to assist the taxpayer in every reasonable way, particularly in claiming and securing relief.

4. Both parties are very much unanimous in the course of hearing that the assessee's 1st to 5th substantive grounds are directed against the CIT(A) action invoking section 251(1)(a) enhancement jurisdiction for the purpose of holding it as an entity engaged in the trade/commercial business activities, for

the purpose of assessing its gross receipts as against the assessment findings dated 24.3.2014 denying it various exemption claims of expenditure etc. Both the parties reiterate their respective stands against and in support of the impugned enhancement made by the CIT(A). As per the latter's detailed discussion in para 118 at page 40 of his order that the assessee's entire receipts of Rs. 4,21,15,375/- ought to be treated as income from "other" sources u/s. 56(1) of the Act.

4.1 The Revenue quotes CIT vs. Nirbheram Deluram [1997] 139 CTR 484 (SC) and Goel Diecast Ltd. vs. CIT (2008) 297 ITR 72 (P&H) with such an enhancement could indeed be made in the lower appellate proceedings before the CIT(A).

5. We have given our thoughtful consideration to the assessee and the Revenue's foregoing respective stands against and in support of the impugned enhancement to the extent of assessing the assessee's entire gross receipts derived from educational activities. We find no reason to sustain the CIT(A)'s action. This is for the precise reason that such an exercise of adding the entire receipts amounts to an altogether a new head of income as against the assessment findings disallowing/restricting the assessee's exemption claim, already forming subject of adjudication; and, therefore, not sustainable as per CIT vs. Shapoorji Pallonji Mistry (1962) 44

ITR 891 (SC), CIT vs. Sardari Lal & Co. (2001) 251 ITR 868 (Del) and CIT vs. Union Tyres (1999) 240 ITR 556 (Del.), adjudicating the very issue in assessee's favour and against the department. The Revenue forgoing case law(s) admittedly does not deal with the issue of adding an altogether new head of income and the same stands distinguished therefore. We accordingly accept the assessee's above extracted substantive grounds nos. 1 to 5 in very terms to reverse the CIT(A) impugned enhancement action. Necessary computation to follow.

6. Next comes the assessee's 6th substantive ground that both the lower authorities have erred in law and on facts in treating its depreciation claim of Rs. 38,62,562/- as an instance of double deduction for the sole reason that it had included a very sum for the purpose of application of income as well. Suffice to say the Revenue could hardly dispute that the legislature has specifically inserted sub-section (6) to section 11 vide Finance Act, 2014 w.e.f. 1.4.2015 that such a depreciation is no more admissible, once the corresponding arguments of the fixed assets forms part of application u/s. 11 of the Act. Case law CIT vs. Rajasthan and Gujarat Charitable Foundation Poona (2018) 89 taxmann.com 127 (SC) has further settled the very issue in assessee's favour and against the

department for the prior period to the above statutory amendment. We thus see no merit in the Revenue's contentions supporting the impugned depreciation disallowance of Rs.38,62,562/- which stands deleted therefore. The assessee's 6th substantive ground succeeds.

7. Coming to the assessee's substantive ground nos. 7 to 9, learned counsel vehemently argues that both the lower authorities have erred in on facts and in law in treating its development, library fund receipts involving specific directions from the donation/contributions as revenue items involving varying sums as liable to be assessed. He could not pin-point any such specific directions of the assessee's contributors so as to satisfy the statutory contention u/s. 11(1)(d) of the Act. We thus uphold both the lower authorities' action disallowing it corpus and specific donation claim to reject all these remaining grounds 7 to 11 in very terms. Ordered accordingly. The assessee's instant "lead" appeal no. 4465/Del/2017 (AY 2011-12) is partly accepted in the forgoing terms.

8. The assessee's second quantum appeal no. 4466/Del/2017 for the latter's assessment year 2012-13 also raises identical ten substantive grounds raising the very issues which are partly accepted as per both the learned representatives respective fair submissions before us. Necessary computation to follow as

per our directions in the preceding assessment year 2011-12 hereinabove. The assessee's instant second quantum appeal no. 4466/Del/2017 (AY 2012-013) is partly allowed.

9. We are now left with the assessee as many as twin section 271(1)(c) consequential penalty appeals ITA No. 7254/Del/2017 and 7255/Del/2017. We make it clear that we have already reversed the learned CIT(A)'s enhancement action as well as the latter's issue of depreciation disallowance (supra) in its forgoing twin quantum appeals. So far as the assessee's section 11(1)(d) corpus and other donation claims are concerned, altogether the same have been upheld; but, at the same time case CIT vs. Reliance Petro Products (2010) 322 ITR 158 (SC) has already settled the issue against the department that it is not each and every quantum disallowance/addition which would automatically attract the penalty proceedings herein i.e. 271(1)(c) of the Act. We accordingly see no reason to sustain both the learned lower authorities' respective findings holding the assessee to have concealed and furnished inaccurate particulars of its taxable income; as the case may be, u/s. 271(1)(c) of the Act in very terms. These assessee twin consequential penalty appeals ITA No. 7254/Del/2017 & 7255/Del/2017 succeed therefore.

10. No other grounds and arguments have been pressed before us.

11. In the result, the assessee's instant twin quantum appeals ITA Nos. 4465/Del/2017 & 4466/Del/2017 are partly allowed and the consequential as many penalty cases ITA Nos. 7254/Del/2017 & 7255/Del/2017 are allowed in above terms. A copy of this common order be placed in the respective case files.

Order Pronounced in the Open Court on 28/07/2025.

Sd/-
(Manish Agarwal)
Accountant Member

Dated: 28/07/2025

SR BHATNAGGAR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(Satbeer Singh Godara)
Judicial Member

ASSISTANT REGISTRAR