

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'G', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri O.P. Kant, Accountant Member**

**ITA Nos. 5991 & 5992/Del/2016
Assessment Years: 2010-11 & 2011-12**

The Indian Education Society, Vill- Chikanwas, Hisar. PAN- AAATI3921J (Appellant)	vs.	Income-tax Officer, Ward -2, Hisar. (Respondent)
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Appellant by	Sh. S. Krishnan, Advocate
Respondent by	Sh. S.S. Rana, CIT/DR

Date of Hearing	17.10.2019
Date of Pronouncement	14.11.2019

ORDER

Per O.P. Kant, A.M.

These two appeals by the assessee are directed against two separate orders , both dated 07/09/2016 passed by the Ld. Commissioner of Income-tax (Appeals)- Hisar [in short the ld the CIT(A)] for assessment year 2010-11 and 2011-12. In both appeals, a common issue has been raised by the assessee and thus both these appeals were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. The sole ground raised by the assessee in ITA No. 5991/Del/2016 for assessment year 2010-11 is reproduced as under:

“That on facts and in the circumstances of the case and in law the Ld.CIT(A) erred in confirming the Action of the Assessing Officer in not granting exemption as claimed u/s. 11 of the Income-tax Act, 1961 on account of building fund receipts of Rs.23,62,500/- received on capital account. The Action being most arbitrary, erroneous, unlawful and unjust be quashed with directions for relief.”

3. Briefly stated, facts of the case are that the Assessing Officer made addition consequent to cancellation of the registration by the Commissioner of Income-tax, Hisar. Subsequently, the Tribunal in ITA No. 941/Del/2013, restored the registration granted to the assessee under section 12AA of the Income Tax Act dated 23/09/2008. In view of the registration restored by the Tribunal, the Learned CIT(A) in the appeal filed by the assessee against the order of the Assessing Officer, deleted certain additions, however, retained action of the Assessing Officer in not granting exemption under section 11 of the Act on account of building fund received of Rs.23,62,500/-, which according to the assessee was received on capital account. Aggrieved with the action of the Learned CIT(A), the assessee is in appeal before the Tribunal raising the ground as reproduced above.

4. The Ld. counsel of the assessee submitted that the Learned CIT(A) is not justified in considering the building fund received as corpus donation for application of 85% income for charitable purposes. He submitted that said clause of 85% application applies only to income derived from property under section 11(1)(a) and 11(1)(b) of the Act and not on the income in the form of voluntary contribution under section 11(1)(d) of the Act. Accordingly, he submitted that order of the Learned CIT(A) might be set aside.

5. On the contrary, the Ld. DR submitted that assessee has not filed any evidences that the voluntary contribution by the donor were with specific direction that they shall form part of the corpus of the trust or the institution, therefore, in absence of any such evidences, order of the Learned CIT(A) is justified in treating the amount received on account of building fund of Rs. 23,62,500/- as income received from property under section 11(1)(a) and 11(1)(b) of the Act, which is required to be utilised as minimum prescribed percentage for charitable purposes.

6. We have heard the rival submission and perused the relevant material on record. The assessee contended that development fund is charged from the students for development of the infrastructure of the society/college/institution for construction of the building and purchase of capital asset. The assessee

submitted that this fund is part of the corpus fund of the society and has been shown as part of the capital fund of the society. The ld. CIT(A) observed that this amount of Rs.23,62,500 collected as development fee has been credited to the balance sheet and has not been taken to the income and expenditure account. The ld. CIT(A) denied the exemption in respect of amount of development fund of Rs.23,62,500/-observing as under:

4.5 It is for consideration as to whether the amount of Rs. 23,62,500/- collected by the appellant on account of development fund being part of corpus fund and credited to the balance sheet is eligible for deduction as per provisions of section 11, section 12, section 12 A, section 12AA and section 13 of the I.T. Act, 1961. In view of grant of registration to the appellant u/s 12AA of the I.T. Act, the surplus of income over expenditure shall not be chargeable to tax. However, the appellant has chosen to not show the above amount in its income and Expenditure statement. Therefore, the exemption available to the appellant in view of restoration of its registration u/s 12AA regarding surplus of income over expenditure in the case of an educational institution existing wholly for educational purposes is not available with respect to above amount collected as development fund and credited to the balance sheet of the appellant. Section 12 of the I.T. Act creates a deeming fiction that any voluntary contribution received by an educational institution established wholly for such purposes shall for the purposes of section 11 be deemed to be income derived from property held under trust and provisions of section 11 and section 13 shall apply accordingly. The appellant in this case has also claimed that it is entitled to exemption of these funds as per section 11 of the I.T. Act. The appellant has stated that 85% of the funds so collected are being accumulated for application towards purposes of education for which the institution has been established.

4.6 However, for the voluntary contribution (as claimed by the appellant) received by the appellant on account of development fund and credited to the balance sheet, to be eligible for exemption u/s 11 of the I.T. Act, the institution has to comply with certain procedural requirements laid down in section 11 in this regard. As the appellant has taken the amount collected as development fund to the balance sheet and not to the Income Expenditure Account, it has, as per provisions of section 11 not applied the income for educational purposes. It seeks to accumulate 85% of this income for application to educational purposes in a later year. In such circumstances it has to fulfill the following conditions laid down in section 11(2) of the Income Tax Act:

- a) The trust is to give a notice to the Income Tax Officer specifying the purposes for which income is been accumulated and the period of accumulation.*
- b) The income so accumulated is to be invested in Government or other approved securities or deposited in Post Office Savings Banks, scheduled banks, co-operative banks and approved financial corporations.*

4.7 The appellant, although claiming exemption u/s 11 has not furnished any evidence that it has fulfilled the aforesaid conditions specified in section 11 for claim of exemption for the above accumulated amount. The case of OBIT vs. Shanti Devi Progressive Educational Society (2012) 340 ITR 320 (Del) quoted by the appellant does not help the appellant as that judgement has been rendered in the context of exemption u/s 10(22) of the I.T. Act. It is not the case of the appellant that it was claiming deduction/exemption u/s 10(22) of the IT Act. The Hon'ble Court in that case has examined corpus fund and loan received from parents in the context of exemption u/s 10(22) of the LT. Act. The appellant has claimed exemption of income on the basis of grant of registration u/s 12AA of the I.T. Act. The appellant's surplus of income over expenditure was held not chargeable to tax in view of its registration u/s 12AA being restored by ITAT. The claim of exemption regarding development fund credited to balance sheet and not to Income Expenditure Account is to

be allowed in the context of section 11, 12 and 13 of the I.T. Act. The appellant has not furnished any evidence before AO or in these proceedings that it had informed the AO regarding accumulation of funds or else investments of accumulated funds in specified securities.

4.8 In the light of above facts and circumstances, the amount of Rs. 23,62,500/- collected as development fund and credited to the balance sheet as Capital Account is held not to be eligible for exemption u/s 11 of the I.T. Act. Action of the AO in holding the said amount to be chargeable to tax is therefore upheld. This ground of appeal is therefore dismissed."

7. The requirement of the application of the income derived from property held for charitable and religious purpose has been prescribed in section 11 of the Act, which is reproduced for ready reference:

11. (1) Subject to the provisions of [sections 60 to 63](#), the following income shall not be included in the total income of the previous year of the person in receipt of the income—

- (a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;
- (b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property;
- (c) income derived from property held under trust—
 - (i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and
 - (ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

- (d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

8. It is evident from section 11(1)(d) of the Act that there is no condition of prescribed amount of application of the income received in the form of voluntary contribution made with a specific direction that they shall form part of the corpus of the trust or institution, thus, the Learned CIT(A) is not justified in considering the development fund received under section 11(1)(a) or 11(1)(b) for the purpose of application of income upto 85% towards charitable purposes. But we find that Ld CIT(A) has not examined the building development fund in the light of the requirement of section 11(1)(d) of the Act that donors should specifically direct that said voluntary contribution shall form part of the corpus of the trust or institution. Therefore the issue which arises in this case is whether the contribution received for construction of building etc. from the student falls under the voluntary contribution for corpus of the trust as per section 11(1)(d) of the Act or not. As this important requirement of the law has not been examined either by the ld. CIT(A) or by the Assessing Officer, we feel it appropriate to restore this issue to the file of the Assessing Officer for deciding afresh with the direction to the assessee to produce necessary documentary

evidence to substantiate that donors have specifically directed to treat the development fund given by them shall form part of the corpus of the trust of the institution. The Assessing Officer shall after verification of the documentary evidences produced by the assessee decide the issue in accordance with law. The ground of the appeal of the assessee is accordingly allowed for statistical purposes.

9. In ITA No. 5922/del/2016 for assessment year 2011-12, identical issue of building fund received of Rs. 35,26,200/- has been raised. The issue, being identical to the issue raised in ITA No. 5921//Del/2016 for assessment year 2010-11, following our finding above, the issue in dispute in the year under consideration is also restored to the file of the Assessing Officer for deciding the same afresh as directed in ITA No. 5921/del/2060 . The grounds of appeal are accordingly allowed for statistical purposes.

10. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 14th November, 2019.

Sd/-

**(H.S. Sidhu)
Judicial member**

Dated: 14th Nov., 2019

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Sd/-

**(O.P. Kant)
Accountant Member**