

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-3", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

I.T.A. Nos. 1824/DEL/2016 & 2025/DEL/2015 A.YRS. 2011-12 & 2010-11		
M/S MANJEET KAUR MEMORIAL PREMIER INSTITUTE OF EDUCATION, H.NO. 836, SECTOR-14, GURGAON, HARYANA - 122002 (PAN:- AAAAM7411J)	VS.	ITO, WARD II(2), GURGAON
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Ved Jain, Adv., Sh. Ashish
Goel, CA
Department by : Sh. Anil Kumar Sharma, Sr. DR

ORDER

Assessee has filed these Appeals against the separate Orders dated 25.1.2016 and 23.1.2015 passed by the Ld. Commissioner of Income Tax (Appeals)—2, Gurgaon pertaining to assessment year 2011-12 & 2010-11.

2. The grounds raised by the assessee in ITA NO. 1824/Del/2016 (AY 2011-12) read as under:-

1. *On the facts and circumstances of the case, the order passed by learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*

2. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 44,54,602/- made by the learned AO.*
3. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the action of A.O. in denying the exemption under section 11 of the Income Tax Act while computing its income ignoring the fact that the assessee-society is an educational institution and registered under section 12AA of the Income Tax Act and the society was holding the property/assets wholly for charitable purposes.*
4. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in not appreciating the provision of Section 11 of the Act whereby exemption is to be provided to the extent which income of the charitable trust is applied to charitable or religious purposes in India.*
5. *On the facts and circumstances of the case, learned CIT (A) has erred both on facts and in law in not appreciating the fact that the income U/s 11 (1) refers. to the income*

from property held under the trust and which has to be applied for charitable purposes irrespective of the head of income under which the income is assessable.

6. *On the facts and circumstances of the case, learned CIT (A) has erred both on facts and in law in ignoring the various judicial pronouncements in this regard.*

7. *That the CIT(A) has erred both on facts and in law in confirming the findings of the learned AO ignoring the explanation and evidences submitted by the assessee in support of its contention.*

8. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.*

3. The grounds raised by the assessee in ITA NO. 2025/Del/2015 (AY 2010-11) read as under:-

1. *That the order passed by Ld. CIT(A) is bad in law and on facts of the case.*

2. *That the Id. CIT(A) erred in sustaining that the assessee is not carrying education activity in this premises.*

3. *That the Ld. CIT(A) erred in sustaining the receipt of Rs. 97,90,257/- as income from house property and taxed under the head income from house property.*
4. *That the Ld. CIT(A) erred in sustaining that there is no application / utilization of expenses against the receipt for the purpose of charitable activity u/s. 2(15) of the Income Tax Act, 1961.*
5. *That the Ld. CIT(A) has erred in sustaining the interest charged u/s. 234A, 234B, 234C and 234D of the Income tax Act.*

Prayer:-

It is therefore, prayed that the disallowance / additions sustained as above by Ld. CIT(A) be deleted and appeal be allowed.

ITA NO. 1824/DEL/2016 (AY 2011-12)

4. The brief facts of the case are that assessee filed the return of income on 01.08.2011 declaring total income of Rs. NIL. The case was selected for scrutiny under the compulsory clause of Central Action Plan 2012. Notice under section 143(2) was issued on 26.9.2012. After change of jurisdiction, the notices under section 143(2) and 142(1) alongwith a questionnaire was

issued on 12.8.2013. In response thereto, assessee's AR appeared and filed the reply. AO observed that the society has made an agreement with M/s Mothers Pride Personal Ltd. to establish a pre-school learning centre/nursery school. As per the agreement with the assessee and the said company, premise will be made available free of charges during the subsistence of the agreement. In consideration of the above assessee is entitled to 20% of the entire collection which includes registration charges, admission charges, annual charges, quarterly charges, monthly fees, hobby classes and charges of all the activities conducted in the school except transport and refundable security. AO during the assessment proceedings considered the amount received from Mothers Pride Persona Limited of Rs. 51,55,453/- as Income under the head house property and allowed statutory deduction under section 24 of Rs. 15,46,359/- of the Income Tax Act. Further addition of Rs. 12,676/- on account of interest income, Income from IT Refund Interest of Rs. 37,382/- and miscellaneous income of Rs. 7,95,450/- received as voluntary donations. Total addition of Rs. 44,54,602/- was made to the returned income of the assessee. Thereafter, the AO completed the assessment at Rs. 44,54,602/- by making various additions vide his order dated 29.3.2014 passed u/s. 143(3) of the Income Tax Act, 1961.

5. Against the assessment order dated 29.3.2014, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 25.1.2016 has dismissed the appeal of the assessee.

6. Aggrieved with the aforesaid order of the Ld. CIT(A), assessee is in appeal before the Tribunal.

7. During the hearing, Ld. Counsel of the assessee has stated that in the present case the assessee purchased and constructed the property after taking term loan from the bank and made the agreement with the Mother Pride Education Persona P Ltd. in respect of rental income. There is no case of any transfer of funds to the members of the society. He further stated that the rental income from the property is in the charitable objects of the Trust as mentioned in the Clause z aa) of the Memorandum of Association. He relied upon the order of the Chennai Bench in the case of Anjuman-E-Himayath-E-Islam (2015) 154 ITD 755. He further stated that in respect of interest expenses of Rs. 24,25,411/- it has been paid on term loan taken to acquire/ construction of assets of the society. He further stated that assessee has also made the repayment of loan to the tune of Rs. 29,51,584/- and depreciation of Rs. 32,31,728/- are the application of income for charitable purposes. He relied upon the order of the Hon'ble Madras High Court in the case of DIT(E) vs. GovinduNaicker Estate (2009) 315 ITR 237 (Madras). It was the further contention that expenditure

incurred on blood donation camps, free books distribution are purely charitable in nature and therefore, to be considered of application of income. Administrative expenses are basically includes printing and stationery, conveyance expenses, office maintenance expenses which are necessary for running office of the trust. Therefore, he finally stated that this is not the case of the AO that the assessee has made any business of sale or purchase of property. There is no allegation that activities are not charitable in nature. In view of the above, he requested that addition in dispute may be deleted.

8. On the contrary, Ld. DR opposed the aforesaid contention of the Ld. Counsel of the assessee and relied upon the orders of the authorities below and requested that the same may be upheld.

9. I have heard both the parties and perused the relevant records available with me, especially the orders passed by the revenue authorities and the case laws cited by the Ld. Counsel of the Assessee. In this case the assessee is a society registered under Societies Registration Act 1860 and registered under 12AA of the Income Tax Act. Assessee filed the Income tax return for the A.Y. 2011-12 on 01.08.2011 declaring total income of Rs. Nil along with copy of Audit Report, Balance sheet and Income & Expenditure Alc. It has been noticed that during the year under consideration the assessee had an agreement with M/s Mothers Pride Education Persona Limited to establish a pre-school learning center nursery school. As per the

agreement with the assessee and the said company, premises will be made available free of charge during the subsistence of the agreement. In consideration of the above assessee is entitled to 20% of the entire collection which includes registration charges, admission charges, annual charges, quarterly charges, monthly fees, hobby classes and charges of all the activities conducted in the school except transport and refundable security. During the assessment proceedings the amount received from Mothers Pride Persona Limited of Rs. 51,55,453/- as Income under the head house property and allowed statutory deduction under section 24 of Rs. 15,46,359/- of the Income Tax Act. Further addition of Rs. 12,676/- on account of interest income, Income from IT Refund Interest of Rs. 37,382/- and miscellaneous income of Rs. 7,95,450/- received as voluntary donations. Total addition of Rs. 44,54,602/- was made to the returned income of the assessee. Aggrieved by the order of the AO assessee preferred an appeal before the Ld.CIT(A) who rejected the contention raised by the assessee that the interest paid by the assessee for raising the loan for construction of the property, repayment of loan, are application of income and therefore assessee in total has applied Rs. 69,71,358/- which is far more than the receipts and confirmed the addition made by the AO. I find that AO has passed two pages order and has made only one action treating the income received from the Mothers Pride Education Persona P Ltd as income under the head house property. However, while computing the total assessed

income added the interest income of Rs. 12676/-, Rs. 37382/- on account of interest on refund and Rs. 7,95,450/- as miscellaneous income which is the amount received as voluntary donation without giving any justification for the same. I further find that AO has accepted the application of funds made by the assessee and he did not make any adverse comment on the activities rendered by the assessee. In the present case, assessee purchased and constructed the property after taking term loan from the bank and made the agreement with the Mothers Pride Education Persona P Ltd in respect of rental income. There is no case of any transfer of funds to the members of the society. Further, rental income from the property is in the charitable objects of the trust as mentioned in the (clause z aa) of the Memorandum of Association. For the sake of ready reference the relevant clause of the Memorandum of Association reads as under:-

“z aa)Without prejudice to the generality of the above objects and for effectively carrying out the same, the society shall have power to receive, hold and possess any property including securities of any kind and to construct and maintain any building and to enter into any contract for or in connection with the purpose of the society to raise funds by creating charge over the assets of the society or otherwise for the benefit of the society and to accept the management of any trust or endowment in which the society may be interested.”

9.1 My aforesaid view is fully supported by the ITAT, Chennai Bench decision in the case of Anjuman-E-Himayath-E-Islam[2015] 154 ITO 755 (Chennai - Trib.) While determining 'income' of assessee-trust and its 'application of income' for purpose of claiming exemption under section 11 (1)(a), provisions of Chapter-IV i.e. sections 22 to 27 applicable for computing income chargeable to tax under head 'income from house property', will not be attracted. For the sake of convenience, the Relevant extract of the order is reproduced hereunder:

"6.3 We have heard both the parties and carefully perused the materials available on record. Chapter-III refers to "income which does not form part of total income". Section-11 of the Act placed under Chapter-III deals with 'income from property held for charitable or religious purpose'. Section- 11 (1)(a) provides that income derived from the property held under trust wholly for charitable or religious purpose, to the extent to which such income is applied, shall not be included in its total income. The Act also provides that upto 15% of the gross income received is accumulated and then the same shall also be exempt from the income of the trust. From the above it is clear that provision of the Act in Chapter-III deals with the manner in which the income of the assessee trust has to be applied in order to exempt such income from the total income. It is not a case of computation of

income chargeable to tax as per the provisions Chapter IV under the head "C-Income from house property". Therefore while determining the "income" of the assessee trust and its "application of income" for the purpose of claiming exemption u/s. 11(1)(a) of the Act, the provisions of Chapter-IV - Sections 22 to 27 of the Act which is applicable for computing the income chargeable to tax under the head 'income from house property' will not be attracted. However, provisions of sections 22 to 27 of the Act will come into play when the assessee is not entitled to the benefit of Section-11(1)(a) of the Act and when such income of the Trust is chargeable to tax under the head "income from house property". It is pertinent to mention here that Hon'ble Calcutta High Court supra has held that income contemplated by the provisions of section 11 is the real income and not the income as assessed or assessable. Accordingly, while arriving at the rental income of the assessee-trust any expenditure incurred whatsoever related to the rental income has to be allowed as deduction and the net income which is the real income, will be treated as the income of the Trust. From our above discussion the ground raised by the assessee on this issue will not survive and therefore, the order of the Revenue is upheld. "

9.2 Further a perusal of income & expenditure and CIT(A) order at page no. 6 shows that application made by the assessee is towards the charitable activities and as per the objects of the society. The Break up of application of Rs. 69,71,358 is as under:

i.	Administrative Expenses	Rs. 3,48,145/-
ii.	Interest & Bank charges	Rs.24,25,411/-
iii.	Depreciation	Rs. 32,31,728/-
iv.	Maintenance expenses	Rs.4,88,307/-
v.	Blood Donation camp exp.	Rs. 1,83,770/-
vi.	Eye Check up camp exp.	Rs. 1,54,149/-
vii.	Free Books Distribution exp.	<u>Rs. 1,39,848/-</u>
		Rs. 69.71,358/-

9.3 In respect of Interest expenses of Rs. 24,25,411/- it has been paid on term loan taken to acquire/construction of assets of the society. Further, assessee has also made the repayment of loan to the tune of Rs. 29,51,584 and depreciation of Rs. 32,31,728/- are the application of income for charitable purposes. In this regard, reliance is placed on the judgement of

the Madras High Court in the case of DIT(E) vs GovinduNaicker Estate[2009] 315 ITR 237 (Madras) wherein it has been held as under:

"9. In the case on hand, it is an admitted fact that the property of the assessee-trust was in a dilapidated condition and would not earn income to carry out the objects of the trust. For the purpose of carrying out the objects of the trust, it has become necessary to demolish and reconstruct the property so as to earn income by exploiting the property. It is also an admitted fact that the rental income in the property held in trust amounted to 90 per cent, of the total income of the trust. For the purpose of putting up the construction of the property held in trust, the trust borrowed fund from the Indian Bank. Thus, the capital asset so put up by the borrowed fund is only for the purpose of augmenting income in order to carry out the object of the trust as envisaged. It is clear from the order of the Commissioner of Income-tax (Appeals) that neither the Assessing Officer nor the assessee has adverted to the object of the charitable trust. But the authorities proceeded on the premise that the complex has been put up by the trust in order to perform its charitable activities, which factum has also not been disputed by the Revenue.

The assessee-trust in order to perform its charitable activities, necessarily has to exploit the capital assets by finding appropriate avenues for earning revenue and for that purpose, has to incur expenditure, which is capital in nature by raising loan. The capital asset built with a borrowed fund generates income which enabled the charitable trust to perform its charitable activities. Thus, the capital asset built with borrowed fund, under no circumstances, could be regarded to be outside the scope of its objects. If it is within the objects of the charitable trust, then there is no reason as to why the borrowing made for the construction of the building and repayment of the loan could not be treated as an application of income. It is not the case of the Assessing Officer that the assessee by constructing the commercial complex contravened the objects of the trust. There is no provision in the Act, which disentitles the assessee-trust from claiming repayment of loan as application of income, especially in view of the fact that the trust has to augment its income and for that purpose it has put up a construction with borrowed fund. If raising of loan does not stand in the way of its charitable activities, the repayment there after must

be treated as application of its income. By repayment of the loan, the trust wiped its liability and the income earned from the property would be available for being utilised for charitable purposes.”

9.4 From the above, I noticed that Expenditure incurred on blood donation camps, Free books distribution are purely charitable in nature and therefore these are to be considered application of income. Administrative expenses are basically includes printing & stationery, conveyance expenses, office maintenance expenses which are necessary for running office of the trust. In view of the above, it is not the case of the AO that the assessee has made any business of sale or purchase of property. There is no allegation that activities are not charitable in nature.

9.5 In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, I delete the addition in dispute and accordingly decide the issue in dispute in favour of the assessee and against the Revenue. In the result, the Appeal filed by the Assessee stands allowed.

ITA NO. 2025/DEL/2015 (AY 2010-11)

10. The brief facts of the case are that assessee filed the return of income on 08.10.2010 declaring total income of Rs. NIL. The return of income was processed u/s. 143(1) of the I.T. Act. The case was picked up for scrutiny.

Accordingly, notice u/s. 143(2) of the I.T. Act was issued on 23.9.2011 and further statutory notice u/s. 142(1) alongwith questionnaire issued on 15.10.201. In response to the notice, assessee's AR appeared and filed the information, details and written submissions. AO observed that the society has made an agreement with M/s Mothers Pride Personal Ltd. to establish a pre-school learning centre/ nursery school. As per the agreement with the assessee and the said company, premise will be made available free of charges during the subsistence of the agreement. In consideration of the above assessee is entitled to 20% of the entire collection which includes registration charges, admission charges, annual charges, quarterly charges, monthly fees, hobby classes and charges of all the activities conducted in the school except transport and refundable security. AO during the assessment proceedings considered the amount received from Mothers Pride Persona Limited of Rs. 97,90,257/- as Income under the head house property and allowed statutory deduction (@30%} of Rs. 29,37,077/- and interest on borrowed capital of Rs. 33,94,280/- under section 24 of the Income Tax Act. Further addition of Rs. 17,503/- on account of interest income was also made by him. Total addition of Rs. 34,54,602/- was made to the returned income of the assessee. Thereafter, the AO completed the assessment at Rs. 34,76,403/- by denying the exemption u/s. 11 of the Act claimed by the assessee, by making various additions vide his order dated 04.3.2013 passed u/s. 143(3) of the Income Tax Act, 1961.

11. Against the assessment order dated 04.3.2013, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 23.1.2015 has dismissed the appeal of the assessee.

12. Aggrieved with the aforesaid order of the Ld. CIT(A), assessee is in appeal before the Tribunal.

13. During the hearing, Ld. Counsel of the assessee has stated that in the present case the assessee purchased and constructed the property after taking term loan from the bank and made the agreement with the Mother Pride Education Persona P Ltd. in respect of rental income. There is no case of any transfer of funds to the members of the society. He further stated that the rental income from the property is in the charitable objects of the Trust as mentioned in the Clause z aa) of the Memorandum of Association. He relied upon the order of the Hon'ble Jurisdictional High Court in the case of Director of Income Tax (Exemption) vs. Span Foundation (2009) 17 DTR 283 (Del) and Hon'ble Uttarakhand High Court decision in the case of CIT vs. Jyoti Prabha Soceity (2009) 310 ITR 162. He further stated that the source from which the money is received is lease and license fee but its application is for the purposes of charitable activities covered u/s. 2(15) of the Act. in respect of interest expenses of Rs. 33,94,280/- it has been paid on term loan taken to acquire/ construction of assets of the society. He further stated that assessee has also made the repayment and depreciation

of Rs. 33,94,280/- are the application of income for charitable purposes. He relied upon the order of the Hon'ble Madras High Court in the case of DIT(E) vs. GovinduNaicker Estate (2009) 315 ITR 237 (Madras). It was the further contention that expenditure incurred on blood donation camps, free books distribution and Eye check up Camp are purely charitable in nature and therefore, to be considered of application of income. Therefore, he finally stated that this is not the case of the AO that the assessee has made any business of sale or purchase of property. There is no allegation that activities are not charitable in nature. In view of the above, he requested that addition in dispute may be deleted.

14. On the contrary, Ld. DR opposed the aforesaid contention of the Ld. Counsel of the assessee and relied upon the orders of the authorities below and requested that the same may be upheld.

15. I have heard both the parties and perused the relevant records available with me, especially the orders passed by the revenue authorities and the case laws cited by the Ld. Counsel of the Assessee. During the year under consideration the assessee had an agreement with M/s Mothers Pride Education Persona Limited to establish a pre- school learning center/ nursery school. As per the agreement with the assessee and the said company, premise will be made available free of charge during the subsistence of the agreement. In consideration of the above assessee is entitled to 20% of the

entire collection which includes registration charges, admission charges, annual charges, quarterly charges, monthly fees, hobby classes and charges of all the activities conducted in the school except transport and refundable security. AO during the assessment proceedings consider the amount received from Mothers Pride Persona Limited of Rs. 97,90,257/- as Income under the head house property and allowed statutory deduction (@30%} of Rs. 29,37,077/- and interest on borrowed capital of Rs. 33,94,280/- under section 24 of the Income Tax Act. Further addition of Rs. 17,503/- on account of interest income was also made by him. Total addition of Rs. 34,54,602/- was made to the returned income of the assessee. The assessee is not engaged in charitable activities and thus income is assessable under the head income from house property. The AO has passed the order and has treated the income received from the Mothers Pride Education Persona P Ltd as income under the head house property. However, while computing the total assessed income added the interest income of Rs. 17,503/- , without giving any justification for the same. In the present case, assessee purchased and constructed the property after taking term loan from the bank and made the agreement with the Mothers Pride Education Persona P Ltd in respect of rental income. There is no case of any transfer of funds to the members of the society. Further, rental income from the property is in the charitable objects of the trust as mentioned in the clause (z aa) of the Memorandum of Association. Further a

perusal of income & expenditure shows that application made by the assessee is towards the charitable activities and as per the objects of the society. The issue is squarely covered in favour of assessee by the judgment of Jurisdictional High Court in the case of DIRECTOR OF INCOME TAX (EXEMPTION) Versus SPAN FOUNDATION [(2009) 17 DTR 283 (Del), (2009) 178 TAXMAN 436 (Del)] wherein Assessee trust having constructed a building out of borrowed funds, application of rent derived from the said building to repay the borrowed funds has to be treated as application of income for charitable purposes and the assessee is entitled to benefits of ss. 11 and 12. Further Hon'ble Uttarakhand High Court in the case of COMMISSIONER OF INCOME-TAX Versus JYOTI PRABHA SOCIETY [2009] 310 ITR 162 (Uttarakhand) held as under;

"It is true that the activities of the respondent-society includes letting out of the properties to the educational institutions. Had the rental income earned by the respondent-society not utilized for the educational purposes it could have been said that the letting out of the property on the part of the respondent-society has lost the charitable purpose. But, in the present case, there is a concurrent finding of fact on the part of the Commissioner

of Income-tax (Appeals) and the Income-tax Appellate Tribunal that the rental income earned by the respondent-society is being utilized again for the purposes of imparting education by maintaining the buildings and constructing new buildings for the same purpose. As such, we are of the view that the charitable purpose is not lost and it cannot be said that the assessee-respondent is not entitled to exemption claimed by it under section 11 of the Act."

15.1 I find that in the case of assessee although the source from which the money is received is lease & license fee but its application is for the purposes of charitable activities covered u/s 2(15). Further, loan advances by an educational trust to students for higher studies should be treated as application of income for the charitable purpose. I further note that the CBDT vide its Circular No. 100 [F.No. 195/1/72-IT(A-I), dated 24.1.1973] has decided that repayment of the loan originally taken to fulfill one of the objects of the trust will amount to an application of the income for charitable purposes. As regards the loan advanced for higher studies. If the only object of trust is to give interest bearing loans for higher studies, it will amount to carrying on of money lending business. However, if the object of the trust is advancement of education and granting of scholarship loans as only one of the activities carried on for the fulfillment of the objectives of the trust, granting of loan even interest bearing will amount to application of income

for charitable purposes. As and when the loan is returned to trust, it will be treated as income of that year. I draw support from the decision of the Hon'ble Karnataka High Court in the case of CIT Vs Janmabhoomi Press Trust [2000] 242 ITR 703 (Karn.) wherein it has been held that repayment of loan for the construction of the building by the assessee for the purpose of augmenting its fund shall qualify as income applied for charitable purpose. The existing scheme of section 11 as well as section 10(23C) provides exemption in respect of income when it is applied to acquire a capital asset. Subsequently, while computing the income for purposes of these sections, notional deduction by way of depreciation etc. is claimed and such amount of notional deduction remains to be applied for charitable purpose. Break up of application of Rs. 79,10,968/- is as under:

I.	Administrative Expenses	Rs. 3,95,692/-
ii.	Interest & Bank Charges	Rs. 33,94,2801-
III.	Depreciation	Rs. 36,55,891/-
IV.	Blood Donation camp expenses	Rs. 1,93,6701-
v.	Eye Check up camp expenses	Rs. 1,16,985/-
vi.	Free Books Distribution Expenses	<u>Rs. 1,54,450/-</u>
		Rs. 79,10,968/-

15.2 In respect of Interest expenses of Rs. 33,94,280/- it has been paid on term loan taken to acquire/construction of assets of the society. Further, assessee has also made the repayment of loan and depreciation of Rs. 36,51,891/- are the application of income for charitable purposes. In this regard, reliance is placed on the judgement of the Madras High Court in the case of DIT{E) vs Govindu Naicker Estate [2009] 315 ITR 237 (Madras) wherein it has been held as under:

“9. In the case on hand, it is an admitted fact that the property of the assessee-trust was in a dilapidated condition and would not earn income to carry out the objects of the trust. For the purpose of carrying out the objects of the trust, it has become necessary to demolish and reconstruct the property so as to earn income by exploiting the property. It is also an admitted fact that the rental income in the property held in trust amounted to 90 per cent, of the total income of the trust. For the purpose of putting up the construction of the property held in trust, the trust borrowed fund from the Indian Bank. Thus, the capital asset so put up by the borrowed fund is only for the purpose of augmenting income in order to carry out the object of the trust as envisaged. It is clear from the order of the Commissioner of Income-tax (Appeals) that neither

the Assessing Officer nor the assessee has adverted to the object of the charitable trust. But the authorities proceeded on the premise that the complex has been put up by the trust in order to perform its charitable activities, which factum has also not been disputed by the Revenue. The assessee-trust in order to perform its charitable activities, necessarily has to exploit the capital assets by finding appropriate avenues for earning revenue and for that purpose, has to incur expenditure, which is capital in nature by raising loan. The capital asset built with a borrowed fund generates income which enabled the charitable trust to perform its charitable activities. Thus, the capital asset built with borrowed fund, under no circumstances, could be regarded to be outside the scope of its objects. If it is within the objects of the charitable trust, then there is no reason as to why the borrowing made for the construction of the building and repayment of the loan could not be treated as an application of income. It is not the case of the Assessing Officer that the assessee by constructing the commercial complex contravened the objects of the trust. There is no provision in the Act, which disentitles the assessee-trust from claiming

repayment of loan as application of income, especially in view of the fact that the trust has to augment its income and for that purpose it has put up a construction with borrowed fund. If raising of loan does not stand in the way of its charitable activities, the repayment there after must be treated as application of its income. By repayment of the loan, the trust wiped its liability and the income' earned from me property would be available for being utilised for charitable purposes."

15.3 I further note that Depreciation has been held to be an application of income in following judgments:

- I. CIT Vs Tiny Tots Education Society [2011] 330 ITR 16 (P&H)
- II. DIT Vs Vishwa Jagriti Mission [2013] 83 DTR 47 (Del).
- III. CIT Vs Sheth Manilal Ranchhoddas Vishram Bhawan Trust [1992] 198 ITR 598 (Guj).
- IV. CIT Vs Bharuka Public Welfare Trust [1999] 240 ITR 513 (Cal)
- V. CIT Vs Institute of Banking Personnel Selection [2003] 264 ITR 110 (Bom.)

15.4 Further, expenditure incurred on Eye check up, blood donation camps, Free books distribution are purely charitable in nature and therefore are to be considered application of income. Administrative expenses are

basically includes printing & stationery, conveyance expenses, office maintenance expenses and salary expenses which are necessary for running office of the trust. In my view, this is not the case of the AO that the assessee has made any business of sale or purchase of property. There is no allegation that activities are not charitable in nature. In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, I delete the addition in dispute and accordingly decide the issue in dispute in favour of the assessee and against the Revenue. In the result, the Appeal filed by the Assessee stands allowed.

16. In result, both the appeals filed by the assessee are allowed.

Order pronounced in the Open Court on 09/01/2017.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Date: 09/01/2017

srb

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches