

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

**BEFORE SHRI SAKTIJIT DEY, VP AND
SHRI NARENDRA KUMAR BILLAIYA, AM**

ITA No.	Assessment Year
3161/Mum/2025	2012-13
3155/Mum/2025	2018-19
3156/Mum/2025	2017-18
3157/Mum/2025	2016-17
3158/Mum/2025	2015-16
3159/Mum/2025	2014-15
3160/Mum/2025	2013-14

Sheila Gopal Foundation Construction House-B, 2 nd Floor, 623, Linking Road, Khar (W), Mumbai-400 052	Vs.	Dy. CIT, Exemption, Circle-2, Room No. 608, 6 th Floor, Cumballa Hill MTNL TE Building, Pedder Road, Dr. Gopalrao Deshmukh Marg, Cumballa Hill, Mumbai-400 026
PAN/GIR No. AABTS 5672 B		
(Assessee)	:	(Revenue)

and

ITA No.	Assessment Year
3312/Mum/2025	2012-13
3313/Mum/2025	2013-14
3314/Mum/2025	2014-15
3315/Mum/2025	2015-16
3316/Mum/2025	2016-17
3317/Mum/2025	2017-18
3318/Mum/2025	2018-19

Dy. CIT, Exemption, Circle-2, Room No. 608, 6 th Floor, Cumballa Hill MTNL TE Building, Pedder Road, Dr. Gopalrao Deshmukh Marg, Cumballa Hill, Mumbai-400 026	Vs.	Sheila Gopal Foundation Construction House-B, 2 nd Floor, 623, Linking Road, Khar (W), Mumbai-400 052
PAN/GIR No. AABTS 5672 B		
(Revenue)	:	(Assessee)

Appellant by	:	Shri Percy Pardiwala a/w Adv. Sanjay Sawant and Adv. Sanjeev Shah
Respondent by	:	Ms. Kavita P. Kaushik

Date of Hearing	:	04.08.2025
Date of Pronouncement	:	28.08.2025

ORDER

Per Saktijit Dey, VP:

The captioned are bunch of 14 appeals, comprising of 7 sets of cross appeals, arising out of a consolidated order dated 10.03.2025, passed by National Faceless Appeal Centre (NFAC), Delhi, pertaining to assessment years (A.Y.) 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19.

2. The grounds raised by the parties in respective appeals are common, except variation in figures. Therefore, for the sake brevity, we propose to reproduce the grounds raised both by the assessee and the Revenue in lead A.Y. 2012-13. The grounds raised by the assessee are as under:

GROUND OF APPEAL

1. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in upholding the order passed by the Assessing Officer wherein he had held that the amount of Rs. 5,12,85,353/- advanced to K. R. Foundation [KRFO], another charitable trust, having similar object, cannot be considered as application of income for the purpose of section 11 of the Act.*
2. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) ought to have appreciated that the aforesaid payments were in fact Donations.*
3. *The Id. CIT(A) erred in ignoring the fact that an aggregate sum Rs. 2,48,00,000/- received back from KRFO in various years was offered to tax in the respective assessment years.*
4. *Without prejudice to the aforesaid grounds, the Id. CIT(A) ought to have held, that in any event, the sum of Rs.2,48,00,000/- should be considered as application of income, or alternatively, it ought to have directed that the sum, so offered as income, ought to be reduced from the computation of income of the respective assessment years.*
5. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in holding that the Appellant has not filed any evidence to show that repayments out of the aforesaid amount have been offered to tax in the relevant years of receipt.*
6. *On the facts and in the circumstances of the case and in law, the order has been passed by the Id. CIT(A) in violation of principles of natural justice.*
7. *The Id. CIT(A) erred in holding that the Appellant was granted personal hearing on 06.03.2025 through video conferencing and no response was received from the Appellant.*
8. *The Id. CIT(A) erred in holding that ground 1(e) in Form no 35 challenging the denial of 15% accumulation of income had become infructuous.*
9. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) ought to have held that the levy of interest u/s. 2348 and 234C of the Act is bad in law.*

3. The grounds raised by the Revenue are as under:

1. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the appeal of the assessee ignoring the fact that the assessee has violated provisions of section 13(2)(a) of the Act by advancing loan to K. R. Foundation wherein the trustee of the assessee trust is also trustee of K. R. Foundation?*
2. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the appeal of the assessee ignoring the fact that the assessee has advanced loan to the K. R. Foundation for constructing cultural centre from which revenue is to be generated and the same is in commercial in nature and hence assessing officer was right in denying exemption u/s 11 of the Act to the assessee?*
3. *Whether the Ld. CIT(A) has erred in holding that in view of the fact that in both the public trust there were common trustees, the element of direct or indirect benefit taken through specified persons was present and the same was covered under the provisions of section 13(1)(c) of the Act?*
4. *Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in not deciding that the element of direct or indirect benefit taken through specified persons as per the provisions of section 13(1)(c) of the Act, is a clear violation of section 13(2)(h) of the Act, therefore the JAO was justified in denying the exemption u/s 11 of the Income Tax Act, 1961?*

4. As could be seen from the grounds raised by the assessee, the core issue arising for consideration is whether the loan advanced by the assessee to another Charitable Trust, namely, K. R. Foundation, would qualify as ‘application of income’ for the purpose of availing benefits u/s. 11 of the Income Tax Act, 1961 (‘the Act’ for short). Whereas, the grounds raised by the Revenue are concerning the issue whether assessee’s claim of exemption u/s. 11 of the Act, can be denied due to violation of conditions of section 13 r.w.s. 11 of the Act on account of a common Trustee in both the Trusts.

5. At the outset, we propose to deal with the issues arising in the appeal of the assessee. Briefly stated, the assessee is a Charitable Trust created by trust deed executed on 24.02.1998 and registered with the Charity Commissioner, Mumbai w.e.f. 02.04.1998. Even, recognizing the assessee as a Charitable Organization, ld. Director of Income Tax (Exemption), Mumbai, has granted registration u/s. 12A of the Act, vide order dated 01.05.1998. Be that as it may, for the assessment year 2013-14, the assessee filed its total

income on 28.09.2012, claiming exemption u/s. 11 of the Act. The return of income so filed was picked up for scrutiny and statutory notices u/s. 142(1) and 143(2) of the Act were issued to the assessee seeking various details.

6. In course of assessment proceedings, the Assessing Officer (AO) observed that in the year under consideration, the assessee had advanced loan of Rs.5,12,85,383/- to another charitable trust/organization - K. R. Foundation. The loan so advanced has been treated as application of income for claiming exemption u/s.11 of the Act. When the AO called into question the aforesaid claim, the assessee submitted that since K. R. Foundation has similar charitable objects, the loan advanced can be treated as application of income. The A.O. however, was not convinced with the submissions of the assessee. He was of the view that the loan advanced to another trust cannot be treated as application of income as it is not in the nature of expenditure and is recoverable. Proceeding further, he observed that assessee's claim of exemption u/s. 11 of the Act, is not acceptable, as one of the Trustees is common in both the Trust. Hence, there is violation of conditions of section 13(1)(c) r.w.s. 13(2)(h) of the Act. Hence, for this reason also the A.O. disallowed assessee's claim of exemption u/s. 11 of the Act and brought the entire receipts of Rs.10,52,01,250/- to tax.

7. Against the assessment order so passed, the assessee preferred appeal before learned First Appellate Authority.

8. As far as the issue whether the advancement of loan to another Charitable Trust having similar objects can be treated as application of income/fund, learned First Appellate Authority agreed with the view expressed by the A.O. He held, firstly, the advancement of loan cannot be treated as application of income, as it is not an expenditure of the Trust

since the loan has to be returned back. Further, he observed, it cannot be application of income as the refund of loan is not treated as income. To that extent, he confirmed the decision of the A.O. that the loan advanced cannot be treated as application of income, hence, has to be considered for the purpose of denial of benefit u/s. 11 of the Act to that extent. However, insofar as the decision of the A.O. of denial of exemption u/s. 11 of the Act on the allegation of a common Trustee, thereby, leading to violation of section 13(1)(c) and 13(2) of the Act, learned First Appellate Authority held that K. R. Foundation cannot be considered as a concern in which any of the persons referred to in clauses (a), (b), (c) and (d) of section 13(1) of the Act have a substantial interest. Therefore, according to him the provisions of section 13(1) is not attracted in case of the assessee. Thus, to that extent, learned First Appellate Authority decided the issue in favour of the assessee and upheld assessee's claim of exemption u/s. 11 of the Act.

9. Insofar as the issue of loan advanced to K. R. Foundation whether can be treated as application of income, ld. Sr. Counsel appearing for the assessee submitted that there is no statutory or legal bar in treating the loan advanced as application of income, as both the Trusts have similar charitable objects. He submitted, it is not necessary that the application of income has to be an expenditure incurred by the Trust. He submitted, the observation of learned First Appellate Authority that loan cannot be treated as application of income because the return of loan is not taxable as income, is also an incorrect finding, as whenever the assessee has received back part of the loan, it has offered it to tax. In this context, he drew our attention to the computation of income for the A.Y. 2017-18 and other subsequent assessment years kept in the paper book. He submitted, till date, K. R. Foundation has repaid loan to the extent of Rs.2,48,00,000/- and which has been offered by the assessee as

income in respective assessment years. Thus, he submitted, the loan advanced to another charitable trust has to be treated as application of income for availing benefit u/s. 11 of the Act. In support of such contention, ld. Sr. Counsel relied upon the following decisions:

- *CIT vs. Indian National Theatre Trust* [2008] 305 ITR 149 (Delhi)
- *CIT vs. St. George Forana Church* 170 ITR 62 (Kerala)
- *National Engg. Co-ordination Committee vs. Asst. CIT* [1992] 43 ITD 612 (Pune)

10. The learned Departmental Representative ('ld. DR' for short) strongly relied upon the observations of the A.O. and learned First Appellate Authority.

11. We have considered rival submissions and perused the materials available on record. We have also applied our mind to the decisions relied upon. On a careful reading of the respective orders of the A.O. and learned First Appellate Authority, we find, the basic premises on which assessee's claim of application of income/fund *qua* the loan advanced to K. R. Foundation have been rejected are as under:

- Loan advanced is not in the nature of expenditure
- Loan advanced is capable of being repaid
- The repayment of loan is not taxed as income

12. As against such observations of the departmental authorities, the facts on record reveal that in different assessment years, the assessee had advanced money/loan to another Trust, having similar charitable objects, for developing a cultured center at Bandra (W) known as Bal Gandharva Rang Mandir, which is for the benefit of general public. It is to be further noted that K. R. Foundation has periodically repaid part of the loan and the assessee has received back an aggregate of Rs.2,48,00,000/-. From the materials on record, it is evident, the repayment of loan has been offered by the assessee as 'income' in

subsequent assessment years. It further appears from materials placed on record that except the assessment years under dispute, the department has never questioned assessee's claim of application of fund/income *qua* the loans advanced to K. R. Foundation in prior and subsequent assessment years, except again in A.Y. 2020-21, where assessee's application seeking rectification of intimation issued u/s. 143(1) of the Act, is pending. In A.Ys. 2008-09 to 2011-12 and A.Y. 19-20, 2021-22 to 2024-25, assessee's claim has been accepted by the A.O.

13. Insofar as the issue whether loan advanced to another Charitable Institution having charitable objects can be treated as application of income/fund in our view, the legal position is more or less settled by various judicial precedents, wherein, it is held that money advanced to another charitable trust having charitable objects can be treated as 'application of income' for the purpose of section 11 of the Act. The decisions cited *supra* lay down the aforesaid ratio. In case of *St. George Forana Church* (*supra*), the Hon'ble Kerala High Court, while drawing a distinction between the word 'applied' and the 'expenditure' has held that the scope of word 'applied' is wider than the word 'expenditure'. While taking note of the decision of Hon'ble Supreme Court in the case of *Indian Molasses Co. Private Ltd. vs. CIT* [1959] 37 ITR 66 (SC), the Hon'ble Kerala High Court has held that the money or amount when applied to a purpose will not go out irretrievably. Accordingly, Hon'ble High Court held that application of income/fund does not require that the fund/money has to go irretrievably. No contrary decision has been brought to our notice by Id. DR. In fact, CBDT Circular No. 100 dated 24.01.1973, makes the position clear by stating that even repayment of loan by a Trust can be treated as 'application of income', but as and when the loan is returned to the Trust it will be treated as 'income' of that year. In the facts of the present appeal, whenever the assessee has received back a part of the loan, it had offered

it as 'income'. That being the case, applying the ratio laid down in the judicial precedents referred to supra and CBDT Circular noted above, we hold that the loan advanced to K. R. Foundation would qualify as 'application of income' in terms of section 11 of the Act. Hence, the assessee is eligible to avail benefit u/s. 11 of the Act in respect of such loan. In view of our decision above, the other issues raised by the assessee do not require specific adjudication, hence, are kept open.

14. Insofar as the issue arising in Revenue's appeal, as discussed earlier, the A.O. has denied assessee's claim u/s. 11 of the Act on the reasoning that due to presence of common Trustee in both the Trusts, the conditions of section 13(1)(c) r.w.s. 13(2)(h) of the Act, have been violated. On a holistic reading of section 13 of the Act, it is observed that if any income belonging to the Trust is for the direct or indirect benefit of any person referred to in sub section (3), then such part of income would not be eligible for exemption u/s. 11 of the Act. Even, both sections 13(1)(c) and 13(2)(h) of the Act refer to the persons in sub section (3) to section 13. The persons referred to in section 13(3) are as under:

"Section 13(3) in The Income Tax Act, 1961

(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;***
- ³[(b) any person whose total contribution to the trust or institution, during the relevant previous year exceeds one lakh rupees, or, in aggregate up to the end of the relevant previous year exceeds ten lakh rupees, as the case may be;]***
- (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, ⁴[***] member, trustee or manager as aforesaid;***
- (e) any concern in which any of the persons referred to in clauses (a), ⁵[***] (c), (cc) and (d) has a substantial interest."***

15. On a careful analysis of facts available on record, we agree with the factual finding of learned First Appellate Authority that none of the aforesaid conditions would apply to assessee's case. That being the fact, we agree with the finding of learned First Appellate Authority that provisions of section 13(1)(c) and section 13(2) of the Act, are not applicable, so as to deny assessee's claim of exemption u/s. 11 of the Act. Thus, to this extent, we uphold the decision of learned First Appellate Authority. Grounds raised by the Revenue are dismissed.

16. To sum up, assessee's appeals are allowed in part and Revenue's appeals are dismissed.

Order pronounced in the open court on 28.08.2025

Sd/-
(N. K. Billaiya)
Accountant Member

Sd/-
(Saktijit Dey)
Vice President

Mumbai; Dated : 28.08.2025
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai