

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

ITA No. 4824/Mum/2025
(Assessment Year: 2012-13)

Income Tax Officer Room No. 617, 6 th Floor, MTNL Building, Peddar Road, Cumballa Hill, Mumbai-400 026	Vs.	Seth Damji Laxmichand Jain Dharma Sthanak 64 Dr. Ambedkar Road, Opp. Kalchowki, Post Office, Chichpokali, Mumbai-400 012
PAN/GIR No. AACTS 2218 L		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Hemant Jawahar Lal & Shri Ravi Ganatra
Respondent by	:	Shri Arun Kanti Datta – CIT DR
Date of Hearing	:	14.01.2026
Date of Pronouncement	:	03.02.2026

ORDER

Per Saktijit Dey, Vice President:

The present appeal by the department arises out of order dated 26.05.2025, passed by National Faceless Appeal Centre ('NFAC' for short), Delhi pertaining to the assessment year (A.Y. for short) 2012-13.

2. The effective grounds raised by the department are as under:

1. *"On the facts and circumstances in allowing of the case and in law, the Ld CIT(A) erred the benefit of indexed cost of acquisition trust registered u/s. 48 of the Act to a u/s. 12A, disregarding dated 19.06.1968. the CBDT Circular No 5-P(LXX-*
2. *"On the facts and circumstances allowing accumulation of the case and in law, the CIT(A) erred in same being under section 11(1)(a) on capital gains, despite the resulting in already deemed as applied under section 11(1A), thereby double deduction".*
3. *"On the facts and circumstances to appreciate of the case and in law, he Ld. CIT(A) failed J.K. Synthetics the ratio of decision of Hon'ble Supreme Court in the case of Apex Court Ltd. v. Union of India (199 ITR 43) (SC) wherein the Hon'ble has categorically held that no legislation permit double can be construed to specifically deduction in respect of the same expenditure unless provided.*

4. *"On the facts and circumstances remanding of the case and in law, the Ld. CIT(A) erred the issue of donation out of accumulated section 11(2) income under of the Act for verification, to section despite legal bar under Explanation 11(2) of the Act"*

3. As could be seen, in ground no. 1, the department has challenged the decision of the first appellate authority in allowing assessee's claim of indexation benefit against the Long Term Capital Gain ('LTCG' for short).

4. Briefly the facts are, the assessee is a charitable trust registered with the Charity Commissioner, Mumbai. The assessee has also been granted registration u/s. 12A of the Act by the competent authority entitling it to avail exemption u/s. 11 of the Act. For the assessment year under dispute, the assessee filed its return of income on 08.10.2012, declaring Nil income after claiming exemption u/s. 11 of the Act. The return of income so filed by the assessee was selected for scrutiny.

5. In course of assessment proceeding, the Assessing Officer (A.O. for short), while verifying the return of income filed by the assessee, noticed that in the year under consideration, the assessee had sold an immovable property for a total consideration of Rs.50 crores. While computing capital gain, the assessee had claimed deduction on account of property tax of Rs.25,415/- and indexed cost of acquisition of Rs.5,03,17,362/- and offered net long term capital gain of Rs.44,96,57,223/-. With reference to the claim of deduction on account of indexed cost of acquisition, the A.O. referring to CBDT Circular No. 5P (LXX-6) dated 19.06.1968, held that such income has to be understood in its commercial sense and no indexation benefit is permissible. In this context, he also relied upon certain judicial precedents and ultimately disallowed assessee's claim of indexation benefit of Rs.5,03,17,365/-.

6. The assessee contested the aforesaid disallowance before the first appellate authority.

7. While deciding the issue, being convinced with the submissions of the assessee, the first appellate authority reversed the decision of A.O. and allowed the indexation benefit of Rs.5,03,17,365/-.

8. We have considered rival submissions and perused the materials on record. We have also applied our mind to the judicial precedents cited before us. On a reading of section 11 of the Act as a whole and sub-section (1A) of section 11 of the Act in particular, it becomes abundantly clear that capital gain arising from transfer of a capital asset being property held by the Trust for charitable or religious purpose can be considered as an application of income if such capital gain is utilized for acquiring another capital asset to be held by the Trust. *Explanation 2* to section 11A(1A) of the Act defines cost of transfer of asset to mean aggregate of the cost of acquisition determined in terms of section 48 and 49 and cost of any improvement thereto. Section 48 of the Act speaks of deduction to be allowed while computing LTCG. One of such deductions being on account of indexation of cost of acquisition. Thus, when the statutory provisions allow deduction on account of indexation benefit for computing capital gain, even u/s. 11 of the Act, the A.O. could not have disallowed the claim of the assessee overriding the statutory provisions. The decisions relied upon by the A.O. to disallow assessee's claim, on careful reading, were found to be factually distinguishable and have no relevance to the issue at hand. On the contrary, the reasoning of the first appellate authority is not only in line with the statutory provisions but also supported by judicial precedents referred to by him. Moreover, on a reading of the assessment order we are of the view that the A.O. *per se* has not questioned the application

of the capital gain in acquisition of another capital asset, which in the instant case is investment made in fixed deposits. Thus, in our considered opinion, the decision of the first appellate authority on the issue suffers from no infirmity, hence, deserves to be upheld. Accordingly, we do so. Ground no. 1 is dismissed.

9. In ground nos. 2 and 3, the Revenue has challenged the decision of the first appellate authority in allowing assessee's claim of deduction u/s. 11(1A) of the Act. In course of assessment proceeding, the A.O. noticed that the assessee had claimed deduction of an amount of Rs.99,85,601/- u/s. 11(1A) of the Act, being 15% of the total receipts accumulated/set apart for application in future. He observed that the deduction u/s. 11(1A) of the Act, has been claimed also with reference to the capital gain of Rs.50 crores. He observed that since the assessee had already claimed deduction u/s. 11(1)(A) of the Act, further deduction u/s. 11(1A) of the Act cannot be allowed to the assessee, as it would amount to double deduction. On a reading of section 11(1A) of the Act, it is observed, if out of the total income earned by a Trust in a particular assessment year, income to the extent of 15% is accumulated or set apart for application to such objects in future, then deduction to that extent can be allowed. On a careful reading of the assessment order, we do not find any adverse observation of the A.O. that the assessee has not applied 85% of the fund towards its objects. The only objection of the A.O. is since the assessee has claimed deduction u/s. 11(1A) of the Act, it cannot claim further deduction u/s. 11(1A) of the Act, with reference to LTCG. We do not find any rationale behind the aforesaid reasoning of the A.O. On a careful reading of the extant provisions, we agree with the first appellate authority that they are mutually exclusive and there is no express bar in either of the provisions to prevent a charitable trust/organization in claiming deduction under both the provisions. In fact, in course of hearing, ld. DR could not bring to our notice any

specific bar in the provisions preventing the assessee from claiming the deduction. In view of the aforesaid, we uphold the decision of the first appellate authority by dismissing the ground.

10. In ground no. 4, the department has challenged the decision of the first appellate authority in remanding the issue of donation to another trust claimed as accumulation of income u/s.11(2) of the Act.

11. Briefly the facts are, in course of assessment proceeding, while verifying the return of income filed by the assessee, the A.O. had noted that the assessee had given donation of Rs.2 crores out of accumulated income u/s. 11(2) of the Act. Referring to Explanation u/s. 11(2) of the Act, the A.O. observed that donation to other charitable trust made out of accumulated income will not be eligible for deduction. When this position was brought to the notice of the assessee, the assessee furnished a revised computation of income. Referring to the decision of Hon'ble Supreme Court in case of *Goetze (India) Ltd. v. CIT* [2006] 157 Taxman 1/284 ITR 323 (SC), the A.O. held that the claim made by the assessee other than through a revised return of income is inadmissible.

12. The assessee contested the aforesaid decision of the A.O. before the first appellate authority.

13. After considering the submissions of the assessee, the first appellate authority observed that the submissions made by the assessee at the first appellate stage are in contradistinction to the submissions made in course of the assessment proceedings. He, therefore, directed the assessee to furnish the relevant evidences/documents in support of its claim that Shri Vardhman Sthanak Jain Sangh and Shri Saurashtra Dashashrimali Jain

Bhojnalaya are not registered u/s 12AA and are also not covered u/s/s 10(23C)(iv) or (v) or (vi) (via) of the Act. Thus, he directed the A.O. to verify assessee's claim and allow it, if found correct.

14. Having considered rival submissions, we do not find any infirmity in the aforesaid decision of the first appellate authority. As could be seen, he has given a categorical finding that the submissions made before him in support of claim are totally different from the submissions made before the A.O. Therefore, to factually verify assessee's claim with reference to the supporting evidences, to find out whether the donees are registered u/s. 12A or covered u/s. 10(23C)(iv)(v)(vi) and (vii) of the Act or not, the first appellate authority has directed the A.O. to verify assessee's claim and decide the issue. In our view, the department cannot have any grievance against the aforesaid directions of the first appellate authority. Accordingly, we dismiss the ground.

15. In the result, the appeal is dismissed.

Order pronounced in the open court on 03.02.2026

Sd/-

Sd/-

(Jagadish)

(Saktijit Dey)

Accountant Member

Vice President

Mumbai; Dated : 03.02.2026

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