

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI**

**Before Sh. A.D. Jain, Vice President**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 1966/Del/2021 : Asstt. Year: 2009-10**

**ITA No. 1967/Del/2021 : Asstt. Year: 2010-11**

**ITA No. 1968/Del/2021 : Asstt. Year: 2011-12**

**ITA No. 1969/Del/2021 : Asstt. Year: 2012-13**

**ITA No. 1970/Del/2021 : Asstt. Year: 2013-14**

**ITA No. 1971/Del/2021 : Asstt. Year: 2014-15**

**ITA No. 1972/Del/2021 : Asstt. Year: 2015-16**

Maharishi Markandeshwar Trust, C/o Rajiv Goel & Associates, 179, Bank Road, Ambala Cantt., Ambala	Vs	ACIT, Central Circle-15, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. ADKPN2266L</b>		

**Assessee by : Sh. Ashwani Kumar, CA &**

**Sh. Rohit Goel, CA**

**Revenue by : Sh. Bhavnesh Kulshreshtha, CIT DR**

**Date of Hearing: 11.05.2022**

**Date of Pronouncement: 27.06.2022**

**ORDER**

**Per Bench:**

The present appeals have been filed by the assessee against the orders of the Id. CIT( A)-3 , Gurgaon dated 26.10.2021.

2. Since, the issues involved in all these appeals are identical, they were heard together and being adjudicated by a common order.

3. The first issue before us is to determine whether the development funds given and collected by the institution are akin to the tuition fees collected or not. Whether the development fund collected partakes the character of revenue receipt or corpus donation u/ s 11(1)( d) of the Income Tax Act, 1961 and capital receipt in nature.

4. The second issue being what should be the " quantum" eligible as per the Section 11(1)(a).

5. The relevant facts required for adjudication of the case are as under:

- The institute was established in 1994
- The assessee is a trust registered u/s 12A of the Act
- The development fund was claimed u/s 11(1)(d)
- All assessments have been completed u/s 143(3)
- A search & seizure action has been conducted on 31.10.2014
- The assessment has been completed on 30.12.2016

### **Treatment of Development Fund as Tuition Fees:**

6. The assessee has been running various Educational Institutes in various fields such as medical, engineering, law, management etc. Annual fees, charges and Development funds are collected by the Institutions under the Trust. From the perusal of seized documents, it was observed by the AO that the appellant has received development fee in addition to tuition fee from all the students on compulsory basis. The AO held that Development fee was a part of fee structure which was to be paid by the students to the institutes. Thus, it was noted by the

AO that such development fee was not voluntary in nature but was part of overall course fee to be paid by the students on compulsory basis along with tuition fee. The appellant has shown the tuition fee as a part of income and expenditure statement as income whereas development fee has been taken directly to the balance sheet as corpus fund. The AO was of the opinion that such development fee was not on account of voluntary corpus fund and therefore the same should have been included in the revenue receipts in the income and expenditure statement.

7. The assessee stated before the AO that in view of provision of section 12 and 11 (1)( d), such corpus donation were made with a specific direction that it would form part of the corpus of trust and thus have been kept out of purview of income. The AO further observed that there was not a single student who has not paid development fee to " the assessee". There was no discretion with the students not to pay the development fee while seeking the admission. Thus, such receipts were not voluntary in nature. The AO confronted the above facts to the assessee and after considering the submission of the assessee observed that such development fee is not voluntary in nature as it has been charged on compulsory basis from all the students. On such facts it was inferred by the AO that such receipts are not covered by the provision of section 11 (1)( d) r.w.s.12 of the Act.

8. During the course of search, statements of some of the students were recorded u/s 131 of the Act in order to examine the nature of development fee charged from the students. It was stated by the students that such payment on account of

development charges was compulsory part of the fee and was not thus voluntary. The AO relied upon the decision of the Hon' ble Madras High Court in the case of PS Govindasami Naidu and Sons vs. ACIT 324 ITR 4-4. On such facts the AO reached to the conclusion that such development fee was in the nature of income of the Trust as such funds were not received voluntarily and there was no such voluntary and specific directions that it would form part of corpus. Accordingly the AO treated the amount of Rs. XXXXX received during the year on account of development fee as a part of income of the trust.

9. During the proceedings before the Id. CIT(A), the assessee argued that as per the Ministry of HRD, fee has been charged in two components - tuition fee - to recover actual cost of imparting education and development fee - to use for the procurement of equipments, books and assets and has been charged as specified in the prospectus. It was argued that when the students are made aware of the fact of payment of development fee through the prospectus, admission forms and fee slips, it cannot be said that it was compulsorily imposed on them. Further, such fees were utilized only for the specific purpose of the capital expenditure. Thus, the same were voluntary in the nature with the specific direction to treat the same as a part of the corpus and relied upon the provision of section 11 (1) (d) of the Act.

10. The Id. CIT( A) held that it is an undisputed fact that the assessee has received amount of Rs. XXXXX during the year from students who have taken admission in various institutes being run by the assessee as development fee, part of overall course fee. Such development fees have been taken directly to

the balance sheet and have been treated by the assessee as voluntary funds received with the specific directions to treat the same as part of corpus as covered u/s 11 (1)(d) of the Act. The Id. CIT(A) held that these amounts are obligatory for each new admission to be paid to the assessee while taking the new admission, thus are not discretionary/ voluntary in nature. These amounts have not been received by the assessee as a voluntary contribution from the new admissions during the year. These amounts/ have not been received by the assessee from the parents of the new admissions as a voluntary contribution made with a specific direction that these would form part of corpus of the trust or institution. Rather the parents did not have any such discretion of not paying such contributions towards development fees and they also did not have any discretion in deciding the quantum for such components while paying the admission fee. The amount to be paid has been already fixed by the institutes being run by the assessee as a percentage of the tuition fee ranging from 7% to 36%. The Id. CIT(A) held that the parents under compulsion and forced to pay such contribution at the direction of the assessee and held that such contributions cannot be held as voluntary in nature as there was no specific directions to form part of the corpus of the assessee. There is nothing on record to show that the amounts were paid by the students to the institutes being run by the assessee with the directions to treat the same as a part of the corpus. The Id. CIT( A) held that these amounts have been received by the assessee from the concerned parents as a part of overall fee structure, in addition to the tuition fee. Such receipts have been charged by the assessee from them through/ in the form of printed fee slips in which various components of tuition fee,

development fee are already specified/ pre- filled. Merely because such, components have been disclosed in the admission prospectus, it would not lead to the inference that these receipts were voluntary in nature with the specific direction to form part of corpus. These receipts are incidental to the main activities carried out by the assessee i.e. from the running of institutes, in the regular course and thus these receipts have direct nexus with the main activities carried out by the assessee for the year under consideration. The Id. CIT( A) held that the development fee is in nature of revenue receipts having nexus with its main activities carried out in the regular course of running the institutes imparting educational activities and are incidental to the same and thus affirmed the action of the Assessing Officer.

11. Aggrieved the assessee filed appeal before us.

12. Before us, the Id. AR relied on the submissions filed before the authorities below and reiterated the contents while the Id. DR supported the order of the Id. CIT( A) who affirmed the Assessment Order.

13. Heard the arguments of both the parties and perused the material available on record.

14. On the issue of " Development Fee", we have gone through the resolution dated 18 .03.1997 of the Government of India (MHRD) which as per Clause (8 ) deemed to be instructions issued by the Government to the University Grants Commission under Sub- section (1 ) of Section 20 of the UGC Act, 1956 and under sub-Section (1) of Section 20 of the AICTE Act, 1987. The

Ministry vide its notification No. FZO-43 /96 has laid down the "Policy For Fee Fixation in Private Educational Institutions" which is applicable to the assessee trust. There is a drastic distinction between the two fees has been clarified by the Ministry itself. As per the resolution, the difference could be examined which is analyzed as under:

#### **"6.6 Fee Determination:**

(a) Fee will have two broad categories - Tuition Fee and Development Fee.

Besides, the management of the institutions may realize the actual cost of boarding & messing from the above students subject to the relevant Committee being satisfied about the reasonableness of such costs.

(b) Tuition Fee will seek to recover the actual cost of imparting education. While assessing a fair tuition fee the Committee will take into account the following:

- (i) ) Salary and allowances including bonus, if admissible to teaching and non-teaching employees;
- (ii) ) Expenditure on administrative services;
- (iii) ) Cost of maintenance of laboratories including consumables;
- (iv) ) Contingent expenditure including statutory requirements like audit fee etc.
- (v) ) Cost of acquisition of books and journals for libraries; and
- (vi) ) Maintenance of buildings and other assets including rents and tariffs.

15. Development Fee relates to rates to be determined by the UGC and AICTE. Different rates may prescribe for payment, fee, seats and foreign NRI seat holders. As the fee chargeable will be notified by the relevant committee it shall be the duty of the statutory body concern to communicate the rate of development fee to such bodies well in advance to enable the appropriate committee to suitable incorporate such rates.

#### **6.7 Maintenance of Fee Accounts:**

- (a) Institutions will maintain two accounts – Maintenance Accounts and Development Accounts.
- (b) The proceeds of Tuition Fee and cost recoveries of boarding and messing etc. will be credited to the Maintenance Accounts. This account will be maintained in two parts – (a) Pay and allowances and (b) other expenditure. All recurring expenditure will be met from this account and brought to account under these two parts.
- (c) At least half the proceeds of Development Fee will be credited to the Development Account in the first ten years after which this Account will receive the entire proceeds of this fee. Miscellaneous receipts of the institution would also be credited to the same account. The proceeds of this fee would be utilized for procurement of equipments, books and journals and acquisition of assets. It will be also be open to the management to debit expenditure on improvement of faculty also to this account.
- (d) The regulations of UGC and the AICTE will provide for Audit of accounts of the relevant institutions to ensure

that the financial managements conforms to the broad framework of these guide lines and the regulations.”

16. Thus, we find primarily the tuition fee is meant to incurring revenue expenditure, the development fee is aimed at requirement of equipments and acquisition of capital assets. On the issue, whether the development fee is revenue in nature or capital in nature. Reliance is being placed on the orders of Co-ordinate Bench of Tribunal in the case of Global Institute of Technology vs. DCIT (Exemption) in ITA No. 1066/Jp/2018 dated 05.11.2018 wherein it was held as under:

*“Addition of development receipt/ fee treating the same as revenue receipt - Held that:- The development fee received by the assessee from the students as per the guidelines fixing the fee structure by the State Government for the technical institutions and applying the other conditions as specified in the orders of the State Govt., is capital in nature and not revenue. Accordingly, we delete the addition made by the Assessing Officer on this account.”*

17. The Co-ordinate Bench of ITAT in the case of ACIT vs. JSS Mahavidyapeetha in ITA No. 735/ Bang/2012 held the view that litmus test of charitable institution is the application of funds and not the colour of the contributions. It was held, *“The AO based his conclusion on the presumption that the contribution to development fee was not a voluntary contribution the question whether the donations were voluntary or not becomes irrelevant and what becomes relevant is the application of such contributions for the objections of the trust which are*

*admittedly charitable. The application of such contributions for objects of the trust is not in dispute."*

18. Further, the Co- ordinate Bench of ITAT Bangalore in the case of Sadvidya Educational Institution vs. ACIT in ITA No. 604/Bang/2011 held that Development Fees received from students as per Policy of Government for acquisition of Fixed Assets and utilized for acquisition of Capital Assets will fall within the definition of section 11 (1)(d).

19. With regard to the absence of specific direction as required by section 11 (1)(d), the Courts have sought to clarify that a specific direction can be gathered from how the recipient has accounted for the contribution.

20. In the case of an educational institution which collected fees on account of building fund and treated as corpus, the Hon' ble Karnataka High Court in Bharatiya Samskriti Vidyapith Trust vs. CIT in ITA Nos. 278-282 of 2007 held that, " since the assessee had specifically mentioned building fund on fee receipts and had later applied for the purpose of building, it could be said that there was a specific direction under 11(1)(d).

21. Similar view has been taken by Hon' ble Karnataka High Court in the case of Sri Ramakrishna Seva Ashrama, 357 ITR 731. In the said case, a trust registered u/s 12 AA had collected contributions from the public which were accumulated in a Rural Project Fund and exemption claimed u/s 11 (1 )( d). The AO denied exemption due to absence of written specific direction from donors. On appeal, the Court held that if the amounts received are held as capital and only applied for specific

purposes then it can be said that there was a specific direction to treat it as corpus funds. The Court further held that the requirement is that the voluntary contributions have to be made with a specific direction. The law does not require that the said direction should be in writing. In the absence of the direction in writing, the only way that one can find out whether there was a specific direction is to find out how the money so paid it is utilized.

22. In the instant case, the Development Fee has been directly taken to corpus account as capital receipt u/s 11 (1)( d) and has also invested in the fixed asset in the year.

**23. Ergo, we hold that the Development Fee is to be treated as corpus fund allowed to be taken as capital receipt.**

24. With regard to issue of computation of 15% u/ s 11(1)( a) of net surplus in place of gross receipt, we have gone through the provisions of the Act which are as under:

*"Section 11(1)(a)*

*Income from property held for charitable or religious purposes.*

*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;"*

25. On going through the bare provisions of the Act, we hold that 15% accumulation is allowed on the income from property held under trust.

26. These provisions have been further clarified by the Hon' ble Supreme Court in the case of Addl. CIT Vs. A.L.N. Rao Charitable Trust 216 ITR 697 wherein lordships has explained the law with an example of Rs. 1,00,000/- gross income and assuming an expenditure of Rs. 20,000/-, Court has held that Rs. 25,000/- being 25% (now 15%) of gross receipts will be allowed as accumulation u/s 11 (1)(a).

27. For the sake of ready reference, the relevant part of the order of the Hon' ble Supreme Court is also reproduced herewith:

*" Thus, if the income derived from property held under trust wholly for charitable or religious purposes during the previous year is Rs. 1, 00, 000 and if Rs. 20, 000 therefrom are actually applied to such purposes in India then those Rs. 20, 000 will get exempted from payment of income- tax as per the first part of s. 11( 1 )( a). Out of the remaining accumulated income of Rs. 80, 000 for the previous year, a further sum of Rs. 25, 000 will get exempted from payment of income- tax as per second part of s. 11( 1 )( a). Thus out of the total income derived from property as aforesaid during the previous year, that is, Rs. 1, 00, 000, Rs. 45, 000 in all will get excluded from the tax net on a combined operation of first and second part of s. 11( 1 )( a). The aforesaid ceiling of Rs. 2 \$, 000 of accumulated income from property of previous year, will get lifted under s. 11(2) to the extent*

*the balance of such accumulated income is invested as laid down by s. 11(2). To take an illustration if, say, an additional amount of Rs. 20,000 out of the balance accumulated income of Rs. 55,000 is invested as per s. 11(2) then this additional amount of Rs. 20,000 of accumulated income will get excluded from the tax net as per s. 11(2). The remaining balance of the accumulated income out of Rs. 55,000, that is, Rs. 35,000 if not invested as per sub-s. (2) of s. 11 will be added to the taxable income of the trust and will not get exempted from the tax net. If on the other hand the entire remaining accumulated income of Rs. 55,000 is wholly invested as per s. 11(2) the said entire amount of Rs. 55,000 will get exempted from the tax net.— Addl. CIT vs. A. L.N. Rao Charitable Trust 1975 CTR (Kar) 114 : (1976)- 103 ITR 44 (Kar) : TC23R.1331 affirmed; CIT vs. Shri Krishen Chand Charitable Trust (1975) 98 ITR 387 (J&K) : TC 23 R. 1326, CIT vs. H.H. Marthanda Varma Elayaraja of Travancore Trust & Ors. (1981) 129 ITR 191 (Ker) : TC 23R.1346, Mohanlal Haraovinddas Public Charitable Trust vs. CIT (1980) 14 CTR (MP) 414 : (1980) 122 ITR 130 (MP) : TC 23R.1341, CIT vs. C.M. Kothari Charitable Trust (1984) 149 ITR 573 (Mad) : TC 23 R.1350 and CIT vs. Trustees of Bhat Family Research Foundation (1989) 75 CTR (Bom) 88 : (1990) 185 ITR 532 (Bom) : TC 23R. 1355 approved.”*

28. Similarly, the Hon'ble Supreme Court in the case of CIT vs. Programme for Community Organisation, 248 ITR 1 held that gross receipts were Rs. 2,57,376/- and the assessee had applied Rs. 1,70,369/- for charitable purposes, thereby leaving balance of Rs. 87,010/-. The Court held under para 3 that Trust was eligible to accumulate 25% (now 15%) of Rs. 2,57,376/- u/s 11 (1)(a).

29. For brevity and ready reference, the entire order of the Hon'ble Apex court is reproduced hereunder:

*" The questions that were referred to the High Court for consideration, at the instance of the Revenue, read thus:*

*"( 1) Whether, on the facts and in the circumstances of the case and on an interpretation of the relevant provisions of the IT Act, the assessee is entitled to exemption at 25 per cent on Rs. 2,57,376 or only on Rs.87,010 ?*

*(2) ) Whether, on the facts and in the circumstances of the case, should not the Tribunal have accepted the view of the Revenue expressed in the circular, the same being consistent with the relevant provisions of the IT Act, 1961 ?*

*(3) ) Whether, on the facts and in the circumstances of the case, and also considering the scope of the earlier order of the CIT( A), dt. 18 th Nov., 1983 , the Tribunal is right in law in holding that the CIT( A) has rightly interfered with the order of the ITO ?"*

*The answers being in favour of the assessee, the Revenue is in appeal by special leave.*

*2. The question that really requires consideration is whether, for the purpose of s. 11( 1)( a) of the IT Act, 1961 , the amount for the grant of exemption of twenty- five per cent should be the income of the trust or it should be its total income as determined for the purposes of assessment to income- tax. This question has to be answered in the light of these facts: The assessee-trust received donations in the aggregate sum of Rs. 2 ,57, 376 . It applied thereout for its charitable purposes the aggregate sum of Rs. 1 , 70 , 369 leaving a balance of Rs. 87,010. The question is whether the assessee is*

*entitled to accumulate twenty- five per cent of Rs. 2 ,57 ,376 as it contends, or twenty- five per cent of Rs. 87 ,010 , as the Revenue appeared to contend.*

*Sec. 11(1)(a) reads thus:*

*" 11. ( 1)( 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 twenty-five per cent of the income from such property."*

*3. Having regard to the plain language of the above provisions it is clear that a charitable or religious trust is entitled to accumulate twenty- five per cent of its income derived from property held under trust. For the present purposes, the donations the assessee received, in the sum of Rs. 2, 57 ,376, would constitute its property and it is entitled to accumulate twenty- five per cent thereof. It is unclear on what basis the Revenue contended that it was entitled to accumulate only twenty-five per cent of Rs. 87,010.*

*For the aforesaid reasons, the civil appeal is dismissed."*

**30. Hence, keeping in view the provisions of Section 11 (1 )(a) and the judgments of Hon'ble Supreme Court, we hold that the amount eligible u/ s 11( 1)(a) be determined taking into consideration, the income derived from the property held under trust to the extent to which the income so accumulated is not in excess of 15 % of income from such property.**

**31.** In the result, the appeals of the assessee are allowed on both the grounds.

Order pronounced in the open court on 27/06/2022.

**Sd/-**

**(A.D. Jain)**  
**Vice President**

**Dated: 27/06/2022**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**Sd/-**

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**