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W.P.(MD).No.13993 of 20_ .



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	15.07.2024
Pronounced On	03.04.2025

Coram:
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD).No.13993 of 2024
and W.M.P.(MD).No.12258 of 2024

M/s.Aurolab Trust
Represented by its President,
Mr.Thulasiraj Ravilla,
No.72, Kuruvikaran Salai, Gandhi Nagar,
Madurai – 625 020.

...Petitioner

Versus

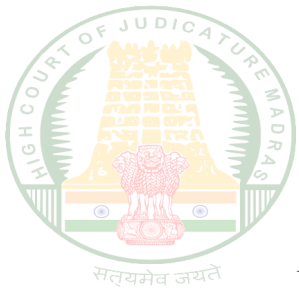
The National Faceless Assessment Centre, Delhi
Represented by Additional/Joint/Deputy/
Assistant Commissioner of Income Tax
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of certiorari to call for the records in the file
of the respondent relating to impugned order u/s.143(3) r.w.s.144B dated
27.03.2024 having DIN:ITBA/AST/S/143(3)/2023-24/1063442687(1)
issued by the respondent and quash the same as invalid in the eyes of law.

For Petitioner : Mr.Ravi Kannan

For Respondent : Mr.N.Dilip Kumar,
Senior Standing Counsel



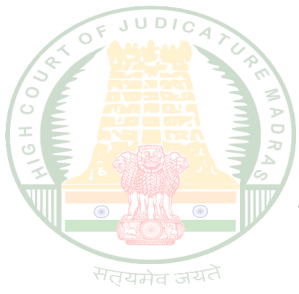
ORDER

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In this writ petition, the Petitioner has challenged the Assessment Order dated **27.03.2024** for the Assessment Year **2022-23** passed under Section 143(3) r/w. Section 144B of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act').

2. Relevant Portion of the Impugned Assessment Order dated 27.03.2024 reads as under:

“4. The Judgment of Hon'ble Supreme Court of India in the case of Civil Appeal No.21762 of 2017 ACIT (Exemption) Vs. Ahmedabad Urban Development Authority should be perused in this regard. The order pertains to applicability of tax exemption to charitable trust and institutions engaged in commercial (revenue based) activities in the sixth category of “Charitable purpose” as laid down under Section 2(15) of the Income Tax Act, 1961 viz., “The advancement of any other object of general purpose utility (GPU)” i.e., charitable activity other than relief of the poor, education, yoga, medical relief, preservation of environment and preservation of monuments or places or objects of artistic or historic interest. As per section 2(15)(ii) and as per the judgment of the Hon'ble Supreme Court, in the course of achieving the object of GPU the receipt of such business, commercial activity or service should not exceed the quantified limit as amended over the year(s). The amended limit w.e.f. 01.04.2016 stands at 20% of the total receipts of the assessee trust. Here, it is important to state that the assessee trust is engaged in the activity of manufacturing or helping to produce or manufacture medical equipment including, ophthalmic instruments, lenses, surgical equipment and other accessories that are necessary for the treatment of patients. The assessee has himself stated that in attainment of object of the trust “nothing hereinafter stated shall be deemed to include any object or purpose which is not a “charitable purpose” within the meaning of section 2(15) of Indian Income Tax Act, 1961”. Since the objective of manufacturing or helping to produce medical instrument can only be stated to have been covered under the object of “General Public Utility” as stated u/s.2(15) of the Income Tax Act. The object of GPU is restricted to the quantum as



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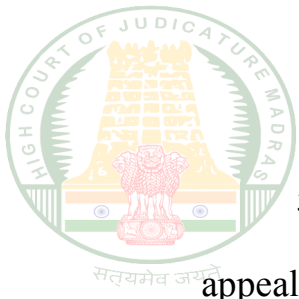
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stated in section 2(15)(ii). The aggregate receipts from GPU should not exceed 20% of the total receipts of the trust. In case of the assessee trust, the quantum of receipt from sale of medical equipments [rendered in the form of GPU] is much beyond the statutory limit of 20% [as per limit prescribed u/s.2(15)(ii) and also illucidated by the Hon'ble Supreme Court in its judgment]. Therefore, the activity of assessee trust is violative of the statutory limit propounded in section 2(15)(ii) as also propounded by the Hon'ble Supreme Court in its above discussed order. In light of the above discussion, the exemption claimed by the trust u/s. 11/12/12A ought to be disallowed.

In view of the above facts, it is hereby proposed to add Rs. 191,92,40,000/- which is accumulated from AY 2012-13 to AY 2016-17 and has not been utilized for the purpose for which it is so accumulated or set apart during the period specified not exceeding 5 years under Section 11(2) of the Income Tax Act, 1961. Penalty u/s.270A of the Act are being separately initiated."

3. The case of the Petitioner is that the Petitioner is a Trust registered under Section 12A of the IT Act vide Order dated 09.10.1992 of the Commissioner of Income Tax, Madurai. It is stated that the main object of the Petitioner Trust is to provide medical relief by manufacturing high quality ophthalmic products for eye care for the public. It is further stated that the Petitioner has been availing the benefits under Sections 11 & 12 of the IT Act since its inception.

4. However, the registration granted to the Petitioner under Section 12A of the IT Act by the Order dated 09.10.1992 was cancelled vide Order dated 30.12.2010 of the Commissioner of Income Tax, Madurai.



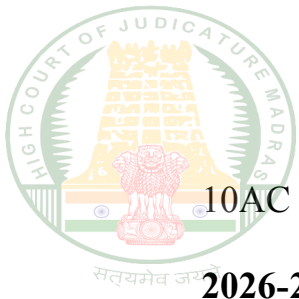
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5. Aggrieved by the aforesaid order, the Petitioner has preferred an appeal in ITA.No.135/Mds/2011 before the Income Tax Appellate Tribunal (ITAT), Chennai 'A' Bench which was dismissed by the ITAT vide Order dated 11.05.2011.

6. Aggrieved over the order of the ITAT, the Petitioner has preferred a Tax Case Appeal in TCA No. 227 of 2011 before this Court and the same is pending.

7. The Petitioner Trust had filed an application on 31.03.2022 under the new regime for registration as a Charitable Trusts under Section 12AB of the Act which was introduced by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 01.04.2021.

8. The application was scrutinized. The Petitioner has been granted registration on **07.04.2022** in Form No.10AC by the Director of Income Tax. The registration granted under Section 12AB of the Act in Form No.



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10AC is valid for the Assessment Years between **2022-2023** and **2026-2027**.

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9. The Petitioner Trust filed a return of income under Section 139(1) of the Act on 29.10.2022 by declaring 'NIL' income for the Assessment Year 2022-2023. The case of the Petitioner was selected for scrutiny and consequently, notices were issued by the Respondent Department.

10. The Impugned Assessment Order preceeds a Notice dated 02.06.2023 issued under Section 143(2) of the IT Act, pursuant to which, a Notice dated 18.10.2023 was issued under Section 142(1) of the IT Act and a Show Cause Notice dated 28.02.2024. The Petitioner has replied to these notices, pursuant to which, a personal hearing was fixed on 18.03.2024 through video conferencing vide communication dated 17.03.2024.

11. Further, it is the case of the Petitioner that the representative of the Petitioner explained the stand taken and added that the amounts accumulated in a year (to be reckoned as 1st year) and the remaining unspent



amount at the end of 5 years, i.e in the 6th year alone could be taxed under

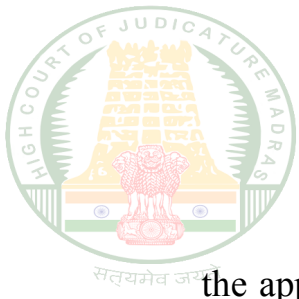
Section 11(3) of the IT Act and not in any of the year and therefore, the

proposals contained in the said Show Cause Notice to a tax sum of Rs.

191,92,40,000/- was impermissible.

12. It is submitted that the exemption claimed by the Petitioner Trust under Section 11/12 of the IT Act has been disallowed and therefore, the aforesaid sum of Rs.191,92,40,000/- has been treated as taxable income at the hands of the Petitioner by the end of the Assessment Year 2022-23.

13. As far as appellate remedy under Section 246-A of the Act is concerned, it is submitted that the Impugned Assessment Order dated 27.03.2024 that has been passed was beyond the proposals contained in the aforesaid Show Cause Notice dated 28.02.2024. It is further submitted that the Impugned Assessment Order dated 27.03.2024 is fraught with bundle of contradiction and therefore arbitrary. Hence, it is prayed that the Impugned Assessment Order is liable to be quashed.



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14. It is further submitted that appellate remedy would be illusory as the appellant is required to pre-deposit 20% of the disputed tax in terms of the prevailing circulars issued under Section 119 of the IT Act. On merits, the learned counsel for the Petitioner would submit that if exemption under Section 11 of the IT Act is not allowed, an addition for unspent amounts accumulated under Section 11(2) of the IT Act cannot be brought to tax under Section 11(3) of the IT Act.

15. That apart, the learned counsel for the Petitioner submitted that the objections of the Petitioner made during the personal hearing have not been considered by the Respondent while passing the Impugned Assessment Order dated 27.03.2024 for the Assessment Year 2022-23 passed under Section 143(3) r/w. Section 144B of the IT Act.

16. It is further submitted that the amount accumulated under Section 11(2) of the IT Act between the Assessment Years 2012-2013 to 2016-2017 had already suffered tax on account of denial of exemption under Section 12 of the IT Act in those Assessment Years.

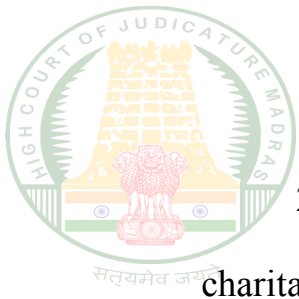


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17. It is the case of the Petitioner that the Respondent erred in holding that the activity of manufacturing ophthalmic products is not an activity pursued for advancing any other object of public utility without giving opportunity to the Petitioner to properly explain its stand about the same.

18. During the course of hearing, the Petitioner submitted that the Petitioner has been recognized as a 'charitable institution' by the Income Tax Department on 07.04.2022 under Section 12A(1)(01)(i)(ac) of the Act in Form No.10 AC pursuant to an application filed by the Petitioner for such registration under Section 12(AB) of the Act on 31.03.2022.

19. Learned counsel for the Petitioner also referred to decision of the Hon'ble Supreme Court in *Assistant Commissioner of Income Tax (Exemptions) Vs. Ahmedabad Urban Development Authority (2023) 4 SCC 561*.



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20. It is submitted that the activity of the Petitioner was indeed charitable in nature within the meaning of Section 2(15) of the IT Act. It is submitted that the activity of the Petitioner was “charitable purpose” within the meaning of the aforesaid section as it was for in the advancement of other object of General Public Utility.

21. It is submitted that even if, the proviso to the aforesaid definition of “charitable purpose” was not attracted, it was submitted that the exemption provided to the proviso to Section 2(15) of the IT Act as the activity was attracted undertaken by the petitioner was in the course of actual carrying out of such advancement of other object of General utility and therefore ,the aggregate receipts from such activity or activities during the previous year did not exceed 20% of the total receipt of the Petitioner Trust undertaken such an activity during the relevant previous year viz., 2021-2022.

22. The above Writ Petition is opposed by the learned counsel for the Respondent Department. It is submitted that there has been no violation of principles of natural justice and therefore, the writ petition is liable to be



dismissed. Insofar the merits of the case are concerned, the learned counsel for the Respondent submitted that the Petitioner Trust is not precluded from challenging the same before the Appellate Authority.

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23. That apart, it is submitted that the Certificate of Registration granted under Section 12A of the IT Act on 09.10.1992 has been cancelled on 13.12.2010 by the Commissioner of Income Tax under Section 12AA(3) of the IT Act and that the appeal filed by the Petitioner before the ITAT was also dismissed by the ITAT on 11.05.2011.

24. It is submitted that the appeal preferred by the Petitioner before the Division Bench of this Court under Section 260A of the IT Act is still pending and therefore, there is no scope for the Petitioner to claim any exemption as a “charitable institution”.

25. I have considered the arguments advanced by the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondent.



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26. I have also perused the documents filed by the Petitioner in support of the present Writ Petition and the definition of “charitable purpose” in Section 2(15) of the IT Act and the decision of the Hon'ble Supreme Court in *Assistant Commissioner of Income Tax (Exemptions) Vs. Ahmedabad Urban Development Authority* (2023) 4 SCC 561.

27. In *Assistant Commissioner of Income Tax (Exemptions) Vs. Ahmedabad Urban Development Authority* (2023) 4 SCC 561, the Hon'ble Supreme Court has discussed about the scope of Sections 10, 11, 12, 12-A, 12-AA & 13 of the IT Act. Relevant portion of the judgment in the said case reads as under:

“170. The effect of Sections 11, 12, 12-A 12-AA and 13 has been the subject of certain decisions [CIT v. Dawoodi Bohara Jamat, (2014) 16 SCC 222; S.R.M.M.C.T.M. Tiruppani Trust v. CIT, (1998) 2 SCC 584] of this Court. These decisions have noticed that Section 11 deals with income from trusts for charitable and religious purposes and sets out which shall be subject to tax.

170.1. Section 11(1) relates to application of income towards the objects of the trust and exempts income of trusts with objects wholly charitable or religious, or parts of income which relate to such objects. Section 11(1-A) provides for exemption of capital gains derived by trusts. Section 11(1-B), speaks of failure to apply income as per option under Explanation (2) to Section 11(1). Section 11(2) relates to setting apart or accumulation of income. Section 11(3) deals with consequences of misapplication of income or improper investment, while Section 11(3-A)



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relates to modification of purposes specified in Form 10 under Section 11(2). Sections 11(4) and 11(4-A) relate to business income of charitable trusts. Lastly, Section 11(5) provides for the prescribed modes of investment in regard to the said trusts.

***170.2.** Section 12 enacts that income of trusts created wholly for charitable or religious purpose from voluntary contributions would be deemed as income from the property held under such trust for the purposes of Sections 11 and 13 of the Act. Section 12-A prescribes the conditions for applicability of Sections 11 and 12 of the Act. It enacts two essential conditions which are to be satisfied by a charitable or religious trust for claiming exemption under those sections : firstly, that the person in receipt of the income has made an application for registration of the trust on or after 1-6-2007 in the prescribed form and manner to the Commissioner and such a trust is registered under Section 12-AA and secondly, where the total income of the trust exceeds the maximum amount which is not chargeable to income tax in any previous year, the accounts of the trust must be audited by a chartered accountant and the person in receipt of the income should furnish such audit report in the prescribed form along with the return of income. The procedure for grant (or refusal) of registration is prescribed by Section 12-AA.*

***170.3.** Section 13 enlists the circumstances under which tax exemption is unavailable to religious or charitable trusts otherwise falling under Sections 11 or 12. Section 13 therefore, has to be read with the provisions of Sections 11 and 12 for deciding eligibility of a trust's claim for exemption.”*

28. A charitable trust is exempted from payment of tax in terms of Sections 11 & 12 of the IT Act provided it has been registered as a charitable trust/institution.

29. Section 11 of the IT Act deals with “income from property” held for “charitable or religious purposes” and exempts the same. Section 12 of



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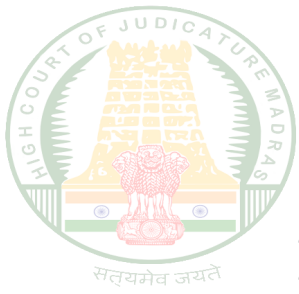
the IT Act exempts income of trusts or institutions from contributions received. To claim exemption from both the categories of Income, *sine qua non* is either “income from property” held for “charitable or religious purposes” or “income from public contributions”. In the present case, the income that is the subject matter of assessment is neither from property nor from contributions to be exempted under Sections 11 & 12 of the IT Act. It is from manufacturing activity.

30. To avail the benefits, the Petitioner has to also satisfy that its objects are “charitable”. It will be therefore useful to refer the definition of the expression, “**charitable purpose**” in Section 2(15) of the IT Act which reads as under:

“2(15). “charitable purpose” includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and



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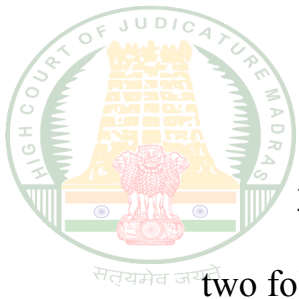
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(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent. of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.”

31. The “charitable purpose” as defined in Section 2(15) of the IT Act is an inclusive definition and thus, includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility.

32. The proviso to definition in Section 2(15) of the IT Act itself makes it clear that the advancement of any other object of general public utility shall not be considered as a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.



33. The exceptions to the proviso to Section 2(15) of the IT Act are

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(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.

34. Sub-section 1 to Section 11 of the IT Act deals with four categories of income, which are as follows:-

(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



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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, subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus.

35. For the sake of clarity, sub-section (1) to Section 11 of the IT Act

is reproduced below:-

“11. Income from property held for charitable or religious purposes.—(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



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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, subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus.”

36. As per sub-section (4) to Section 11 of the IT Act, the expression, “property held under trust” includes a business undertaking so held and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to



be applied to purposes other than charitable or religious purposes. Sub-

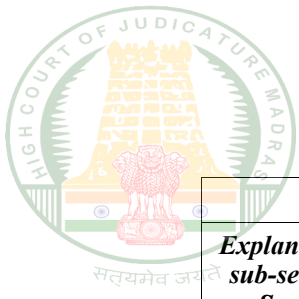
Section (4) to Section 11 of the IT Act is reproduced below:

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“(4) For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.”

37. As per Explanations 1, 2, 3, 4 & 5 of sub-section (1) to Section 11 of the IT Act, if the income from the property is not applied or is not deemed to have been applied for charitable or religious purposes in India during the previous year and is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income. However, there are stipulations in these explanations.

38. Explanations 1, 2, 3, 4 & 5 of sub-section (1) to Section 11 of the IT Act are reproduced below:



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<i>Section 11(1)</i>				
<i>Explanation 1 of sub-section 1 to Section 11</i>	<i>Explanation 2 of sub-section 1 to Section 11</i>	<i>Explanation 3 of sub-section 1 to Section 11</i>	<i>Explanation 4 of sub-section 1 to Section 11</i>	<i>Explanation 5 of sub-section 1 to Section 11</i>

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Section 11(1)

Explanation 1.— For the purposes of clauses (a) and (b), (1) in computing the fifteen per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income; (2) if, in the previous year, the income applied to charitable or religious purposes in India falls short of eighty-five per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount— (i) for the reason that the whole or any part of the income has not been received during that year, or (ii) for any other reason, then— (a) in the case referred to in sub-clause (i), so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately	Explanation 2.— Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with Explanation 1, to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 or other trust or institution registered under section 12AA or section 12AB, as the case may be, being contribution with a specific direction that it shall form part of the corpus, shall not be treated as application of income for charitable or religious purposes.	Explanation 3.— For the purposes of determining the amount of application under clause (a) or clause (b), the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession". Explanation 3A.— For the purposes of this sub-section, where the property held under a trust or institution includes any temple, mosque, gurdwara, church or other place notified under clause (b) of sub-section (2) of section 80G, any sum received by such trust or institution as voluntary contribution for the purpose of renovation or repair of such temple, mosque, gurdwara, church or other place, may, at its option, be treated by such trust or institution as forming part of the corpus of the trust or the institution, subject to the condition	Explanation 4.— For the purposes of determining the amount of application under clause (a) or clause (b),— (i) application for charitable or religious purposes from the corpus as referred to in clause (d) of this sub-section, shall not be treated as application of income for charitable or religious purposes; (ii) application for charitable or religious purposes, from any loan or borrowing, shall not be treated as application of income for charitable or religious purposes:	Explanation 5.— For the purposes of this sub-section, it is hereby clarified that the calculation of income required to be applied or accumulated during the previous year shall be made without any set off or deduction or allowance of any excess application of any of the year preceding the previous year.
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39. Sub-section (1A) to Section 11 of the IT Act has to be read in conjunction with sub-section (1) to Section 11 of the IT Act. Sub-section (1A) to Section 11 of the IT Act is not relevant. However, for the sake of clarity, sub-section (1A) to Section 11 of the IT Act is also reproduced below:-

“(1A) For the purposes of sub-section (1),—

(a) where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

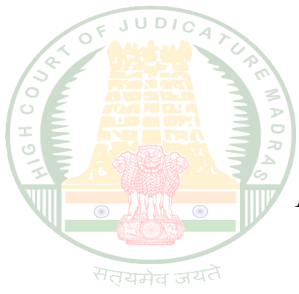
(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain;

(ii) where only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset;

(b) where a capital asset, being property held under trust in part only for such purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the appropriate fraction of the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of the appropriate fraction of such capital gain;

(ii) in any other case, so much of the appropriate fraction of the capital gain as is equal to the amount, if any, by which the appropriate fraction of the amount utilised for acquiring the new asset exceeds the appropriate fraction of the cost of the transferred asset.



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Explanation.—In this sub-section,—

(i) "appropriate fraction" means the fraction which represents the extent to which the income derived from the capital asset transferred was immediately before such transfer applicable to charitable or religious purposes;

(ii) "cost of the transferred asset" means the aggregate of the cost of acquisition (as ascertained for the purposes of sections 48 and 49) of the capital asset which is the subject of the transfer and the cost of any improvement thereto within the meaning assigned to that expression in sub-clause (b) of clause (1) of section 55;

(iii) "net consideration" means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer."

40. Sub-section 2 to Section 11 of the IT Act deals with 85% of the income referred to in Clause (a) & Clause (b) of sub-section (1) to Section 11. Consequences, for not applying 85% of income referred to in Clause (a) & Clause (b) of sub-section (1) to Section 11 r/w. Explanations of sub-section (1) to Section 11 of the IT Act is prescribed in sub-section (2) to Section 11 of the IT Act. For the sake of clarity, sub-section (2) to Section 11 of the IT Act is also reproduced hereunder:

“(2) Where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—



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(a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5);

(c) the statement referred to in clause (a) is furnished [at least two months prior to] the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:

Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

Explanation.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or section 12AB or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.”

41. Income from trust referred to in sub-section (2) to Section 11 of the IT Act shall be deemed to be the income of such person of the previous year under sub-section (3) to Section 11 of the IT Act, if,

(i) in income is applied for non-charitable purposes or ceases to be so accumulated or set apart or under clause (a); or



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- (ii) it ceases to remain so invested or deposited as above; or
- (iii) is not utilized or accumulated or set apart and is not utilised for the purpose for which it is so accumulated or set apart;
- (iv) is credited or paid to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of Section 10.

42. For the sake of clarity, sub-section (3) to Section 11 of the IT Act is reproduced hereunder:

(3) Any income referred to in sub-section (2) which—

(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

(b) ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5), or

*(c) is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section [***],*

(d) is credited or paid to any trust or institution registered under section 12AA or section 12AB or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10,

shall be deemed to be the income of such person of the previous year,—

(i) in which it is so applied or ceases to be so accumulated or set apart under clause (a); or

(ii) in which it ceases to remain so invested or deposited under clause (b); or



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(iii) being the last previous year of the period, for which the income is accumulated or set apart but not utilised for the purpose for which it is so accumulated or set apart under clause (c); or

(iv) in which it is credited or paid to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution under clause (d).

43. Sub-section (3A) to Section 11 of the IT Act provides for other certain relaxation to in sub-section (3) to Section 11 of the IT Act. As per sub-section (3A) to Section 11 of the IT Act, where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited in accordance with the provisions of clause (b) of sub-section (2) cannot be applied for the purpose for which it was accumulated or set apart, the Assessing Officer may, on an application made to him in this behalf, allow such person to apply such income for such other charitable or religious purpose in India as is specified in the application by such person and as is in conformity with the objects of the trust; and thereupon the provisions of sub-section (3) shall apply as if the purpose specified by such person in the application under this sub-section were a purpose specified in the notice given to the Assessing Officer under clause (a) of sub-section (2) to Section 11 of the IT Act.



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44. There are two exception to relaxation in sub-section (3A) to Section 11 of the IT Act. They are as follows:

<i>Exception No.1</i>	<i>Exception No.2</i>
<i>Provided that the Assessing Officer shall not allow application of such income by way of payment or credit made for the purposes referred to in clause (d) of sub-section (3) of Section 11.</i>	<i>Provided further that in case the trust or institution, which has invested or deposited its income in accordance with the provisions of clause (b) of sub-section (2), is dissolved, the Assessing Officer may allow application of such income for the purposes referred to in clause (d) of sub-section (3) in the year in which such trust or institution was dissolved.</i>

45. For the sake of clarity, sub-section (3A) to Section 11 of the IT Act is reproduced hereunder:

“(3A) Notwithstanding anything contained in sub-section (3), where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited in accordance with the provisions of clause (b) of sub-section (2) cannot be applied for the purpose for which it was accumulated or set apart, the Assessing Officer may, on an application made to him in this behalf, allow such person to apply such income for such other charitable or religious purpose in India as is specified in the application by such person and as is in conformity with the objects of the trust; and thereupon the provisions of sub-section (3) shall apply as if the purpose specified by such person in the application under this sub-section were a purpose specified in the notice given to the Assessing Officer under clause (a) of sub-section (2):

Provided that the Assessing Officer shall not allow application of such income by way of payment or credit made for the purposes referred to in clause (d) of sub-section (3) of section 11:



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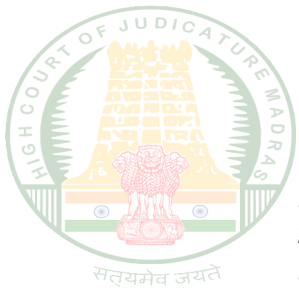


Provided further that in case the trust or institution, which has invested or deposited its income in accordance with the provisions of clause (b) of sub-section (2), is dissolved, the Assessing Officer may allow application of such income for the purposes referred to in clause (d) of sub-section (3) in the year in which such trust or institution was dissolved.”

46. Sub-section (3A) to Section 11 of the IT Act is also not relevant since the income that is referred to in the impugned Assessment Order is income from manufacture and sale of ophthalmic lenses.

47. The Petitioner has claimed the benefit of sub-section (4A) to Section 11 of the IT Act. Sub-section (4A) to Section 11 of the IT Act states that sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or institution, being profits and gains of business, unless the business is incidental to attainment of the objectives of the trust or as the case may be, institution and separate books of account are maintained by such trust or institution in respect of such business. For the sake of clarity, sub-section (4A) to Section 11 of the IT Act is reproduced hereunder:

“(4A). Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is



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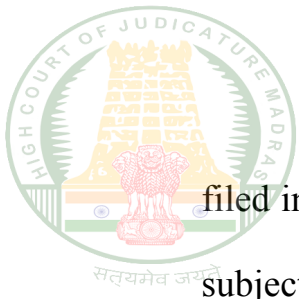
incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.”

48. While dealing with the scope of sub-section (4A) to Section 11 of the IT Act, the Hon'ble Supreme Court in ***New Noble Educational Society Vs. Commissioner of Income Tax*** (2023) 6 SCC 649 has observed as under:

“76. In view of the above discussion, it is held that charitable institutions and societies, which may be regulated by other State laws, have to comply with them just as in the case of laws regulating education (at all levels). Compliance with or registration under those laws, are also a relevant consideration which can legitimately weigh with the Commissioner or other authority concerned, while deciding applications for approval under Section 10(23-C).

77. This reasoning equally applies especially in Section 11(4-A) which speaks of profits incidental which specifies that exemption in relation to income or trust of an institution which are profits or means of business cannot be exempted “unless the business is incidental, trust or as the case may be institution and separate books of accounts are maintained by such trusts or institution in respect of such business”. Thus, the underlying objective of the seventh proviso to Section 10(23-C) and of Section 11(4-A) are identical. These have to be read in the light of the main provision which spells out the conditions for exemption under Section 10(23-C) — the same conditions would apply equally to the other sub-clauses of Section 10(23-C) that deal with education, medical institution, hospitals, etc.”

49. A reading of the impugned Assessment Order dated 27.03.2024 and Notices that preceeded the impugned Assessment Order, the affidavit



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filed in support of this writ petition indicates that the income which was the subject matter of the impugned Assessment Order is neither an income from the property held for “charitable or religious purposes” nor income of the Petitioner Trust from contributions as specified in Sections 11 & 12 of the IT Act.

50. Thus, there is no merit in the present case. Hence, this Writ Petition is liable to be dismissed. However, liberty can be granted to the Petitioner to file an appeal before the Appellate Authority and challenge the impugned Assessment Order dated 27.03.2024, within a period of 30 days from the date of receipt of a copy of this order. On filing of such appeal by the Petitioner, the Appellate Authority shall dispose of the same, as expeditiously as possible.

51. Accordingly, this Writ Petition is dismissed with the above liberty. No costs. Consequently, connected miscellaneous petition is closed.

03.04.2025



jen/mrr



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Index : Yes/No

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order

To

- 1.The Income Tax Officer,
TDS Ward, Income Tax Office,
Erode, Erode District.
- 2.The Managing Director,
Erode District Central Cooperative Bank Ltd.,
No.1, Bhavani Main Road,
Erode, Erode District.
- 3.The Assessment Officer,
Income Tax Department,
Erode, Erode District.

C.SARAVANAN, J.

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**Pre-Delivery Order in
W.P.(MD).No.13993 of 2024**

03.04.2025