

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 4434/Del/2017
Assessment Year: 2010-11

RAMA DEVI MEMORIAL SOCIETY,
CITY PUBLIC SCHOOL,
E-3, SECTOR-61,
NOIDA – 201301
UTTAR PRADESH
(PAN: AAATR6940C)
(PAN: AAMPM9282G)
(APPELLANT)

VS. JCIT, RANGE-2
SHOPPING COMPLEX,
G-BLOCK, SECTOR-20
NOIDA, U.P.

(RESPONDENT)

Assessee by : Dr. Rakesh Gupta, Adv. &
Sh. Somil Aggarwal, Adv.
Revenue by : Sh. Ravi Kant Gupta, Sr. DR.

ORDER

The Assessee has filed this Appeal against the Order dated 31.03.2017 of the Ld. CIT(A)-I, Noida relating to assessment year 2010-11 on the following grounds:-

- I. Whether on the facts of the case and in law Ld. CIT(A) is correct in holding that the charitable status of the Appellant Society was not relevant for claim of exemption uls

11(1)(a) of the Income Tax Act, 1961 but the nature and source of income is material?

2. Whether Ld. CIT(A) is correct in law and on the facts of case to ignore provisions of Sections 11, 12, and 13 relating to charitable institutions i.e. 'income derived from property held under trust/legal obligation; application of income for charitable purposes; accumulation or setting apart of income for charitable purposes; forms or modes of investment of accumulated income etc. necessary and relevant for exemption of income.

3. Whether Ld. CIT(A) is justified in law to import the concept of 'pure charity' in place of words "Charitable purpose" when there is no such requirement in Sections 11, 12, & 13 of the Act.

4. Whether Ld. CIT(A) is correct in law to issue enhancement notice based on arbitrary and imaginary propositions of law ignoring actual provisions of Income Tax Statute relating to charitable institutions/trusts.

5. Whether Ld. CIT(A) is correct in law to hold that educational institutions can only claim exemption u/s IO(23C)(iv) and IO(23C)(vi) and not under section 11 of the Act.

6. Whether Ld. CIT(A) is correct In law to hold that educational trusts or institutions cannot collect fee etc from students and charging of such fee etc. will render the objects of the trusts/institutions as uncharitable.

7. Whether Ld. CIT(A) is justified in law to ignore the principle of application Of income u/s 11 (1)(a) for claim of exemption and holding that expenditure incurred on imparting of education is not to be set off against fee and other income of the Appellant.

8. Whether Ld. CIT(A) is justified in law to hold that the income of appellant from fee and other receipts is assessable under the head income from 'other sources' without any deduction on account of expenditure incurred by the appellant.

9. Whether deciding of an appeal on arbitrary and imaginary ideas will be within four corners of law.

10. Whether Ld. CIT(A) is correct in holding that business undertaking held under trust should have been received by way of contribution to its cause and held as such only then charitable institution can claim exemption of income derived from such business.

11. Whether Id CIT(A) is justified in law and on facts of the case to ignore the school buildings and other assets as property held under trust and import his own imaginary and arbitrary ideas relating' to term "property" to disallow benefit of Section 11 when all relevant conditions of Section 11 are satisfied and there is no violation of any legal provisions.

12. Whether Ld CIT(A) is justified in law to hold that when provisions Section 10(23C)(iv) & (v) provide for exemption of income of educational institutions, the Legislature would not have legislated Section 11 again for exemption of such income.

13. Whether Id CIT(A) is erred in law not to decide the ground of appeal relating to lease charges of Rs 11,37,029/- paid to NOIDA Authority ignoring written submissions filed by the appellant

on last day of hearing i.e. 31.03.2017 in respect of this addition and on enhancement notice.

14. Whether Ld. CIT(A.) is justified in law to treat depreciation of Rs. 15,96,073/-, disallowed by AO and not appealed against by the appellant, as donation and again making addition as income which amounts to double addition.

15. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.

2. The brief facts of the case are that assessment in this case was completed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as the Act) vide order dated 07.02.2013 by making addition of Rs. 11,37,029/- on account of lease rent paid to Noida Authority for not deducting TDS u/s 40(a)(ia). Against the assessment order, the Assessee appealed before the Ld. CIT(A), who vide his impugned order dated 30.3.2017 has enhanced the income at Rs. 2,61,15,153/-. Ld. CIT(A), discussed the concept and theory of charitable purposes as defined in section 2(15) and conditions laid down in section 11 to section 13 of the Act. He held that once the income of educational institution is exempt, it was on account of the fact that imparting education is matter of pure charity and educational institutions are not permitted to receive or recover the

cost of charity by way of charging fee as according to him it would be uncharitable activity. He relied upon the decision of the Hon'ble Supreme Court decisions cited in his order in this regard. Ld. CIT(A) further held that assessee is not entitled for the benefit of section 11 and 12 and its income has to be assessed as income from other source u/s 56 against which no deduction u/s 57 will be allowed and thus, Ld. CIT (A) held the entire receipts as taxable. Against the order of Ld. CIT(A), assessee is in appeal before the Tribunal.

3. At the time of hearing Ld. Counsel for the assessee drew our attention to a similar order passed by the same CIT(A), on 30.03.2017 in the case of M/s Aadarsh Public School, which was made part of the paper book from page 23-51. It was shown by Ld. Counsel for the assessee that para 4, 5, 8, 9, 11 to 100, 102 & 103 of the said decision given by same Ld. CIT(A) in the case of M/s Aadarsh Public School are verbatim to para 19 to para 71, part of para 72, para 73 to para 84, part of para 85, 87 to 91, 96 to 100, part of para 101, para 102 to para 112, 113, 115 to 116, 118-119 of appeal order passed in the case of the assessee and thus argued that entire discussion and decision given by Ld. CIT(A) in the case of M/s Aadarsh Public School has been lifted by him in his order passed in the case of the assessee & is identical. It was further brought to our notice vide paper book page 52-74 that the said order of Ld. CIT(A), in the case of M/s Aadarsh Public School went before Tribunal and Tribunal in ITA No. 3782/Del/2017 vide order dated 31.01.2018

reversed all the findings recorded by CIT(A) vide its order dated 31.01.2018 and thus, Ld. Counsel for the assessee argued that this a covered case by the aforesaid decision of Tribunal. Regarding ground no. 13 and 14 it was pleaded that no opportunity was provided to the assessee. In sum and substance Ld. Counsel argued for the reversal of the order of Ld. CIT(A).

4. On the other hand Ld. Sr. DR relied upon the order of Ld. CIT(A) and the assessment order & agreed that the present appeal is covered by the Tribunal decision in the case of Adarsh Public School, (supra).

5. Having heard the rival submissions and having gone through the orders passed in the present case and having gone through the paper book, I am of the considered view that the decision of Ld. CIT(A) on all fronts & issues are similar to the one which were decided in the case of M/s Aadarsh Public School Supra. So much so the language of the Ld. CIT(A)'s order in the case of Aadarsh public School and the language in the appeal order in the present case and the findings arrived at by Ld. CIT(A) in both the cases are identical. We therefore, find that the issues involved in the present appeal covering Grounds No. 1 to Ground No.12 are covered by the decision of the Tribunal in the case of Aadarsh Public School (Supra) in which Tribunal held as under:-

"11. We have heard the rival submissions and perused the relevant finding given in the impugned order as well as the material referred to before us. We have already discussed in brief various facets of the observations made by the Id. CIT(A) while exercising his power of enhancement u/s.251(2) and taxing the entire receipts of Rs.1,04,85,689/- as income from other sources. It is an admitted fact that assessee society has been formed and registered under the 'Registration of Societies Act, 1860', with the sole object of providing education and in pursuance of such an object it has set up an infrastructure in the form of school which is named as 'Adarsh Public School', from where it is providing education upto Senior Secondary level. Looking to its object which is for 'charitable purpose' in terms of section 2(15) and is solely for imparting education, it has been granted registration u/s.12A by the competent authority, i.e., Ld. CIT Ghaziabad. Once registration u/s.12A is granted, then it is fait accompli and accordingly, all its receipts / income are subject to computation and benefit u/s.11 to 12 and restrictions provided u/s 13. Such a

registration u/s 12A has neither been withdrawn nor has any action been taken by the competent authority to withdraw such certificate of exemption granted u/s.12A. That is the reason why the assessments have completed u/s. 143(3) for the subsequent assessment year, wherein the assessee has been given the benefit of Section 11. Here in the impugned assessment year the case of the Assessing Officer was that the audit report in Form 10B was not filed along with return of income and the one which was filed during the course of the assessment proceeding was back dated. This allegation of the Assessing Officer has been negated by the Id. CIT(A) who has found that audit report in Form 10B was proper. Thus, the ground and the finding of the Assessing Officer to deny the claim of benefit of section 11 has been overruled by the first appellate authority, which finding has now attained finality as revenue is not in appeal or in cross objection. The Assessing Officer has only taxed the surplus over income and expenditure account, however the Id. CIT(A) has proceeded to tax the entire receipt albeit on different grounds.

12. Now we shall deal in brief the various observations and findings of the Id. CIT(A) by which he has denied exemption/benefit of Section 11 to the assessee. Coming to his first objection that assessee is not entitled for benefit/exemption u/s.11, because there is a separate provision under the Act u/s. 10(23C)(iv), (v) and (vi) where it could have or can claim the exemption and since assessee has not availed the exemption u/s.10(23C), therefore, it is debarred from claiming exemption u/s.11. At the outset, such an observation is against the principle laid down by the Hon'ble Supreme Court in the case of CIT vs. Bar Council of Maharashtra (supra), wherein the their Lordships have observed and held as under:-

6. At the outset it may be stated that we were not inclined to permit counsel for the revenue to urge his first contention as in our view the revenue must be deemed to have given up the same. We may point out that precisely this very contention was raised by the revenue before the Tribunal and was negative by it. The Tribunal on a detailed analysis of the concerned provisions took the

view that the two provisions were not mutually exclusive but operated under different circumstances, that section 11 was relatively wider in its scope and ambit, that while section 10(23A) granted absolute exemption in respect of particular types of income, section 11 imposed certain conditions for the exemption but such exemption was available for all sources, and that there was nothing inherently improbable or inconceivable about the two provisions operating simultaneously and as such the claim for exemption under section 11 was available to the assessee-Council provided it satisfied 11 the requirements of that provision. We may point out that there are other allied provisions like for instance clause (23C) in section 10 which clearly indicate that the Legislature did not intend to rule out section 11 when exemption was claimable under such specific provisions of section 10. It was after negating the contention in this manner that the Tribunal went on to consider the claim for exemption made by the

assessee-Council under section 11 but on merits found that there was no material or evidence on record to show whether or not the securities were held by the assessee-Council for any of the charitable purposes and, therefore, it remanded the case. The remand order was never challenged by the revenue by seeking a reference on the ground that a remand was unnecessary because section 11 was ruled out by reason of exemption having been obtained by the assessee- Council under section 10(23A) nor was any such contention raised when reference was sought by the assessee-Council nor when the matter was being argued in the High Court. In these circumstances, it is clear to us that the revenue acquiesced in the view taken by the Tribunal that the claim for exemption under section 11 could not be said to be ruled out by reason of the provisions of section 10(23A). We, therefore, proceed to deal with the second contention which was principally argued before us in these appeals.

13. Thus, the aforesaid observation of the Hon'ble Apex Court, makes it very clear that there is no bar or disharmony between Section 10(23C) and Section 11; and exemption of Section 11 cannot be denied even when there is a specific provision of Section 10(23C). This principle has been reiterated by the Hon'ble Jurisdictional High Court in the case of CIT vs. Indian Institute of Engineering Society, reported in 218 Taxman 151 (All), wherein Their Lordships had observed as under:-

6. Shri Awasthi, learned counsel, submitted that as the assessee claimed exemption, being an educational institution as such it was required to obtain exemption from the prescribed authority under Section 10(23C) of the Act, which is mandatory. Since no exemption from the prescribed authority under Section 10(23C) of the Act has been obtained as such the assessee was not entitled to claim benefits under Section 11 of the Act. The submission is wholly misconceived. Admittedly, the

assessee is an educational institution and was established for charitable purposes for running educational institutions and imparting education. Section 10 of the Act deals with the income not liable to be included in total income of the assessee while Section 11 deals with the income from property held for charitable or religious purposes. Both Section 10(23C) and Section 11 of the Act are independent sections. The assessee was registered under Section 12A of the Act. As such the assessee was rightly granted benefits under Section 11 of the Act."

14. This judgment of Hon'ble jurisdictional High Court clearly negates the theory of Id. CIT (A). Further Hon'ble Punjab and Haryana High Court in the case of CIT vs. Mahasabha Gurukul Vidhyapeeth (2010) 2 Taxmann.com 283 (P & H) too have upheld the same proposition that once all the requisite conditions for exemption u/s.11 have been met and even if condition u/s. 10(23C) have not been complied with, then there should be no

bar to seek exemption u/s.11. In view of the aforesaid binding judicial precedents, we reject the observation and finding of the Id. CIT (A) that assessee cannot claim exemption/benefit of Section 11 or is not entitled for benefit u/s 11 as assessee was eligible for such an exemption u/s. 10(23C).

15. Ld. CIT(A) while denying the exemption of Section 11 to assessee society has held that, since imparting of education is a matter of pure charity, therefore, the educational institution is not permitted to receive or recover the cost of charity from its beneficiary by way of fees, i.e., charging of fees itself would amount uncharitable activity. We are unable to subscribe to this proposition at all, because if fees is not charged from the students then how the activity of imparting education can be carried out. Fees collected from the students itself feeds the charity, unless some other considerations are received for profiteering and personal gains of trustees or members of the society. Strong reliance has been placed by the Id. CIT (A) upon the judgment of Hon'ble Apex Court in the case of ACIT vs. Surat Art Silk Cloth

Manufactures Association (supra). In our humble understanding of the said judgment and the principle laid down by the Constitutional Bench of Hon'ble Apex Court, nowhere the Hon'ble Apex court has held that the charging of fees or some profit for carrying out charitable activity would be reckoned as not charitable. The Hon'ble Apex Court held that if primary or dominant purpose of a trust or institution is charitable, then any other object which by itself is not charitable and is mere ancillary to the dominant purpose then also it is held to be valid charity. The primary test which is to be applied is, whether the main or primary object of the trust is charitable or not. It is an undeniable that under the Income Tax Act, educational activity has been specifically treated as charitable purpose and if the entire activities of the assessee is purely for carrying out education then the test of dominant and main purpose stands fulfilled as laid down by the Hon'ble Apex court. Hon'ble Apex Court has further held that if any activity for profit is carried out in the course of actual carrying out its purpose, then the activity for profit must be intertwined or wrapped up with

or implied in the purpose of the institution or trust, in other words it must be an integral part of such purpose. What is to be looked into whether the activity is propelled by a dominant profit motive and whether the dominant object of the activity is profit making or carrying out a charitable purpose, if it is former then the purpose would not be charitable, but, if it is latter the charitable character of the purpose would not be lost. Thus, in no way the principle laid down by the Hon'ble Apex Court can be interpreted or understood in the manner that if certain receipt or income is generated out of an activity which is charitable and such a receipt or income is wholly applied for carrying out charitable purpose, then it cannot be reckoned for non charitable purpose. Here in this case, the charging of fees is a part of receipt during the course of carrying out educational activity which has been completely applied for that activity alone, therefore such a receipt by way of fees has to be seen as an application of income for charitable purpose. As regards another constitutional bench judgment of Hon'ble Apex Court in the case of TMA Pai Foundation and

others (supra), it is seen that the Hon'ble Apex Court in the context of 'capitation fee' and profiteering, itself culled out the exception in the following manner:-

66. In such professional unaided institutions, the Management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/University subject to adoption of a rational procedure of selection. A rational fee structure should be adopted by the Management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the state or university to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus for the furtherance of education is permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers."

[Emphasis added is ours]

16. Thus, the Hon'ble Apex Court held that in principle there should be no 'capitation fee' or profiteering, but reasonable surplus to meet the cause of education and augmentation of facility does not amount to profiteering. Nowhere the Hon'ble Apex Court has held that educational institution is debarred from taking any kind of fees from the students albeit they have expressed caution in a limited way on a capitation fee for the purpose of profiteering. Similarly in the other judgment relied upon by the Id. CIT (A), that is, in the case of *Islamic Academy of Education & Ors vs. State of Karnataka (supra)*, the Hon'ble Apex Court again following the principle of the constitutional Bench in the case of *TMA Pai Foundation & Others (supra)* and observed as under:-

212. So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the government. Each institute must have the freedom to fix its own fee structure

taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It

thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus" cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprisers."

[Emphasis added is ours]

17. The aforesaid judgment clearly clinches the issue and completely negates the view of the Ld. CIT (A). Thus, none of the judgments as referred to by the Id. CIT(A) have been analysed in proper prospective rather his interpretation of the principles laid down by the Apex Court are incorrect and out of context. Before us the learned counsel had submitted the total fees charged from various students during the year the details and bifurcation of which is as under:-

Class	TUTION FEES	MON THS	NO. OF STUD ENTS			BUS (300*1 2)	STUDE NTS TRAVE LLING BY BUS		REST ANNUAL	ADMISS ION FEES	Total
NUR	500	12	60	3,60,000	1,000	3,600	5	18,000	60,000		
LKG	500	12	78	4,68,000	1,000	3,600	7	25,200	78,000		
UKG	500	12	70	4,20,000	1,000	3,600	8	28,800	70,000		
1	600	12	69	4,96,800	1,000	3,600	12	43,200	69,000		
2	600	12	83	5,97,600	1,000	3,600	15	54,000	83,000		
3	600	12	80	5,76,000	1,000	3,600	10	36,000	80,000		
4	600	12	78	5,61,600	1,000	3,600	17	61,200	78,000		
5	600	12	70	5,04,000	1,000	3,600	15	54,000	70,000		
6	700	12	76	6,38,400	1,000	3,600	17	61,200	76,000		
	700	12	77	6,46,800	1,000	3,600	15	54,000	77,000		
8	700	12	79	6,63,600	1,000	3,600	19	68,400	79,000		
9	900	12	60	6,48,000	1,000	3,600	17	61,200	60,000		
10	900	12	57	6,15,600	1,000	3,600	18	64,800	57,000		
11	1,100	12	33	4,35,600	1,000	3,600	7	25,200	33,000		
12	1,100	12	29	3,82,800	1,000	3,600	5	18,000	29,000		
			TOTAL	80,14,800				6,73,200	9,99,000		
			FINE	2,65,095			LATE FEES	27,750	30,500		
			B/S	82,79,895			B/S	7,00,950	10,29,500	4,70,900	1,04,81,245

18. From the above details, it is quite evident that the assessee school has been charging fees only from its students and there is no capitation fee at all. Such fees have been charged from the students for the running of the school and has been applied for its dominant purpose/object of carrying out educational activity. If we apply the principle and ratio laid down by the Hon'ble Apex Court in the aforesaid cases, then the fees charged by the assessee is neither for profiteering nor for carrying any activity beyond its dominant object.

Thus, allegation of the Id. CIT (A) on this score also is hereby rejected.

19. Now coming to the observation that assessee's income by way of fees cannot be held to be derived from property held under the trust, because students cannot be treated as property. If such a proposition or view of Id. CIT (A) is upheld, then probably no education institution in the country would ever be eligible/entitled for exemption u/s.11 and perhaps will defeat the entire purpose of legislature and the definition of 'charitable purpose' of education as defined in Section 2(15). Section 12 of the Act clearly provides that any voluntary contribution received by a trust wholly for charitable or religious purpose, then for the purpose of Section 11 it is deemed to be income derived from the property held under the trust. Such a deeming provision of revenue contribution is held as income derived from the trust which is subject to computation and conditions laid down in Section 11 to 13. If the assessee is carrying out any obligation for educational activity, then it has to be treated as the 'trust' under the provision of Section 11; and

this proposition has been clearly held by the Hon'ble Supreme Court in the case of CIT vs. Gujarat Maritime Board (Supra), that if the assessee is under legal obligation to apply the income then it is entitled to be registered as charitable trust. In the case before the Hon'ble Supreme Court, the authority Gujarat Maritime Board was carrying out the development of minor port which was in the realm of 'carrying out objects of general public utility'. The Hon'ble Apex Court held that such an authority is to be reckoned as charitable trust for the purpose of Section 11. In this case one of the main objection raised on behalf of the department was that said Board was not entitled for the benefit of Section 11 as it was not a trust under the 'Public Trust Act' and therefore, it was not entitled to claim registration u/s. 12A. Since it was not held under the trust therefore, it is not entitled for exemption u/s. 11(1)(a). The relevant contention of the Revenue as well as the finding of the Hon'ble Apex Court reads as under:-

12. One of the objections raised on behalf of the Department was that

Gujarat Maritime Board is not entitled to the benefit of section 11 of the 1961 Act as the said Board was not a trust under Public Trust Act and, therefore, it was not entitled to claim registration under section 12A of the 1961 Act. The Department's case was that the Maritime Board was a statutory authority. It was not a trust. Its business was not held under a trust. Its property was not held under trust. Therefore, the Board was not entitled to be registered as a Charitable Institution. It was the case of the Department that the Board was performing statutory functions. Development of minor ports in the State of Gujarat cannot be termed as the work undertaking for charitable purposes and in the circumstances the Commissioner rejected the Board's application under section 12A of the 1961 Act in the light of the above case of the Department, we are required to consider the

expression 'any other object of general public utility' in section 2(15) of the 1961 Act.

13.

14. We have perused number of decisions of this Court which have interpreted the words, in section 2(15), namely, 'any other object of generally public utility'. From the said decisions it emerges that the said expression is of the widest connotation. The word 'general' in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose—*CIT v. Ahmedabad Rana Caste Association* [1983] 140 ITR 1 (SC). The said expression would prima facie include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable even if public welfare is intended to be served. If the primary purpose and the predominant object are to promote the welfare of the general public the purpose would be charitable purpose. When an object is to promote

or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the said trade or industry— CIT v. Andhra Chamber of Commerce [1965] 55 ITR 722 (SC). If the primary or predominant object of an institution is charitable, any other object which might not be charitable but which is ancillary or incidental to the dominant purpose, would not prevent the institution from being a valid charity— Addl. CIT v. Surat Art Silk Cloth Mfrs. Association [1980] 121 ITR 1 (SC).

15. *The present case in our view is squarely covered by the judgment of this Court in the case of CIT v. Andhra Pradesh State Road Transport Corpn. [1986] 159 ITR 1 in which it has been held that since the Corporation was established for the purpose of providing efficient transport system, having no profit motive, though it earns income in the process, it is not liable to income-tax.*

16. *Applying the ratio of the said judgment in the case of Andhra Pradesh State Road Transport Corpn. (supra), we find that, in the present case, Gujarat Maritime Board is established for the predominant purpose of*

development of minor ports within the State of Gujarat, the management and control of the Board is essentially with the State Government and there is no profit motive, as indicated by the provisions of sections 73, 74 and 75 of the 1981 Act. The income earned by the Board is deployed for the development of minor ports in India. In the circumstances, in our view the judgment of this Court in Andhra Pradesh State Road Transport Corpn.'s case (supra) squarely applies to the facts of the present case.

17. Before concluding we may mention that under the scheme of section 11(1) of the 1961 Act, the source of income must be held under trust or under other legal obligation. Applying the said test it is clear, that Gujarat Maritime Board is under legal obligation to apply the income which arises directly and substantially from the business held under trust for the development of minor port in the State of Gujarat. Therefore, they are entitled to be registered as 'Charitable Trust' under section 12A of the 1961 Act."

20. This principle has been reiterated by the Hon'ble Delhi High Court in the case of Institute of Chartered Accountants of India-v-DGIT, 358 ITR

91 (Del). Thus, the assessee society which has been registered under 'Registration of Societies Act, 1860' with the sole object of providing education and has a legal obligation for applying its income for such charitable purpose, then for the purpose of Section 11 it has to be treated as trust and income derived from carrying out such obligation has to be reckoned as income derived from property under the trust and therefore, on the ground also as raked by the Id. CIT (A), exemption u/s.11 cannot be denied. Accordingly, in view of the finding given above and various legal principle as discussed above, we hold that none of the observations and the finding of the Id. CIT(A) are sustainable and the grounds taken and the reasoning given by him to deny the benefit/exemption u/s.11 to the assessee cannot be upheld either in law or on facts.

21. Accordingly, in view of our finding given above, the entire receipts which has been taxed under the head 'income from other sources' is set aside and we direct the Assessing Officer to grant exemption u/s.11 as per the income and expenditure account submitted by the assessee."

6. Therefore respectfully following the decision of the Division Bench of the Tribunal in the case of Aadarsh Public School (Supra), it is held that the findings of Ld. CIT(A) are not in accordance with law and his action of denial of benefit of section 11 and 12 is reversed and it is further held that educational activity has been specifically treated as charitable purpose u/s 2(15) and I do not uphold the finding of Ld. CIT(A) that charging of fee would amount to uncharitable activity. It is further held that judgments referred by Ld. CIT(A) have not been interpreted correctly and have been interpreted out of context. Fee charged from the students has been applied for the purpose of carrying out charitable activity. I also reverse the finding of Ld. CIT(A) that income by way of fee cannot be held to be derived from property held under trust. I also do not approve the order of Ld. CIT(A) that the entire receipts are liable to be taxed under the head income from other source in this case and this finding given by CIT(A) is set aside and it is directed that the Ld. A.O. should grant exemption u/s 11 and section 12 to the appellant as per the income & expenditure account submitted by the assessee. In other words the order of CIT(A) passed in this case for the above stated reasons is reversed and thus, enhancement of income made by him at Rs. 2,61,15,153/- is hereby set aside and addition made by him is hereby deleted. Accordingly, all these grounds stand allowed.

7. Regarding Ground No. 13 and Ground No.14, since opportunity of hearing has not been given to the assessee, both these grounds are set aside to the file of A.O. for deciding denovo in accordance with law after giving opportunity of hearing to the assessee.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 05-07-2018.

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated : 05-07-2018

SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.