

आयकर अपीलिय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

श्रीवी. दुर्गा राव, न्यायिक सदस्य एवं  
श्रीडि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.101/Viz/2015  
(निर्धारण वर्ष/Assessment Year:2010-11)

Touching Heart Ministries  
D.No.1-5-1, Tailors Colony  
Tuni  
E.G.District

Vs. Income Tax Officer  
Ward-1  
Tuni

[PAN :AABAT4658D]

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri G.V.N.Hari, AR  
प्रत्यर्थी की ओर से / Respondent by : Shri M.K.Sethi, DR

सुनवाई की तारीख / Date of Hearing : 15.11.2017  
घोषणा की तारीख/Date of Pronouncement : 22.11.2017

**आदेश /ORDER**

**PER D.S. SUNDER SINGH, Accountant Member:**

1. This appeal is filed by the assessee against the order of the Commissioner of Income-Tax (Appeals)-2, [CIT(A)], Visakhapatnam vide

ITA No.0024/13-14/373/ITO W-1 Tuni/2014-15 dated 30.01.2015 for the assessment year 2010-11.

2. The assessee is a Trust registered with District Registrar of Societies, Kakinada vide certificate dated 31.07.2007 with the objectives of gospel development project and social development project. The Society is engaged in ecclesiastical activities such as training to pastors, bible lessons, preaching, conduction of prayers etc., and social development activities like education programmes, education help and other philanthropic activities such as help in times of natural calamities. The assessee society had filed the application in Form No.10A on 31.03.2011 before the Commissioner of Income Tax, Rajahmundry seeking grant of registration u/s 12AA of the Income Tax Act and the Commissioner of Income Tax rejected the proceedings vide order dated 20.09.2011. Subsequently, the assessee went on appeal before the ITAT. Consequent to the order of ITAT, Visakhapatnam, the CIT(Exemptions), Hyderabad granted the registration w.e.f. 31.03.2011 i.e. the date of filing of the application in Form No.10A by the assessee. Hence, the assessing officer (AO) noted that there was no registration u/s 12A of I.T.Act to the assessee society, thus, the assessee is

not eligible for exemption u/s 11 of the I.T.Act. Accordingly, AO treated the status of the assessee as "Association of Persons (AOP) and taxed the entire receipts.

3. During the previous year, relevant to the assessment year, the assessee had received sum of Rs.1,49,26,785/- consisting of donations and contributions of Rs.56,45,286/- and the donations forming part of Corpus was Rs.92,81,499/-. The assessee has spent the entire amount of the donations received for the purpose of corpus by purchase of fixed assets. The AO in the assessment order held that since the assessee does not enjoy the exemption u/s 11 of I.T.Act, the entire capital receipts required to be taxed as income as per section 2(24)(ia) of I.T.Act. Further the AO disallowed a sum of Rs.30,26,148/- from the expenditure incurred for the purpose of objectives and brought to tax the balance amount of Rs.1,19,47,606/-) (1,49,26,785 - 29,79,179).

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) held that even voluntary contributions received for specific purpose towards corpus of the Trust would form part income consequent to amendment made to section 2(24)(ia) of I.T.Act

w.e.f.1.4.1989. The Direct Tax Laws (Amendment) Act, 1987 deleted the word 'not being contributions made with a specific direction that they shall form part of the corpus of the Trust or institution'. Hence, the Ld.CIT(A) opined that the effect of the amendment is voluntary contributions received by a trust would form part of its income . Since the assessee does not enjoy the exemption u/s 11 and 12A, the Ld.CIT(A) held that the assessee would be ineligible to claim exemption from taxation of its income by way of corpus donation. Accordingly, the Ld.CIT(A) confirmed the addition made by the AO representing the corpus donation of Rs.92,81,499/- and allowed the regular expenditure claimed by the assessee amounting to Rs.60,05,327/- incurred on objects of the Society. In the result the CIT(A) deleted the addition of Rs.30,26,148/- relating to income and expenditure account and confirmed the corpus donation received with a specific purpose. For ready reference, we extract the relevant paragraph of the CIT(A) order in para no. 5.1 to 5.2 which reads as under :

*"5.1. The Direct Tax Laws (Amendment) Act, 1987 w.e.f. April 1, 1989 inserted clause (d) in sub-section(1) of section 11 to provide that the income in the form of voluntary contributions made with a specific direction, that they form a part of the corpus of the trust or the institution shall be excluded from the total income of the trust or the institution. The expression "not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution" was deleted from the definition of income with effect from 01.04.1989 by the Direct Tax Laws (Amendment) Act, 1987. The effect of these amendments is that any voluntary contribution received by a trust would form*

*part of its income, even if it is contribution made towards corpus with effect from 01.04.1989. However, donation made with a specific direction to the corpus will be exempt from tax in view of provisions contained in Sec.11(l)(d) and Sec.12 and when the conditions stipulated therein are satisfied. However, in those cases where the trusts or the institutions lose the exemption under section 11, either by not complying with the conditions laid down in section 12A or by falling within the mischief of section 13, the corpus donations will be included in their income and taxed. Thus every voluntary contribution received by a trust, including corpus donation would constitute 'income' as per the definition of income u/5.2(24)(jja) of the Act.*

*5.2. In view of the above legal position, the contention that the corpus donations are capital receipts and not liable for taxation is without merit. The, voluntary contributions including corpus donation fall within the ambit of 'income' defined in Sec.2(24). The corpus donations are specifically exempt from taxation if the conditions for exemption of income u/s 11 & 12 are satisfied. In the assessee's case the assessee is not eligible for exemption u/s 11- Therefore, the assessee would be ineligible to claim exemption from taxation of its income by way of corpus donation. As a result, it is held that the AO is justified in holding that the income in the form of corpus donation of Rs 92,81,4991- Is liable for taxation, and the impugned addition made in this regard is upheld. The decision in the case of CIT Vs. SRMT Staff Association is distinguishable on facts, as the assessee would clearly fall within the ambit of trust defined in Sec 2(24)(i)(a) of the LT Act and thereby the decision is not applicable to the assessee's case."*

4. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR argued that the assessee had received the contributions from Touching Heart Ministries to the tune of Rs.92,81,500/- with specific purpose of acquiring the fixed assets i.e. development of conference and training centre and procurement of land at Tuni and the entire amount was applied for the purpose for which the donations were received. As an evidence, the Ld.AR filed a paper book containing the letters of donations received from the donors vide

page nos. 32 to 36 along with account copy of donations forming part of corpus. The assessee also filed income and expenditure account and the Balance sheet evidencing the acquiring of land and payments made for acquiring the site and establishing that the amount received for the corpus of the Trust was used for the purpose of acquiring the fixed assets and there was no balance left. Ld. AR argued that the assessee is a Trust registered under Societies Act received the donations from the identified donors for a specific purpose of acquiring the assets. The amount received by the assessee is not at the disposal of the assessee for applying its objectives and hence the donations received for specific purpose cannot be treated as income of the assessee. Though the words in section 2(24)(iia) deleted the voluntary contributions for specific purpose, the law laid down by various high courts and tribunals holds that even though the assessee does not enjoy the exemption u/s 11, the tied up grants cannot be regarded as income u/s 2(24)(ii)(a) of I.T.Act. Since the assessee has received the donations for a specific purpose these donations required to be treated as capital receipts and cannot be held to be revenue receipts. Ld.AR further argued that even if it is treated as revenue receipts since the assessee has spent the entire amount for the purpose for which the same was received and there was no surplus in hand following the decision of

Delhi High Court in the case of DIT Vs. Society for Development Alternatives 205 Taxman 0373, only the surplus required to be brought to tax, but not the total sum of donations received. In the assessee's case, there was no surplus available with regard to the corpus donations. The Ld.AR also relied on the following decisions :

- (i) Commissioner of Income Tax vs. S.R.M.T.Staff Association
- (ii) Commissioner of Income Tax vs. Beldih Club
- (iii) Income Tax Officer vs. Vokkaligara Sangha
- (iv) Nirmal Agricultural Society vs. Income Tax Officer

5. On the other hand, Ld.DR submitted that exemption in this case was granted from the assessment year 2011-12 by an order of the Commissioner of Income Tax (Exemption), Hyderabad dated 08.08.2016 and the assessee is not entitled for exemption u/s 11, hence, the entire donations received by the assessee required to be treated as income u/s 2(24)(iia) and further argued that in the absence of the exemptions available to the assessee, the AO rightly treated the status as AOP and relied on the orders of the lower authorities.

6. We have heard the rival submissions and perused the material placed on record and gone through the case laws relied upon by the assessee and the orders of the lower authorities. The assessee is a Trust registered under the Societies Act for the assessment year 2011-12. The assessee did not have exemption u/s 11 and the exemption u/s 11 was available to the assessee w.e.f. 31.03.2011 i.e. the date of application submitted by the assessee in the Form No.10A. During the previous year relevant to the assessment year, the assessee had received the donations amounting to Rs. 1,49,26,785/- out of which a sum of Rs.56,45,286/- for objectives credited to the 'Income and Expenditure Account' and Rs.92,81,499/- to 'capital fund' forming part of corpus. The said sum of Rs.92,81,499/- received by the assessee for acquiring the land, construction of building at Tuni for procurement of land and development of conference and training centre. The fact that the donations were received for the purpose of acquiring the capital assets was evidenced by the copies of the letters placed by the assessee in the paper book page nos. 32 to 36. From the return of income and the enclosed Balance sheet, it is evident that the entire sum of donations received for corpus was applied by the assessee for the purpose of acquiring the fixed assets as specified in the letters of donors. The sum of Rs.92,81,499/- was tied up donations for a specific purpose. There is no



dispute with regard to the identity of the donor as well as the purpose for which the donations were received by the assessee. The AO as well as the CIT(A) held that both the receipts of the donations as well as the donations forming part of corpus was in the nature of income within the meaning of section 2(24)(iia) of I.T.Act. On the similar facts and circumstances, ITAT, Bangalore in ITO Vs. Vokkaligara Sangha reported in 2015 44 CCH 0509 Bangalore Tribunal held that voluntary contributions received for specific purpose cannot be regarded as income u/s 2(24)(iia) of I.T.Act. The Coordinate Bench while rendering the decision considered the number of decisions of various Tribunals including the decision of Coordinate Bench, ITAT, Hyderabad in Nirmal Agricultural Society Vs. Income Tax Officer, J.B. Educational Society vs. ACIT, Hon'ble Delhi High Court in the case of Basanti Devi & Sri Chakhan Lal Garg Education Trust. For the sake of convenience and clarity, we extract the relevant paragraphs of the order of the Tribunal which reads as under :

*"5.3.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited and placed reliance upon. Firstly, we would like to consider the legal position with regard to the voluntary contributions urged by the parties. The case of the assessee before the authorities below was that the voluntary contributions received by it was for the specific purpose of construction of a 'Kalyan Mantap'. In short, the assessee has pleaded that the amount received by the assessee was a tied up grant or an amount received for a specific purpose as being capital in nature. In support of this proposition, the assessee has cited / placed reliance on several decisions of various benches of the ITAT,*

wherein it has been held that voluntary contributions received for specific purposes cannot be considered as income.

5.3.2 In the case of J.B. Educational Society V ACIT reported in 159 TTJ 234 (Hyd), the Hyderabad Bench of the Tribunal followed an earlier decision of the Hyderabad Bench in the case of Society for Integrated Development in Urban and Rural Areas reported in 90 ITD 493 (Hyd) wherein the Tribunal followed the order of another coordinate bench in the case of Nirmal Agricultural Society (2000) 67 TTJ (Hyd) and recorded the observations therein which were as under :-

"24. Coming to the second limb of the argument of the learned counsel for the assessee that the entire receipts cannot be taxed, we find that the issue is covered by the judgment of this Bench in Nirmal Agricultural Society v. ITO, 71 ITD 152. In that case, it has been held (as per head note) as under:-

"The assessee had not been granted registration under Section 12A, as the Commissioner thought it fit to refuse to condone the long delay caused by the assessee in applying for the registration. Therefore, the Assessing Officer had no other option but to complete the assessments in the status of AOP also closing his eyes towards Section 11 and Section 13.

To that extent, the Assessing Officer was right as he had acted only according to will of law.

But as far as the contents of the assessments were concerned, even when the assessee had been assessed as AOP and deprived of Section 11 benefits, the Assessing Officer could assess only net income of the assessee and not gross receipts. As far as the assessee was concerned, construction of houses, reclamation of land, etc., were part of its regular activities. Houses were built on the land of poor agriculturists. The assessee-society had no legal title or right over the land or houses of those villagers/ agriculturists who were the beneficiaries. The purpose and activity of the assessee-society was to engage in such charitable activities. Whatever amount had been spent on those programmes/projects, it was spent in the usual course of carrying on its acclaimed objects. Therefore, there was no basis whatsoever, factual or legal, to hold that the amounts spent by the assessee in constructing houses or reclaiming land were capital expenditure. As far as the assessee was concerned, those expenses were revenue expenses. The assessee had no right or title over those properties. Those expenses were incurred as part of its normal activities for

*which the society was formed. Therefore, the money spent by the assessee- society in constructing houses, reclaiming the land, for non-formal education, etc., had to be allowed as deduction in the computation of income.*

*The grants received from foreign donor were for specific purposes. The grants which were for specific purposes did not belong to the assessee-society; such grants did not form corpus of the assessee or its income. Those grants were not donations to the assessee so as to bring them under the purview of Section 12. Voluntary contributions covered by Section 12 are those contributions freely available to the assessee without any stipulation, which the assessee can utilise towards its objectives according to its own discretion and judgment. Tied-up grants for a specified purpose would only mean that the assessee which was a voluntary organisation, had agreed to act as a trustee of a special fund granted by donor with the result that it need not be pooled or integrated with the assessee's normal income or corpus. In the instant case, the assessee was acting as an independent trustee for that grant, just as same trustee could act as a trustee of more than one trust. Tiedup amount need not, therefore, be treated as amounts which were required to be considered for assessment for ascertaining the amount expended or the amount to be accumulated.*

*The assessee should have actually credited the grant in the personal account of the donor and any amount spent against that grant should have been debited to that separate account of the donor. That incoming and outgoing need not be reflected in the income and expenditure account of the assessee. At the end of the project, the balance, if any, available to the credit of the donor, could be treated as income of the assessee, if the donor did not insist for the repayment of the balance amount.*

*Therefore, the Assessing Officer was to be directed to redo the assessment on the following lines.*

*(1) The tied-up grants received from the donor, Bread for the World, will be taken out of the computation of income from the income-side.*

*(2) All the money spent under the tied-up programmes directed by the donor also will be taken out of the computation of income from the expenses-side.*

*(3) Any non-refundable credit balance in the personal account of Bread for the World will be treated as income in*

the year in which such non- refundable balance was ascertained.

(4) The expenses incurred by the assessee for house construction, reclamation of land, non-formal education programme (other than covered by the tied-up grants) will be deducted as revenue expenses."

25. Honourable Rajasthan High Court in the case of Sukhdeo Charity Estate (supra) held as follows (as per head note):-

"It was for the specific purpose of implementation of the water supply scheme that the request for contribution had been made by the assessee-trust and it was in response to that request that the amount had been given by the Calcutta trust. It was clear that the intention of the donor and the donee was to treat the money as capital to be spent for the water supply scheme. The fact that the amount had not been paid over to the State Government and was kept unutilised in the account of the assessee-trust was not relevant. The amount could not be said to be "income" and could not be included as part of the assessable income of the trust under the provisions of Section 12(2)."

In Yet another judgment in the case of Sukhdeo Charity Estate (supra), the Honourable Rajasthan High Court held as follows (as per head note):-

"The intention of the donor-trust as well as the donee-trust was to treat the money as capital to be spent for the Ladnu Water Supply Scheme. It was of no significance whether the amount had since been paid to the State Government or kept in the account of the said scheme by the assessee-trust. The amount of Rs. 70,000/- did not constitute income of the petitioner. The reassessment proceedings were not valid and were liable to be quashed."

This Bench of the Tribunal in the case of Arya Vysya Abhyudaya Sangham (supra) for asst. year 1998-99, in its order dated 25-6-2002 to which one of us was a party, was inclined to uphold the view of the Commissioner (Appeals) in that case by holding in para 15 of that order as follows:

"Though we find considerable force in the other argument of the assessee's counsel i.e. the income should be computed on commercial principles, as we have held that the assessee-society is eligible for exemption Under Section 11 of the Act and as we have also held that the objects of the society were of charitable nature within the meaning of

*Section 2(15) of the Act, and as we have further held that there is no violation, whatsoever of the provisions of Section 13(1)(c) and (d) of the I.T. Act, 1961, the other grounds of the assessee need not be gone into, as it would be of academic interest only."*

*The Revenue has not brought to our notice any judgment from any High Court which has dealt at length on this issue and which is in its favour. It is also not clear whether the Revenue has accepted or gone on appeal against the judgment of this Bench in the case of Nirmal Agricultural Society (supra).*

*26. Honourable Andhra Pradesh High Court in the case of Chairman, Andhra Pradesh Welfare Fund v. CIT, as per head note, held as follows:-*

*"(i) That the finding of the Tribunal, that the assessee could not be regarded as a branch or as a part of the parent body, was a finding of fact and no question of law arose for reference.*

*(ii) That the mere fact that the rice millers paid contributions with an oblique motive would not affect the character of the contributions, as voluntary contributions.*

*(iii) That the finding of the Tribunal, that the assessee was not entitled to exemption as a trust under Section 12 because some of the funds were being utilised for purposes other than charitable and religious was a finding of fact and no question of law arose for reference."*

*This judgment was relied upon by the Reference. A careful reading of this judgment does not indicate that the question raised by the assessee before us was posed to the court. We do not feel that this is a precedent for laying down a proposition of allowability of expenditure for computation of income of a charitable institution which is denied benefit Under Section 11. Honourable Supreme Court in the case of Goodyear India Ltd. v. State of Haryana (1991) 188 ITR 402 (SC), as per head note, held as follows: "*

*Precedent -- Authority only for what it decides - Not for what may remotely or even logically follows - Decision on question not argued cannot be treated as precedent."*

*Thus, the judgment of Honourable Andhra Pradesh High Court (supra) does not help the case of the Revenue.*

27. On other hand, learned authors Chaturvedi and Pithisaria in their book *Income Tax Law, Fifth edition, Vol.1*, at page 424, under the heading "Income, when falls into the tax net", observed as follows:-

"Although Section 14 of the 1961 Act classifies income under six heads, the main charging provision is Section 4(1) which levies income-tax, as only one tax, on the "total income" of the assessee as defined in Section 2(45) of that Act. AO income in order to come within the purview of that definition must satisfy two conditions. Firstly, it must comprise the "total amount of income referred to in Section 5". Secondly, it must be "computed in the manner laid down in this Act". If either of these conditions fails, the income will not be a part of the total income that can be brought to charge [CIT v. Harprasad & Co. P. Ltd., (1975) 99 ITR 118, 125 (SC)]".

28. As argued by the Revenue, though by virtue of Section 2(24)(iia) voluntary contributions are income, to our mind this by itself does not entitle the tax gatherer to ignore all other well settled principles of taxation and general law and levy tax on gross receipts without considering the claim for deductions. Principles such as capital versus revenue, doctrines of overriding title, form versus substance, interpretation of "deeming" provisions etc., have to be applied wherever necessary. Only the surplus or profit can be brought to tax and the same has to be computed in the manner laid down in the Act applying the normal principles of accountancy and taxation laws.

29. The learned authors Kanga and Palkhivala in the book *The Law and Practice of Income Tax, Eighth edition, Vol. I*, at page 387, state the legal position as follows:-

"Voluntary contributions towards corpus of recipient trust.—

The present Section 12 is expressly made applicable to voluntary contributions which are made with a specific direction that they shall form part of the corpus of the trust [original in italics]. Therefore, such contributions on capital account do not have to be applied to charitable purposes but can be retained as the corpus of the recipient trust without attracting any tax liability. Although the italicized words have now been omitted from Section 2(24)(ii-a), the exclusion of such capital donations from the definition of "income" implicit in that section. The correct legal position is as under

(a) All contributions made with a specific direction that they shall form part of the corpus of the trust are capital receipts in the hands of the trust. They are not income either under

the general law or under Section 2(24)(ii-a) rightly construed. (See under Section 2(24)(ii-a), "Voluntary contributions received by charity".)

(b) Section 2(24)(ii-a) deems revenue contributions to be income of the trust. It thereby prevents the trust from claiming exemption under general law on the ground that such contributions stand on the same footing as gifts and are therefore not taxable. (See under Section 10(3), "Voluntary payments ..."p.320.)

(c) Section 12 goes one step further and deems such revenue contributions to be income derived from property held under trust. It thereby makes applicable to such contributions all the conditions and restrictions under Sections 11 and 13 for claiming exemptions. (See also Expln. (1) to Section 11(1).] (d) Section 11(1)

(d) specifically grants exemption to capital contributions to make the fact of non-taxability clear beyond doubt. But it proceeds on the erroneous assumptions that such contributions are of income nature - "income in the form of voluntary contributions". This assumption should be disregarded."

5.3.3 After, relying on the observations from the decision of the coordinate bench (supra), the Hyderabad Bench in the case of J.B. Educational Society (supra) observes as under :-

58. Further, in the case of Shri Shankar Bhagwan Estate vs. ITO (61 ITD 196) wherein even after considering section 2(24)(iia) of the Act it was held as follows:

"Section 2(24)(iia) has to be read in the context of the introduction of present section 12. In the instant case the Assessing Officer on evidence had accepted the fact that all the donations had been received towards the corpus of the endowments. In view of this clear finding, they could not be assessed as income of the assessee. Therefore, the voluntary contributions received by the assessee towards the corpus could not be brought to tax."

59. Now the issue for our consideration is whether the amounts received by the assessee were in the nature of voluntary donations received for specific purpose. If yes, whether the same could be considered towards corpus of the trust. Alternatively, if the donations are not voluntarily made, then whether such donations could be considered as income chargeable to tax. The assessee has taken a plea

before us that these donations are received from members of the trust and their associated companies/persons for a specific purpose, it is a tied up grant. Sections 11, 12 and 2(24)(iia) of the Act speak of voluntary contributions. Therefore, firstly, it has to be seen whether such donations are voluntary or not. According to the dictionary meaning, an act can be said to be voluntary if it is done by free choice of one's own accord, without compulsion or obligation, without valuable consideration, gratuitous, etc. There is no material on record to suggest that such donations are given against the will of the donors or by any compulsion or under any obligation. In that sense, it can be said that the donations are voluntary. Before us, the assessee filed a list of donors in Paper Book form at page Nos. 637 to 656 giving details of the donors. If the donations are not voluntarily made, the same fall outside the ambit of sections 11, 12 and 2(24)(iia) of the Act. Consequently, general provisions of Income-tax Act would become applicable. According to the general provisions of the Act all receipts are not income. Donations received for specific object are to be considered as tied up fund and it is capital receipt. If the donations are made voluntarily for specific purpose, the same cannot be held as income of the assessee, since the donations were, in our opinion, given for specific purpose as tied up grant and it cannot be taxed as income.

60. In the present case, the resolution passed by the assessee shows that it has been received from members of the trust and their associated companies/persons towards "building construction" and the same were expended for that purpose. So far as section 2(24)(iia) is concerned, this section has to be read in the context of introduction of section 12. It is significant that section 2(24)(iia) was inserted with effect from 1.4.1973 simultaneously with the present section 12, both of which were introduced from the said date by Finance Act, 1972. Section 12 makes it clear by the words appearing in parenthesis that contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall not be considered as income of the trust. The Board circular No. 108 dated 20.3.1973 is extracted at page 1754 of Volume I of Sampath Iyengar Law of Income-tax (10th Edition), in which the interrelation between sections 12 and 2(24) has been brought out. Gifts made with clear direction that they shall form part of the corpus of the religious endowment can never be considered as income. In the case of R.B. Shreeram Religious and Charitable Trust v. CIT (172 ITR 373) (Bom) the Hon'ble High Court held that even ignoring the amendment to section 12, which means that even before



*the words appearing in parenthesis in the present section 12, it cannot be held that voluntary contributions specifically received towards corpus of the trust may be brought to tax.. The aforesaid decision was followed by the Bombay High Court in the case of CIT vs. Trustees of Kasturbai Scindia Commission Trust (189 ITR 5) (Bom). In the present case donations being received for specific purpose, towards corpus of the trust, cannot be assessed as income of the assessee.*

*61. Same view was taken in the case of Shri Dwarakadeesh Charitable Trust vs. ITO (98 ITR 557), DCIT vs. Nasik Gymkhana (77 ITD 500), ITO vs. M/s. Gaudiya Granth Anuvad Trust in ITA No. 386/Agra/2012 order dated 2.8.2013, Penta Software Employees Welfare Foundation vs. ACIT in ITA Nos. 751-752/Mds/2007 and DIT (Exemptions) & Anr. vs. Sri Belimath Mahasamsthana Socio, Cultural and Educational Trust (336 ITR 694) (Kar).*

*62. Further, we have also carefully gone through the order of the Tribunal in the case of Nirmal Agricultural Society vs. ITO (71 ITD 152) relied on by the DR. Specifically paragraphs 9 to 12 of that order support the case of the assessee rather than the Revenue. For clarity, we reproduce the said paragraphs as under:*

*"9. But as far as the contents of the assessments are concerned, we find much force in the contentions advanced by the assessee. Even when the assessee has been assessed as AOP deprived of s. 11 benefits, the AO could assess only net income of the assessee and not gross receipts. As far as the assessee is concerned, construction of houses, reclamation of land, etc., are part of its regular activities. Houses are built on the land of poor agriculturists. The assessee-society has no legal title or right over the land or houses of those villagers/ agriculturists who are the beneficiaries.*

*The purpose and activity of the assessee-society is to engage in such charitable activities. Whatever amount has been spent on those programmes/ projects, they were spent in the usual course of carrying on its acclaimed objects. Therefore, there is no basis whatsoever, factual or legal, to hold that the amounts spent by the assessee in constructing houses or reclaiming land are capital expenditure. As far as the assessee is concerned, those expenses are revenue expenses. The assessee has no right or title over those properties. Those expenses were incurred as part of its normal activities for which the society was formed.*

Therefore, the money spent by the assessee-society in constructing houses, reclaiming the land, for non-formal education, etc., has to be allowed as deduction in the computation of income.

10. The grants received from Bread for the World were for specific purposes. The grants which are for specific purposes do not belong to the assessee- society. Such grants do not form corpus of the assessee or its income. Those grants are not donations to the assessee so as to bring them under the purview of s. 12 of the Act. Voluntary contributions covered by s. 12 are those contributions freely available to the assessee without any stipulation which the assessee could utilise towards its objectives according to its own discretion and judgment. Tied-up grants for a specified purpose would only mean that the assessee, which is a voluntary organisation, has agreed to act as a trustee of a special fund granted by Bread for the World with the result that it need not be pooled or integrated with the assessee's normal income or corpus. In this case, the assessee is acting as an independent trustee for that grant, just as same trustee can act as a trustee of more than one trust. Tied-up amounts need not, therefore, be treated as amounts which are required to be considered for assessment, for ascertaining the amount expended or the amount to be accumulated.

11. The assessee should have actually credited that grant in the personal account of the donor, Bread for the World and any amount spent against that grant should have been debited to that separate account of the donor. That incoming and outgoing need not be reflected in the income and expenditure account of the assessee. At the end of the project, the balance, if any, available to the credit of Bread for the World, the donor, could be treated as income of the assessee, if the donor did not insist for the repayment of the balance amount.

12. Therefore, in the light of the examination of the facts of the case, we direct the AO to redo the assessments in the following lines:

(1) The tied-up grants. received from the donor, Bread for the World, will be taken out of the computation of income from the income side.

(2) All the money spent under the tied-up programmes directed by the donor also will be taken out of the computation of income from the expense side.

(3) Any non-refundable credit balance in the personal account of Bread for the World will be treated as income in the year in which such non-refundable balance was ascertained.

(4) The expenses incurred by the assessee for house construction, reclamation of land, non-formal education programme (other than covered by the tied-up grants) will be deducted as revenue expenses. "

63. Being so, as seen from the above order of the Tribunal the amount received by the assessee for specific purpose would only mean that the assessee agreed to act as a trustee of a special fund granted by assessee's trustees/members or associated persons. As a result it need not be pooled or integrated with the assessee's normal income or corpus. The assessee is acting as an independent trustee for that amount received from the assessee's trustees/members just as some trustee can act as a trust for more than one trust. Tied up or specific grant need not, therefore, be treated as amounts which are required to be considered for assessment. In other words, tied up grant received from donors for a specific purpose cannot form part of assessee's income.

64. In view of the above discussion, we are of the opinion that voluntary contributions in the nature of tied up grant received by the assessee cannot be brought to tax even the trust is not registered u/s. 12AA of the Act. The tied up donations received by the assessee should not be taxable as income of the assessee, if it is used for specific purpose for which it has been given and it cannot be considered as revenue receipts so as to tax the same

5.3.4 In coming to the aforesaid conclusion the Hyderabad Bench of the ITAT has also relied upon the decisions of the ITAT, Delhi Bench in the case of Smt. Basanthi Devi (supra) and Sri Chakhan Lal Garg Education Trust (supra) and in the case of Gaudiya Granth Anved Trust (supra) wherein similar issue raised has been considered by both the Delhi and Agra Benches of the ITAT. We also find that the Hon'ble Delhi High Court in the case of Basanti Devi & Sri Chakhan Lal Garg Education Trust vide its order in ITA No.927/09 dt.23.9.2009 has also affirmed the view taken by the Hon'ble ITAT in holding that corpus donations cannot be regarded as income under Section 2(24)(iia) of the Act.

5.3.5 Following the above decisions of the Tribunal (supra), relied upon by the assessee, we hold that voluntary contributions received for a

*specific purpose cannot be regarded as income under Section 2(24)(iia) of the Act since they are capital receipts and tied up grants for specific purpose”*

6.1. Further, Hon’ble Delhi High Court in the case of DIT vs. Society for Development Alternatives relied upon by the assessee has considered the decision of Hon’ble Rajasthan High Court in the case of Sukhdeo Charity Estate v. CIT [149 ITR 470] and upheld the order of the Ld.CIT holding that if the assessee fails to utilize the grants for the purpose for which it was sanctioned, the amounts so unutilized required to be brought to tax, if it is not refunded back to the funding agencies. For clarity and convenience, we extract the relevant paragraphs of the order of the High Court of Delhi in para no.7 and 8 which reads as under :

*“With regard to the second contention, the findings recorded by the tribunal are that the respondent-assessee had received grants for specific purposes/projects from the government, non-government, foreign institutions etc. These grants were to be spent as per the terms and conditions of the project grant. The amount, which remained unspent at the end of the year, got spilled over to the next years and was treated as unspent grant. The Commissioner of income Tax(Appeals) while deleting the said addition had observed as under:-*

*“I have considered the assessment order and submissions of the appellant along with evidences placed on record. On perusal of the evidences regarding the project grants placed on record, it is seen that the said amounts are received/sanctioned for a specific purpose/project to be utilized over a Particular period. The utilization of the said grants is monitored by the funding agencies who send persons for inspection and also appoint independent auditors to verify the utilization of funds as settled terms. The appellant has to submit inter/final progress/work completion reports along with evidences to the funding agencies from time to time. These agreements also include a term that separate audits*

*accounts for the project will be maintained. The unutilized amount has to be refunded back to the funding agencies in most of the cases. All the terms and conditions are simultaneously complied with otherwise the grants are withdrawn. The appellant has to utilize the funds as per the terms and conditions of the grant. if the appellant fails to utilize the grants for the purpose for which grant is sanctioned, the amount is recovered by the funding agency. On the basis of the evidences placed on record, it is seen that the appellant is not free to use the funds voluntarily as per its sweet will and, thus, these are not voluntary contribution as per Section 12 of the Act. These are tied up grants where the appellant acts as a custodian of the funds given by the funding agency to channelize the same in a particular direction.*

*In case of voluntary contribution, the appellant is free to use the money as per its will and neither have to render the account of the same to the donor nor the same is monitored by the donor. The said amount becomes income of the appellant and has to be used for charitable purposes as per its objects However, in case of specific tied up grants, money is received for specific purposes and is to be utilized for the same."*

*The Commissioner of Income Tax (Appeals) has also referred to the judgment of the Rajasthan High Court in Sukhdeo Charity Estate v CIT(1984) 149 ITR 470 (Raj)."*

*In view of the aforesaid factual position, the tribunal has upheld the order passed by the Commissioner of Income Tax (Appeals) and has not accepted the appeal filed by the Revenue.*

*In view of the aforesaid factual position, we are not inclined to entertain the present appeals on the second aspect"*

6.2. In the instant case, the donations were received for specific purpose for acquiring the fixed assets. This is evidenced by the letters placed before us from the donors. The funds are not freely available to the assessee society, for utilizing its objectives other than acquiring specified assets. The entire amount received for acquiring the fixed assets was utilized by the assessee and there are no surplus funds available to the assessee. The

above facts are not disputed by the Ld.DR. The fact that the amount was utilized was evidenced by the Balance Sheet, thus the facts of the case is squarely covered by the decision of the Coordinate Bench of Bangalore in the case of Vokkaligara Sangha cited supra, wherein the Coordinate Bench held that contributions received for specific purpose cannot be regarded as income u/s 2(24)(iia) of the act. Respectfully following the view taken by the ITAT, Bangalore, we hold that the donations received for specific purpose of acquiring the capital assets are tied up grants and cannot be treated as income u/s 2(24)(ii)(a) of I.T.Act. Accordingly, we set aside the orders of the lower authorities and allow the appeal of the assessee

7. In the result, appeal of the assessee is allowed.

The above order was pronounced in the open court on 22<sup>nd</sup> Nov' 2017.

Sd/-

(वी.दुर्गाराव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 22.11.2017

L. Rama, SPS

Sd/-

(डि.एस. सुन्दरसिंह)

**(D.S. SUNDER SINGH)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

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

1. अपीलार्थी / The Appellant- Touching Heart Ministries, D.No.1-5-1, Tailors Colony, Tuni, E.G.District
2. प्रत्यार्थी / The Respondent–Income Tax Officer, Ward-1, Tuni
3. The Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-1, Visakhapatnam& Rajahmundry
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary  
 ITAT, VISAKHAPATNAM

