IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI L.P. SAHU, A.M.

ITA.No.4944/Del./2012
Assessment Year 2008-2009

The ACIT, Circle-2, Gurgaon.	vs.	M/s. The Scientific and Educational Advancement Society, Plot No 5, Sector-4, Urban Estate, Gurgaon. PAN AABTT0890L
(Appellant)		(Respondent)

ITA.No.4430/Del./2012
Assessment Year 2008-2009

M/s. The Scientific and Educational Advancement Society, Plot No.5, Sector-4, Urban Estate, Gurgaon. PAN AABTT0890L	vs.	The ACIT, Circle-2, Gurgaon.
(Appellant)		(Respondent)

For Revenue :	Shri S.S. Rana, CIT-D.R.
For Assessee :	Dr. Rakesh Gupta and Shri Somil Agarwal, Advocates.

Date of Hearing :	28.08.2018
Date of Pronouncement :	15.10.2018

ORDER

PER BHAVNESH SAINI, J.M.

Both the cross-appeals are directed against the Order of the Ld. CIT(A), Faridabad, Dated 06th July, 2012, for the A.Y. 2008-2009.

2. We have heard the Learned Representat ves of both the parties and perused the material available on record.

3. The facts of the case are that return of income declaring NIL income was filed by assessee-society ("Scientific Educational Advancement Society") on 30.09.2008 which was processed under section 143(1) of the I.T. Act, 1961. The case was selected for scrutiny. The assessee-society (in short "SEAS") is registered u/s 12AA of the Act as per the certificate dated 23.09.2003 granted by the Learned Commissioner of Income Tax, Faridabad. The assessee-society is engaged in imparting education through running a school in the name of Colonel's Central Academy ('CCA' in short). During the course of assessment proceedings, the AO observed that the gross

receipts of the assessee-society and CCA were to the tune of Rs.27,65,642/- and Rs.3,01,45,505/-, respectively. Against these receipts, the surplus of Rs.22,63,331/- and Rs.88,46,999/-, respectively, was declared during the year. As per Form No.10 filed with the return of income, the assessee-society also set apart/accumulated surplus of Rs 18,48,455/- till the previous year ending 2012-13. After considering the capital expenditure of Rs.63,81,941/- in acquisition of fixed assets and after excluding depreciation of Rs.29,94,661/- from the expenditure, the AO has worked out the total application of funds at Rs.2,51,88,097/- against the gross receipts of Rs.3,29,11,147/- shown in both SEAS and CCA. This resulted into surplus of Rs.77,23,050/- during the year and the application of funds to the extent of 76.53% only for the purpose of education. The AO further observed that the application of the assessee-society for grant of approval under section 10(23C)(vi) for A.Y.2008-09 under appeal was rejected by the CCIT, Panchkula vide order dated 07.10.2008 and the said order was affirmed by the Hon'ble Punjab and Haryana

High Court. It was further observed that the assessee-society made investment of Rs.8,90,85,122/- in purchase of land and farm houses during the year out of the sale proceeds of land sold in A.Y.2007-08, which were not used for the purpose of education. The AO issued show cause notice giving reference to the substantial profits generated year after year, rejection of approval under section 10(23C)(vi) and investment in purchase of farm houses and land not used for the purpose of education. After considering the reply of the assessee-society on these issues, the AO had denied the benefit of exemption u/s 11(1) and computed income under chapter-IVD of the I.T. Act, by treating the surplus of Rs.22,63,331/- and Rs.88,46,999/-, from assessee-society and CCA, respectively, aggregating to Rs.1,11,10,330/- as income mainly on the ground that the assessee-society was not engaged in providing education but for earning profits only.

3.1. The assessee-society aggrieved against these findings, challenged the assessment order, before the Ld.

CIT(A). The written submissions of the assessee-society are reproduced in the appellate order in which the assessee-society briefly explained that assessee-society is a Registered under Societies Registration Act and is also registered under section 12AA of Income Tax Act 1961. The assessee-society filed its return of income originally voluntarily and claimed exemption under section 12 of Income Tax Act. The AO has not allowed the depreciation claimed by the assessee-society and has not considered the investments made under section 11 (5) of the Income Tax Act 1961. The assessee-society claimed investment in 87.48% but the A.O. calculated at 76.53%. The AO has not allowed the depreciation as per several reported decisions. The AO has allowed depreciation in preceding A.Y 2006-2007 under section 143(3) of the I.T. Act, 1961. Further, surplus up-to 15% permissible under section 12 of each year is accumulated to be utilized when it becomes substantial for undertaking major construction/expansion work as has been done in the past. The assessee-society has deposited Rs.2,32,65,675/- in Schedule Bank as on

31.03.2008, but the AO has not considered this deposit. The assessee-society had deposited Rs.1,08,39,823/- in SBI, Rs.1,16,38,485/- in Allahabad Bank and Rs.1,89,797/- in Indian Overseas Bank as on 31.03.2008 and FDR of Rs.45,00,000/-. In the instant case, the assessee-society is running the School and is doing the charitable educational activities and has spent over 85% of the receipts during the year. Therefore, assessee-society is entitled for deduction under section 11(5)(iii) of the I.T. Act. The assessee-society met all the objections of the A.O in the written submissions and it was submitted that assessee-society runs one educational institution and has been granted registration under section 12AA and since it has utilised 85% of its income for charitable purpose i.e. for the purpose of education, therefore, assessee-society qualifies deduction under sections 11 and 12 of the I.T. Act, 1961. The A.O. has wrongly excluded depreciation from the expenditure which is allowable deduction.. The assessee-society vide calculation to show that more than 85% of total receipts have been utilised. Therefore,

the objection of the A.O. is totally misplaced on facts and in law. In alternate contention, it was submitted that even if finding of the A.O. are correct, then also the difference between 85% and the percentage treated as applied alone can be charged to tax. The decision relied upon by A.O. is not applicable. The decision of Uttarakhand High Court in the case of Queens Educational Society and St Paul's Senior Secondary School, relied upon by the A.O is contrary to the Judgment of the Hon'ble Supreme Court in the case of Aditanar Educational Institution vs. Addl. CIT (1997) 224 ITR 310 (SC). Moreover, these decisions have been rendered in the context of Section 10(23C), while assessee-society has been claiming exemption under section 11 of the I.T. Act, 1961. Therefore, there is no requirement that the 'Trust' should exist solely for education and not to earn profit. The finding of the A.O. are incorrect that no concession education have been given to the weaker sections, the details of the same are filed. The assessee-society explained all the issues which were asked for by the Ld. CIT(A) along with details of all capital

investments made on the land purchased from the consideration received from sale of Dhorka Land along with evidences for the same. Generator set and digging a tube well at Sadhrana property, which is now used as sports complex of CCA School. The Daily Diary maintained for all the activities carried on the properties of the assessee-society. F.18 and F.20 Aravalli properties purchased for existing buildings are being put to use for the educational activities of school and the manner of the same have been explained. The school premises have been visited by various children of different schools. The land at Lohari was acquired with the intention of building a vocational school. 2.00 acres plot of land at Gopalpur was also intended to be used for advancement vocational education. The assessee-society has acquired these lands for educational purpose only for the purpose of expanding educational objectives in the field of vocational and technical training and education which is also evident from the resolution. In A.Y. 2007-08, the assessee-society had earned capital gains by virtue of sale of land at Dhorka. It claimed application of the

same for charitable purpose under section 11(1A) read with section 11(2) by setting aside the proceeds from the sale of Dhorka Land for the purpose of acquiring other capital assets being land to be held under Trust for charitable purpose. The claim was allowed by the Ld. CIT(A). In the succeeding year, the entire sale proceeds was utilized by the assessee-society for acquiring four pieces of land, details and evidences for the same have been filed. Moreover, out of the four lands purchased, two have been put to use by the assessee-society for the purpose of imparting education in the school run by it in the name of CCA. The land at Sadhrana and Plot No.F-18 and F-20 at Aravalli are being utilized by the school for conducting various activities of the school, which is part of the curriculum of education, being imparted in the school as per the CBSE guidelines. The other two pieces of land have been purchased for the purpose of education only, as resolved by the governing body of the assessee-society in its resolution passed and filed along with Form-10 and the Return of Income of the assessee-society for A.Y 07-08. It is, therefore, clear

that net consideration received by the assessee-society from the sale of land, being a capital asset, has been invested in capital assets, being lands and the lands, further purchased, have been either put to use for the charitable purpose for which the assessee-society has been established or are intended to be put to use for the same. The assessee-society, therefore, satisfies the condition of Section-11(1A) which requires capital gains to be reinvested in another capital asset to avoid tax on capital gains. The exemption under section 11(1A) for capital gains for a charitable Trust has been upheld in the case of CIT vs Aurobindo Memorial Fund Society (2001) 247 ITR 93 (Mad) and Director of Income Tax (Exemptions) vs DLF Qutab Enclave Complex Medical Charitable Trust (2001) 248 ITR 41 (Del.). It is, therefore, clear that reinvestment in capital assets is the only condition which is required to be fulfilled to qualify for deemed application of income from capital gains under section 11(1 A) of the I.T. Act, 1961. The investment in land is a prescribed and approved mode of

investment for Trusts as per Section 11(5) and cannot be faulted on this ground.

3.2. As for invoking the provisions of section 11(1B), it was submitted that since the assessee-society has not exercised the option under clause 2 of the Explanation to sub section (1) of section 11, the question of invok ng Section 11(IB) does not arise. In fact, the assessee-society has applied its income under section 11(1A) r.w.s 11(2) which is evident from the fact that it filed Form-10 along with its return of income, stating the object of accumulation which have been allowed by in A.Y. 2007-2008 by the Ld. CIT(A). It is, therefore, established that assessee-society has applied its income earned from capital gains, for charitable purpose under section 11(1A) by purchasing capital assets and utilized the capital assets acquired for the purpose of imparting education, which is the object with which the "Trust" has been established. The assessee-society did not made any non-charitable use of the assets acquired.

3.3. The Ld. CIT(A) considered the issue in detail and noted that the AO has denied the benefit of exemption under section 11(1) after considering and relying upon the assessment order for the A.Y. 2007-08 wherein the claim of exemption was denied for the same reasons, substantial deposits in the bank accounts and the fact that no children from weaker section was provided free/concessional education despite such aims and objects of the society. The Ld. CIT(A) referred to Judgment of the Hon'ble Supreme Court in the case of Aditanar Educational Institution vs. CIT (1997) 224 ITR 310 (SC) in which it was held that *"merely because certain surplus arises from the operations of an educational-society or trust or other similar body running an educational institution solely for educational purposes, it cannot be held that the institution is being run for profit so long as no person or individual is entitled to any portion of the profit and the said profit is used for the purposes and for the promotion of the objects of the institution".* The Ld. CIT(A) also noted the decision of Honble Uttarakhand High Court in the case of

Queen's Educational Society and St. Paul's Senior Secondary School (supra) delivered in the context of Section 10(23C)(vi) of the I.T. Act, 1961. The Ld. CIT(A) referred to decision in the case of Thiagarajar Charities vs. Addl. CIT 225 ITR 1010, the Hon'ble Supreme Court has held that *"where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity".* The Ld. CIT(A) also noted that on similar reason, appeal of assessee-society for A.Y. 2007-2008 have been allowed. Thus, the land held at Dhorka was accepted for the educational purpose as per the records with the Revenue Department. The Ld. CIT(A) also no ed that assessee-society has filed list of students to whom concessional treatment have been given by offering scholarships. Therefore, finding of the A.O. is contrary to facts. The Ld. CIT(A) also noted that assessee-society is entitled for depreciation as per law and assessee-society has incurred 85.63% for the purpose of charitable activity. Therefore, the claim of assessee-society for depreciation was

found allowable, which was allowed. The Ld. CIT(A), accordingly, granted benefit of Section 11(1) of the I.T. Act and deleted the addition of Rs.1,11,10,330/-.

3.4. The Ld. CIT(A), thereafter, considered the lands purchased by assessee-society and noted that sale consideration of land was not utilised in purchase of any asset during the previous year relevant to A.Y. 2007-2008 and the deduction under section 11(1A)(a) for capital gain was not allowable. The assessee-society, therefore, set apart-accumulated sale consideration to the extent of Rs.7,22,67,210/- in A.Y. 2007-2008 and made investment of Rs.8,71,42,582/- in the assessment year under appeal. The Ld. CIT(A) noted that Section 11(1A)contemplates deemed application of capital gain for the charitable purposes with reference to investment of net consideration received on transfer of assets. Since the assessee-society did not incur expenditure on transfer of land, therefore, entire consideration of Rs.9.11 crores was treated as net consideration. The Ld.

CIT(A) issued show cause notice as to why Section 11(1B) of the I.T. Act be not invoked in the case of assessee-society ? The assessee-society filed evidences to show all properties purchased out of sale consideration have been used for the purpose of objects of assessee-society i.e., for 'charitable purposes'. However, the claim of assessee-society has been rejected by holding that properties have been used for pleasure trips which is nothing to do with education. Mere frequent visits at properties in question by the management and other students would not serve the purpose. The Ld. CIT(A) ultimately held that investment aggregating to Rs.6,77,16,875/- made in the farm houses and land at Gopalpur and Lohari, do not qualify as having been applied for charitable or educational purpose by any stretch of imagination. The Ld. CIT(A) applied Section 11(1B) of the I.T. Act and directed to enhance the income to Rs.6,77,16,875/-.

4. Aggrieved by the Order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal and has raised the following ground :

> *"The Ld. CIT(A) has erred on facts & in law in directing the A.O. to accept the status of the assessee as that of a charitable society & allow the exemption claimed u/s 1 l(l)(a) of the Act The Ld. CIT(A) has overlooked the decision of the Hon'ble Supreme Court in the case of Gangabai Charities vs. CIT (1992) (197 ITR 416) wherein it was held that " The crux of the statutory exemption u/s 11(1)(a) of the Act is not the income earned from property held under Trust but the actual application of the said income for religious & charitable purposes. The exemption can be lost if application of income is for purpose other than education [Maa Saraswati Education Trust vs. UOI (2010) 194 Taxman 84 (HP)]".*

5. The Ld. D.R. relied upon the Order of the A.O. and submitted that though the issue is same as have been considered in A.Y. 2007-2008, but more reason have been given in assessment year under appeal, therefore, A.O. rightly denied exemption under section 11 of the I.T. Act. He has submitted that assessee-society will not get benefit of Section 11(1A) because it has incurred less than 85% of the total income for the purpose of charitable activities.

6. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that issue is identical as have been considered in preceding A.Y. 2007-2008 in which the Ld. CIT(A) allowed the claim of assessee-society and Departmental Appeal have been dismissed by ITAT, Delhi, H-Bench, in ITA.No.1742/Del./2012 and ITA.No.1880/Del./2012, Dated 24.09.2014 whereby the departmental appeal have been dismissed. He has submitted that ground of appeal raised in A.Y. 2007-2008 was identical as have been raised in

assessment year under appeal i.e., 2008-2009. He has submitted that assessee-society made a claim of exemption under section 11 of the I.T. Act and not under section 10(23C)(vi) of the I.T. Act. A.O. followed the Order for A.Y. 2007-2008 for the purpose of denying exemption under section 11 of the I.T. Act. PB-186 is Order of Ld. CIT(A) dated 18.01.2012 for A.Y. 2007-2008. PB-186 to PB-227 are the Orders of Ld. CIT(A) for A.Ys. 2007-2008, 2009-2010 and 2011-2012 and 2012-2013 in which similar claim have been allowed against which department did not file any appeal. He has submitted that Certificate under section 12AA is in existence. PB-172 to 185 are assessment orders for A.Ys. 2006-2007, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 in which A.O. has allowed benefit of Sections 11 and 12 of the I.T. Act, in favour of the assessee-society. He has submitted that if depreciation is taken into consideration, the application of income of assessee-society for charitable purposes would be more than 85%. He has relied upon Judgment of Hon'ble Supreme Court in the case of Queens

Educational Society vs. CIT (2015) 372 ITR 699 (SC) in which Judgment of Hon'ble Uttarakhand High Court have been overruled by the Hon'ble Supreme Court as relied upon by the A.O. He has also relied upon decision of Hon'ble Supreme Court in the case of CIT vs. Rajasthan and Gujarati Charitable Foundation Poona (2018) 300 CTR 1 (SC) in which the Hon'ble Supreme Court held that *"normal depreciation could be considered as legitimate deduction in computing real income of assessee on general principles or under section 11(l)(a) of the I.T. Act."* PB-241 is Order dated 26.02.2007 of CCIT, Panchkula granting exemption under section 10(23C)(vi) of the I.T. Act for A.Ys. 2002-2003 to 2004-2005 which continue till 2005-2006 (PB-243). He has submitted that land purchased at Dhorka in earlier year and no adverse inference has been drawn against the assessee-society. He has, therefore, submitted that Ld. CIT(A) correctly allowed exemption under section 11(1) of the I.T. Act, 1961 and rightly deleted the addition of Rs.1,11,10,330/- made by the A.O.

7. We have considered the rival submissions and do not find any justification to interfere with the Order of the Ld. CIT(A) in granting exemption under section 11(1) of the I.T. Act. Learned Counsel for the Assessee rightly contended that the decisions referred to in the grounds of appeals do not apply to the facts of the case. The A.O. relied upon decision of Uttarakhand High Court in the case of Queens Educational Society and St. Paul's Senior Secondary School (supra) for denying the exemption under section 11 of the I.T. Act. However, the said decision has been overruled by the Hon'ble Supreme Court in the case of Queens Educational Society vs. CIT (supra). The A.O after making his own calculation and denying depreciation to assessee-society noted that *"assessee has applied only 76.53% of the total receipts."* However, assessee-society explained that if depreciation is included, it would be more than 85% receipts applied by the assessee-society for charitable purposes. The claim of assessee-society is supported by the decision of Hon'ble Supreme Court in the case of CIT vs. Rajasthan and Gujarati Charitable Foundation

Poona (supra). The A.O. relied upon his own order for A.Y. 2007-2008 for denying exemption to assessee-society which have been set aside by the Ld. CIT(A) and the Tribunal has dismissed the departmental appeal on identical facts. The Tribunal in para-5.2 of the Order dated 24.09.2014 held - *"We find no infirmity in these findings of the Ld. CIT(A). The assessee is definitely entitled to claim deduction under section 11 of the I.T. Act as registration under section 12AA is in force."* It is not in dispute that the registration under section 12AA is still continue in favour of the assessee-society. No distinguishable facts have been brought on record to say that facts in A.Y. 2007-2008 are different from A.Y. 2008-2009 under appeal. Therefore, issue is covered in favour of assessee-society by Order of ITAT for A.Y. 2007-2008 (supra). The Ld. D.R. referred to decision of Hon'ble Punjab & Haryana High Court dated 10.02.2009 in assessee's case where writ petition have been admitted by the Hon'ble Punjab & Haryana High Court against the Order passed by CCIT, Panchkula in the matter of Section 10(23C)(vi) of the I.T. Act in A.Ys. 2006-

2007 and 2007-2008. This issue is also considered by the Tribunal in A.Y. 2007-2008. It may be noted here that the issue involved in this appeal is benefit of Sections 11 and 12 of the I.T. Act to the assessee-society and not under section 10(23)(vi) of the I.T. Act. In A.Ys. 2006-2007, 2009-2010, 2010-2011, 2011-2012 and 2012-2013, the A.O passed the scrutiny assessments and claim of the assessee-society under sections 11 and 12 of the I.T. Act, 1961, have been allowed and these Orders have been passed by the A.O. after Judgment of Hon'ble Punjab & Haryana High Court under section 10(23C)(vi) of the I.T. Act, 1961. It may also be noted that the land purchased at Dhokra was in earlier year for which no adverse inference has been drawn in earlier years. Therefore, nothing could be attributable against the assessee-society, if assessee-society violated conditions of Section 11 of the I.T. Act. Considering the totality of the facts and circumstances of the case and history of the assessee-society, in the light of Order of the Tribunal for A.Y. 2007-2008 dated 24.09.2014 (supra), we do not find any justification to interfere

with the Order of the Ld. CIT(A) in granting exemption under section 11 of the I.T. Act. The Order of the Ld. CIT(A) is confirmed and Departmental Appeal stands dismissed.

8. In the result, ITA.No.4944/Del./2012 of the Department is dismissed.

9. The assessee-society in its cross-appeal (ITA.No.4430/Del./2012), challenged the Order of Ld. CIT(A) in enhancing the income by Rs.6,77,16,875/- by denying exemption for investments in properties.

10. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has submitted that the Ld. CIT(A) enhanced the taxable income on the ground that investment made by the assessee-society in the capital assets namely Aravalli Farm Houses, Gopalpur lands, Lohari lands were not actually used for educational/ charitable purposes in the year under appeal and thus, such investment is hit by Section 11(1B) and alternatively by Section 11(3) of the I.T. Act. The assessee-society was holding

land at village-Dhorka from the year 2001 and 2003 for charitable/ educational purposes. The said land was sold in A.Y. 2007-2008 for Rs.9,11,97,187/- and its cost was Rs.67,18,729/- and there was thus, profit/income of Rs.8,44,78,187/- on its sale in A.Y. 2007-2008. Such profit was accumulated to the extent of Rs.7,22,67,210/- under section 11(2) for the purpose of purchasing land within vicinity of Gurgaon which is suitable for Educational/Vocational Institute after obtaining necessary CLU. Such accumulation for charitable purposes was accepted by Ld. CIT(A) in A.Y. 2007-2008 which have been affirmed by the Tribunal. PB-146 is copy of Form-10 applied to the A.O. of accumulated amount in the year under consideration. Further investments have been made in the properties. PB-147 is resolution of the assessee-society in which it was noted that the land of the assessee-society is likely to be acquired for industrial zone, therefore, it has to be disposed-off to purchase another property for educational purposes in Gurgaon. The Ld. CIT(A) in A.Y. 2007-2008 held that profit/ income on sale of Dhorka

land, exempt under section 11(1)(a) of the I.T. Act. The assessee-society purchased five immovable properties for an aggregate amount of Rs.8,71,42,582/-. The details of the same are noted in para 6.2 of the impugned order in which properties have been purchased at Sadhrana for Rs.1,94,25,707/-, Aravalli (F-18) for Rs.81,89,707/- Aravalli (F-20) for Rs.68,96,507/-, Gopalpura Rs 1 20 37,707/- and Lohari Rs.4,05,92,954/-. Out of the above five properties, assessee-society applied the accumulated income of Rs.7,22,67,210/- accumulated in A.Y. 2007-2008 for purchase of Sadhrana, Gopalpura, Lohari properties meant for educational purposes The Ld. CIT(A) treated the property at village Sadhrana as used for charitable/educational purposes based on the evidence. The Ld. CIT(A) applied Section 11(1B) of the I.T. Act in respect to the remaining four properties aggregating to Rs.6.77 crores and made addition by enhancing the income. He has submitted that Section 11(1B) is not applicable in the instant case as the assessee-society never claimed the application of income in terms of Explanation

below Section 11(1), the violation of which, alone would have brought under section 11(1B) of the I.T. Act, into action. The assessee-society never exercised option under section 11(1B) of the I.T. Act. The assessee-society exercised option for claiming the benefit under section 11(2)(b) of the I.T. Act on account of accumulation of funds. Form-10 is meant for Section 11(2) of the I.T. Act. Section 11(5)(x) of the I.T. Act permitted the assessee-society to make investment in immovable properties. PB-204 is Order of the Ld. CIT(A) for A.Y. 2007-2008 in which same facts have been mentioned and filing Form-10 by the assessee-society in which Ld. CIT(A) has given a finding that the income to the extent of Rs.7,22,67,210/ is treated to have been applied for charitable purposes. For applying Section 11(1B), Form-9A is prescribed under Rule 17 of I.T. Rules, which is not a case of the assessee-society. He has relied upon the decision of ITAT, Ahmedabad Bench in the case of Shri Surat Panjarapole Trust vs. ACIT (2011) 44 SOT 104 (Ahd.) in which it was held as under :

"If the trust is established for charitable or religious purpose and there is no other object for which the trust is utilized then property of the trust so held and thereafter so transferred can only income/capital gains which has to be considered within the provisions of ss. 11(1) and 11(1 A) only. There was no material on record to show that the land sold by assessee trust was used for non-charitable assessee cannot be denied exemption of the capita! gains in accordance with provisions of s. 11(1A)".

11. The Ld. CIT(A), alternatively, applied Section 11(3) which will come into operation after five years on completion of five years of accumulation of income. So, no tax can be levied in assessment year under appeal. In fact, Section 11(3) is also not applicable in this case which is applicable if income accumulated under section 11(2) is applied to purposes other than charitable or ceased to be accumulated for application. In this case, income accumulated under section 11(2) amounting to Rs.7,22,67,210/- has been applied for purchasing

Sadhrana, Gopalpura and Lohari properties. The short fall in the application to the tune of Rs.2,10,842/- at best could be treated as un-complied. Moreover, five years period for accumulation to last was not yet over in the instant year. These lands have been purchased for expansion of educational activities only and cannot be said that these assets were used for non-charitable purposes. Form-10 was filed with return for A.Y. 2007-2008 and the period of accumulation under section 11(2) is for five years, which means that A.Y. 2013-2014 is the last date by which it could be so utilised. Therefore, findings of the authorities below are incorrect. Even if these properties are not treated as application of accumulated income, these properties being immovable properties may be treated as one of the prescribed modes of investment under section 11(5), therefore, no adverse view should be taken against the assessee-society.

12. On the other hand, Ld. D.R. relied upon the Order of the Ld. CIT(A) and submitted that Section 11(3) is applicable

in the case of assessee-society. The properties have not been utilised for educational purposes. The Ld. CIT(A) has given a specific finding that properties have been visited on some occasions for visit of Chairman and Principal/Teachers for short trip which is not meant for educational purpose. No permission has been obtained for opening any educational institution. The assessee-society invested entire consideration in purchase of land with no earmarking of funds for construction of building for opening of new school. Land at Gopalpura was lying vacant and land at Lohari has been leased-out for agricultural purposes only. The Ld. D.R. relied upon the following decisions :

(1) Gangabai Charities vs. CIT (1992) 197 ITR 416 (SC).

(2) DIT vs. Charanjiv Charitable Trust (2014) 267 CTR 305 (Del.)

(3) CIT vs. Vijeta Educational Society 2011-TIOL-591-HC-ALL-IT.

(4) Dy. DIT vs. India Cements Educational Society 157 ITD 1008.

13. We have heard the Learned Representatives of both the parties and perused the material available on record. The Ld. CIT(A) recorded in the Order that land at Dhokra was purchased by the assessee-society in the years 2001 and 2003. It was sold for a consideration of Rs.9.11 crores in A.Y. 2007-2008 which resulted into profit/income at Rs.8.44 crores which was claimed as exempt under section 11(1A) of the I.T. Act, 1961, in A.Y. 2007-2008. The assessee-society also filed Form-10 along with return of income in which income to the extent of Rs.7,22,67,210/- was set apart for utilization in future pursuant to the resolution dated 31.10.2007 wherein it was resolved that money received after sale of the above property may be re-invested for purchase of land in Gurgaon for Educational/Vocational purposes. The assessee-society, out of the sale consideration, made investment in immovable properties at Sadhrana, Aravalli, Gopalpura and Lohari. It is not in dispute that land at Village-Dhokra held for educational purposes which is also evident from the orders passed under section 10(23C)(vi) by CCIT for A.Ys. 2002-2003 to 2004-2005

and for A.Y. 2005-2006. The Ld. CCIT would not have granted approval under this provision if such land had not been meant for educational purposes. Similarly, the assessment order for A.Y. 2006-2007 was passed under section 143(3)/148, but, proceedings under section 148 have been dropped vide Order dated 16.12.2010 by verifying that assessee-society is registered under section 12A of the I T Act. Similarly, assessment order for A.Y. 2007-2008 was passed under section 143(3) which was appealed before Ld. CIT(A) who has granted benefit under sections 11 and 12 of the I.T. Act to the assessee-society. The order of Ld. CIT(A) have been upheld by the Tribunal. The Ld CIT(A) in the order for A.Y. 2007-2008 has specifically not ced that in respect of unutilized amounts, assessee-society has for the purpose of Section 11(1) set apart/accumulated profits of Rs.7,22,67,210/- filed Form No.10 along with return of income and also subsequently, made investment in purchase of land to the extent of Rs.8,71,42,582/-. Hence, the income to the extent of Rs.7.22 crores was treated to have been applied for charitable

purposes. It is well settled law that exemption under section 11(1A) for capital gains for a charitable trust has been upheld in the case of CIT vs. Aurobindo Memorial Fund Society (2001) 247 ITR 93 (Mad.) and DIT (Exemptions) vs. DLF Qutab Enclave Complex Medical Charitable Trust (2001) 248 ITR 41 (Del.) (supra). If the land at Dhokra village was not meant for charitable purposes, the assessee-society would not have got benefit of Sections 11 and 12 for all these years. We, therefore, held that the land at Village-Dhokra which was sold in A.Y. 2007-2008 was meant for educational purposes only. Copy of Form No.10 is filed at page-146 of the paper book and copy of the resolution of assessee-society is filed at page-147 of the paper book and contention of assessee-society has been accepted by Ld. CIT(A) in A.Y. 2007-2008 above and his view have been confirmed by the Tribunal. It is also not in dispute that assessee-society purchased lands at Sadhrana, Gopalpura and Lohari aggregating to Rs.7,20,56,368/-. Therefore, short fall of Rs.2,10,842/- is the income remaining to be applied to five years period allowed under section 11(2)

which has not been expired in assessment year under appeal i.e., A.Y. 2008-2009. Therefore, this amount also cannot be brought to tax. Since the assessee-society purchased the lands for a sum of Rs.7.20 crores for educational purposes, therefore, there is nothing wrong in the explanation of assessee-society. The Ld. CIT(A) already found that land at Sadharna have been used for educational purposes. The remaining two properties at Gopalpura and Lohari cannot be treated as not for charitable purposes merely for the reasons that these have not been used. Non-user or passiveness of the lands purchased cannot be treated as user for non-charitable purposes. Section 11(5) provides that accumulated amount under section 11(2) has to be kept in specified modes of investment, which include investment in immovable property. It does not provide that such immovable property must be meant for any specific purpose. Therefore, there is nothing wrong in explanation of assessee-society in purchasing the properties. In the case of Shri Surat Panjarapole Trust vs. ACIT (supra), it was held that non-use of the land or

passiveness of land is not equal to its holding the land for non-charitable purposes. Thus, in our view, the assessee-society having purchased the abovementioned land, has used the accumulated amount for charitable and educational purposes. No evidence have been brought on record by the Revenue to prove that land at Gopalpura and Lohari were used for non-educational and non-charitable purposes. The Ld. CIT(A) made a reference to two properties at Aravalli which have got no bearing on the issue as the said two properties according to the explanation of assessee-society, are not utilised for accumulated profits under section 11(2) of the I.T. Act because the accumulation have been made under section 11(2) in respect of three properties only i.e., Sadharna, Gopalpura and Lohari. Ld. CIT(A) wrongly applied Section 11(1B) of the I.T. Act as the assessee-society accumulated its income under section 11(2) and in that situation Section 11(1B) is not applicable. Accumulation was under section 11(2) and not under Explanation to sub-section 11(1) as is clear from the order passed by the Ld. CIT(A) and the Tribunal

in A.Y. 2007-2008 and it was clearly noticed that Form-10 have been filed in A.Y. 2007-2008 which is applicable for accumulation of income under section 11(2) only. The findings of the Ld. CIT(A) that Section 11(3) is applicable is also not correct because income accumulated under section 11(2) was applied for educational purposes. Considering the totality of the facts and circumstances of the case noted above in the light of finding of fact recorded by the Ld. CIT(A) and Tribunal in A.Y. 2007-2008, it is clear that no addition could be made against the assessee-society of such nature. The order of the Ld. CIT(A), therefore, cannot be sustained in law for enhancing the income of assessee-society of Rs.6,77,16,875/- and that too by invoking Section 11(1B) and Section 11(3) of the I.T. Act, which are not applicable to the case of the assessee-society. The decisions relied upon by the Ld. D.R. are not applicable to the facts of the case. In view of the above discussion, we set aside the Order of the Ld. CIT(A) and delete the addition of Rs.6,77,16,875/-. Accordingly, appeal of the assessee-society is allowed.

14. In the result, Appeal of the Assessee is allowed.

15. To sum-up, appeal of Revenue is dismissed and appeal of Assessee is Allowed.

Order pronounced in the open Court.

Sd/-	Sd/-
(LP SAHU)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated 15th October, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.