

**IN THE INCOME TAX APPELLATE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
(THROUGH VIRTUAL COURT)**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA Nos. 165/ALLD/2018
Assessment Year: 2012-13

Nazareth Hospital Society 13-A,Kamla Nehru Road, Allahabad Uttar Pradesh PAN:AAATN1730G (Appellant)	v.	Deputy Commissioner of Income-tax(Exemption) Lucknow Uttar Pradesh (Respondent)
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Appellant by:	Mr. R. S. Agrawal, Advocate
Respondent by:	Mr. A.K. Singh, Sr. DR
Date of hearing:	03.12.2020
Date of pronouncement:	18.02. 2021

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, being ITA No. 165/ALLD/2018, is directed against appellate order dated 27.02.2018 in Appeal No. 4/DCIT/EXM(LKN)/Alld./15-16 passed by learned Commissioner of Income Tax (Appeals), Allahabad (hereinafter called "the CIT(A)"), for assessment year (ay) 2012-13, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 30.03.2015 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for assessment year (ay): 2012-13. We have heard both the parties through video conferencing mode through virtual court.

2.The grounds of appeals raised by assessee in memo of appeal filed with Income-Tax Appellate Tribunal, Allahabad (hereinafter called “the tribunal”) reads as under:-

“1. BECAUSE considering the facts and circumstances of the case contribution of Rs. 72,00,000/- made by Nazareth Hospital Society to Roman Catholic Diocese of Allahabad Private Limited (RCD) , both being charitable institutions and registered u/s 12A of the Act , is application of income for charitable purposes as per the provisions of section 11(1)(a) of the Income-tax Act,1961 . The said contribution is liable to be deduction from the income for the purpose of computation of taxable surplus in the assessment of the appellant institution.

2. BECAUSE considering the facts and the circumstances of the case the CIT(Appeals) has erred in law to hold that the said contribution is not application of income for charitable purpose by the appellant institution on the ground that objects of appellant institution and RCD are not the same. The decision of the authorities below is against the provisions of Section 11(1)(a) as well section 2(15) of the Act. Section 2(15) has defined the CHARITABLE PURPOSE. The CIT(Appeals) has failed to consider that medical relief is the main object of the appellant institution and education is the purpose for which the contribution has been applied by the RCD and both the objects are included under the definition of Charitable purpose as per section 2(15) of the Act.

3. BECAUSE considering the facts and the circumstances of the case contribution of Rs. 72,00,000/- by the appellant institution to RCD needs to allowed as utilization of income for charitable purpose under section 11(1)(a) of the Act and the assessment of the appellant is liable to be completed on Nil taxable income. The demand for tax and interest charged under different section has to be cancelled and refund due to the appellant institution to be allowed with interest. .”

3. The brief facts of the case are that the assessee society is running hospitals and school of Nursing at 13-A ,Kamla Nehru Road, Allahabad. The assessee society was constituted and executed from 05.01.1976 . The assessee society was registered as a charitable society registered u/s 12AA of the 1961 Act, vide orders dated 16.07.1976 passed by learned Commissioner of Income Tax ,Lucknow. The assessee society case for impugned ay was selected for framing scrutiny assessment by Revenue under the provisions of Section 143(2) read with Section 143(3) of the 1961 Act. The assessee participated in assessment proceedings before AO and

furnished required information and details. The assessee also furnished copies of byelaws and renewal certificate issued by Registrar of Societies , U.P , during the course of assessment proceedings before the AO. The copy of Registration u/s 12AA of the 1961 Act was also submitted by assessee before the AO during the course of assessment proceedings. The assessee had claimed exemption u/s 11 of the 1961 Act. The AO observed that the assessee had received total receipts of Rs. 21,45,14,778/- , out of which Rs. 16,52,82,644/- was applied as application of fund, and surplus of Rs. 4,92,32,124/- was shown, which was more than 15% accumulation permitted u/s 11(1)(a) of the 1961 Act. The AO observed that the assessee has contributed Rs. 72,00,000/- as donation to Roman Catholic Diocese Private Limited. On being asked by AO as to allowability of the aforesaid donation, the assessee submitted that donation given by one charitable institution to another charitable institution is to be treated as application of income u/s 11 and is exempt from income-tax. The AO rejected the contentions of the assessee by holding that object of the donor and the donee society are not same, as can be seen from their Memorandum of Association, and hence said amount cannot be considered as application of income for charitable purposes. The AO observed that main object of the donor viz. assessee society is medical relief and running of hospitals , while main object of the donee society was education. The AO was of the view that when the assessee contributes a fund as donation to the donee society who is engaged in different activities , then assessee society is not fulfilling its objects for which assessee society was established. The AO was of the view that the said amount of donation of Rs. 72,00,000/- made by assessee society to 'Roman Catholic Diocese Private Limited' cannot be exempt from income-tax. The AO relied upon judgment of Hon'ble Allahabad High Court in the case of J K Charitable Trust (1992) 196 ITR 31(All. HC) , and brought to tax the said donation of Rs. 72,00,000/- as income in the hands of the assessee, vide assessment order dated 30.03.2015 passed u/s 143(3) of the 1961 Act.

4. Aggrieved by assessment framed by the AO, the assessee filed first appeal with learned CIT(A) who was pleased to dismiss the appeal filed by assessee, vide appellate order dated 27.02.2018, by holding as under:

"8. I have considered the arguments of the appellant. In order to properly appreciate the legal position regarding allowability of donation by one charitable trust to another charitable trust, the provisions of section 11(1)(a) of Income Tax Act needs to be properly appreciated. For the sake of clarity the provision of Section 11 (1)(a) are reproduced herein below-

"Subject to the provisions of section 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"

9. A proper appraisal of the above clause reveals that income derived from the property held under trust is to be treated as exempt to the extent **such** income is applied to **such purposes** in India. The word "such" appearing in the Section 11(1)(a) of the I.T. Act is to be properly understood. **The section clearly prescribes that only that application of income which is incurred for fulfilling the purposes of the trust (such purpose) is to be treated as exempt. Thus, in order to consider whether the income of the trust has been utilized for the purposes for which such trust has been established, the object of the trust needs to be examined.**

10. The objects of the appellant i.e. Nazareth Hospital Society as is evident from Memorandum of Association is as under -

"A. To establish and run hospitals, nursing homes, welfare homes, rest houses for the good and benefit of the people.

B. To acquire by purchase, gift, lease, mortgage, loan, grant, legacy, bequest, exchange, right, privilege or otherwise from any person, company, society, Government or institution or any other body whatsoever moveable or immovable properties of all descriptions useful for any purpose of the Society.

C. To construct, equip, operate, endow, maintain and from time to time alter, improve, extend, close down. Demolish or dispose off suitable sites, buildings, offices, institutions, model farms, small industries, laboratories, x-rays, amenities and facilities deemed necessary or useful for any purpose or purposes of the society.

D. To initiate, encourage, promote, organize, operate, advise, help co-operative societies, credit unions, housing projects, legal aid societies, clubs, community services or other institutions, bodies, persons, as from time to time seem necessary or appropriate for any purpose or purposes of the Society.

E. To print, publish, issue and exhibit any films, journals, periodicals, books, papers, pamphlets, advertisements, reports, lectures and other reading matters for the diffusion of medical, agricultural, technical, moral, philosophical, cultural and other useful knowledge for the promotion benefit and advancement of charitable ideals, institutions, works and activities of the Society.

F. To engage, employ and procure the assistance of and to suspend, discharge, and dismiss directors, managers, specialist, assistants, teachers, lawyers, technical advisers, doctors, nurses, clerks, secretaries, accountants, workmen, servants and other personnel or staff either nor remuneration or gratuitously and to pay them salaries, wages, gratuities, expenses, pensions, provident funds and any other remuneration for services rendered to the society.

G. To accept, received hold, administer and use any gift, bequest, donation, subscription or foundation in cash or kind or other form of property whether subject to any trust or not for any of the objects of the society and to undertake, discharge or carry out the offices, duties and functions of the trustees, managers and administrators whether solely or jointly with others or other for or in respect of any such gifts, bequests, donations, trusts, foundations or properties whether vested in the Society or otherwise, and to take such steps for the securing of such contributions to the funds of the Society as may from time to time be deemed expedient.

H. To alienate by way of sale, mortgage, lease, release, loan, charge, hypothecate, pledge, exchange, hiring out, gift or otherwise, with or without security the portions or funds of the Society or any portion or portions thereof including the making or giving of subscriptions, contributions or assistance, pecuniary or otherwise for the purpose or purposes of the Society.

I. To invest, lay aside deposit in the banks or otherwise deal with the moneys or funds of the Society not immediately required for the object of the Society and to subscribe for purchase acquire, hold, sell, endorse and negotiate in every way debentures, stock shares and securities of every description on the money market.

J. To borrow and raise funds with or without security in any manner the Society may think fit and to repay the same.

K. To negotiate with and to enter into agreement with any Government or Authority whether Central, State, District, Municipal, local University, Board or other public or private body as may deem conducive to the promotion or accomplishment or the objects of the society or any of them and to apply for, obtain, collect, receive or recover from any such Government or Authority or Body such grants, allowances, rights, concessions and privileges as may seem from time to time desirable and to carry out, exercise, comply with and utilize the same.

L. To use the property and assets of the Society and all income form the property and assets, moveable and immovable or from the works of the Society as such whensoever derived from the objects of the Society as set forth in the

Memorandum of the Association, provided that no portion thereof is distributed among the members by way of profits, dividends, bonuses or by any other form except remuneration for services rendered to the Society.

M. To do or to cause to be done any or all such acts or things as shall be in keeping with the objects of the Society, provided such things or acts be not contrary or inconsistency with the spirit and principles of the laws under which this Society has been organized and registered."

Thus, the main object for which the **appellant society is established as a charitable organization is to establish and run hospital and nursing homes. Infact, the society is running a hospital in the name of Nazareth Hospital.**

11. The objects of the M/s Roman Catholic Diocese Pvt. Ltd. are as under –

“The Objects for which the Company is founded are	Objects
(a) To acquire and take over all or any part of the movable and immovable properties now or hereafter vested in the Roman Catholic Bishop of Allahabad (in which expression is included an Administrator Apostolic for the time being or Vicar-Capitular) or vested in any other person or persons or body and used or devoted for or to any purposes of the Roman Catholic religion or any charitable or educational or other purpose whatsoever in connection therewith.	
(b) To provide and/or administer churches, chapels, schools, hotels, houses, convents, orphanages, penitentiaries, co-operative societies, banks, agricultural or industrial settlements or associations, poor homes, missions, foundling homes and nurseries, institutes, libraries, reading guilds, confraternities, sodalities, hospitals, clubs, dispensaries, and other religious, educational and charitable institutions in India	To provide religious, educational and charitable institutions
(c) To take over the effect and liabilities of existing institutions.	To take over effect(sic asset) and liabilities
(d) To take over, acquire, hold, dispose of securities of the Government of India or of any local Government or public body, and stocks shares, and securities of any Company	To take over securities, etc.
(e) To receive, collect and recover Government grants or allowances in connection with any property held by the Company or otherwise, and to deal with the same according to the interest thereof.	To receive grant, etc.
(e) To purchase, take on lease or in exchange, or otherwise acquire any lands, buildings, easements, rightly of common,	To acquire and dispose

- or property movable or immovable which may be requisite for the purposes of or conveniently used in connection with any of the objects of the Company, and to sell, demise, lease, rent out, mortgage, give in exchange, surrender or dispose of the same. **of land, etc.**
- g. To hire and employ secretaries, clerks, managers, servants and workmen, and also doctors and nurses, schoolmasters and teachers, and others, and to pay to them salaries, wages, gratuities and pensions. **To hire servants**
- h. To take any gift of money or other property or any bequest or foundation whether subject to any special trust or not for any one of more of the objects of the Company, and to accept the office of and act as trustees, managers, and administrators whether solely or jointly with others or another for or in respect of any gift or any other property whether vested in the company or otherwise and whether subject to any trusts, managements, and administration would involve the exercise by the Company of powers not specifically mentioned in these presents. **To take gifts and accept trust**
- i. To establish, promote, or assist in establishing or promoting, and to subscribe to or become a member of any other association whose objects are similar, or in part similar, to the objects of the Company, or the establishment or promotion of which may be beneficial to this Company. **To promote associations**
- j. To administer or manage local or parochial funds of churches or parishes directly or through Juntas or fabricas or churchwardens, and to administer, manage, or control religious institutions and establishments.
- k. To invest and deal with the moneys of the Company not immediately required upon such securities and in such manner as may from time to time be determined, and to lend moneys with or without security. **To invest funds**
- l. To borrow or raise, and give security for money by the issue of or upon bonds, debentures, bills of exchange, promissory notes, or other obligations of securities of the Company or by mortgage or charge upon all or any part of the movable and immovable property of or vested in the Company. **To borrow money**
- (m) To construct, maintain, and alter any houses, churches, schools, buildings, or works necessary or convenient for the purposes of the Company. **To construct buildings**
- (n) To take such steps by personal or appeals, public meetings, or otherwise as may from time to time be deemed expedient for **To make**

the purpose of procuring contributions to the funds of the Company or of funds in which the company is interested in the shape of donations, annual subscriptions, or otherwise.

appeals

(o) To carry on the business of printers, bookbinders and publishers, and also to print and publish any newspapers, periodicals, books or leaflets that the Company may think desirable for the promotion of its objects.

(p) To subscribe to any local or other charities or religious or educational institutions or societies, and to grant donations for any public purposes, and to provide a superannuation fund for the Clergy of the Diocese of Allahabad and the servants of the Company, or otherwise to assist such Clergy or such servants and their dependants.

**To subscribe
to charities**

(q) To apply the moneys and properties of the Company generally for the support and maintenance of the Roman Catholic Bishop and Clergy of the Diocese of Allahabad and for Roman Catholic Religious charitable and educational purposes throughout the Diocese of Allahabad, The expression Roman Catholic when used in these presents shall mean members of the catholic religion who acknowledge the Bishop of Rome to be their supreme religious head.

**To support
the Bishop
and Clergy.**

(r) To manage, administer, and carry on any concern of whatsoever nature having objects similar or allied to any of the objects of the Company.

(s) To do all such other lawful things as are incidental or conducive to the attainment of the above objects and to the religious, moral, educational, and physical welfare of people in India."

**To do things
incidental**

Though, the object clause of M/s Roman Catholic Diocese Pvt. Ltd. makes mention of maintaining hospital in a passing manner, Intact the Society is not maintaining/ running any hospital since its inception till date. **The Society is running educational institutions and no hospital or any work relating to medical relief is being done by M/s Roman Catholic Diocese Pvt. Ltd. It is also a fact that the donation received from Nazareth Hospital Society has been utilized by the donee society (M/s Roman Catholic Diocese Pvt. Ltd.) in its charitable purposes of running a charitable educational institution and not for running any hospital.**

12. In view of the above, it is clear that the charitable activity in which M/s Nazareth Hospital Society is engaged is clearly distinct from the charitable activity in which M/s Roman Catholic Diocese Pvt. Ltd. is engaged and the donation given by M/s Nazareth Hospital Society to M/s Roman Catholic

Diocese Pvt. Ltd. has not been utilized for the purposes of objects of M/s Nazareth Hospital Society but has been utilized for the charitable objects of M/s Roman Catholic Diocese Pvt. Ltd. which is maintaining educational institution. Now, coming to the case laws relied on by the appellant, all the rulings of various High Courts and Supreme Court discuss that donation made by one charitable trust to another charitable trust will be treated as application of income in the hands of donor trust. However, in all the cases, the issue before the Hon'ble Courts was whether the donation by one trust to another will be treated as application of income and the Courts have not given any opinion on the issue of allowability of donation if the objects of donor and donee societies one different and the donee society has utilized donation received in furtherance of its objects and not the objects of donor society. In the case of **CIT vs. J.K. Charitable Trust** reported in **196 ITR 31 (AP)** it has been held that a charitable purposes may be served in more than one way. One is directly contribute for the promotion of that cause; the other is to contribute money to other charitable organization, which advances that cause. Thus, in this decision the **Hon'ble Court have held that donation made one charitable trust to another charitable trust shall be allowed as application of income only if the other charitable organization advances "that cause", i.e. the cause of donor charitable trust.**

13. In view of the above, it is clear that donation made by one charitable trust to another charitable trust is not allowable as application of income in all the circumstances. **If the objects of donor trust are different from objects of donee trust and donee trust does not utilize the donation received from the donor trust for the objects of cause of donor trust, the exemption on account of application of income is not available to the donor trust in terms of Section 11(1) of the I.T. Act.** This issue has come up for consideration before the **Hon'ble High Court of Delhi** in the case of **Mool Chand Khairati Ram Trust vs. Director of Income Tax (Exemptions)** reported in **59 Taxmann.com 398**, the Hon'ble High Court have had an occasion to examine the provisions of Section 11, Section 12 & Section 12A r.w.s. 2(15) of the IT. Act. The gist of the judgment is given as under –

"Section 11, read with sections 12 and 12A, of the Income -tax Act, 1961 - Charitable or religious trust, Exemption of income from property held under (Application of income) - Assessment year 2006-07 - Whether assessee would be entitled to exemption under section 11(1)(a), only if income is applied for charitable purpose for which properties are held in trust - Held, yes - Whether if assessee's activities are outside scope of its objects, it would not be entitled to exemption even if such activities are charitable in nature - Held, yes - Whether conditions imposed under section 12A are in addition to conditions or exemptions as specified under sections 11 and 12 and, thus, notwithstanding that an assessee has been granted a registration under section 12A, it would be necessary for assessee to comply with conditions of section 11 in order to claim any benefit under provisions of that section and it is necessary for Assessing

Officer to examine whether income derived from property held in trust has been applied for object of trust - Held, yes [Paras 26 to 29] [In favour of assessee]

Section 2(15), read with section 11, of the income-tax Act, 1961 - Charitable purposes (Medical relief) - Assessment year 2006-07 - Assessee-trust was set up with object of improving ayurvedic system of medicine - In furtherance of its objects, it set up a hospital which provided allopathic as well as ayurvedic treatment and included investigation techniques of modern medicine - It was denied exemption under section 11 on ground that proportion of receipts pertaining to ayurvedic research institute was significantly lower than that pertaining to hospital and, thus, assessee's activities were in excess of its objects - Whether since objects of trust did not prohibit running of an allopathic hospital or drawing from any other system of medicine for improving ayurvedic system of medicine and establishment of an allopathic hospital assisted assessee in its object of improving ayurvedic system, activities of assessee could not be held to be ultra vires its objects and fact that proportion of receipts pertaining to ayurvedic research institute was significantly lower than that pertaining to allopathic hospital would be immaterial in such case - Held, yes [paras 34 to 40] [In favour of assessee] Words and Phrases : 'Such purposes' as occurring in section 11(1)(a) of the Income -tax Act, 1961"

14. In view of the judgment of Hon'ble Delhi High Court in the case of **Mool Chand Khairati Ram Trust** (supra), it is clear that the expression "such purposes" appearing in Section 11(1)(a) of the I.T. Act in the context of application of income refers of those charitable purposes for which the properties, from which the income is derived, are held under the trust i.e. income derived from the property held under trust can be applied only to the objects of the donor trust or such incidental objects which have close nexus with or, conducive to the fulfillment of main object of donor trust. Such income cannot be applied for getting exemption for a purpose, even though charitable, which is not object of the donor trust. Thus, every application of income will have to be examined on the touch **stone of the object of the trust which intends seek to exemption on account of application of its income u/s 11(1)(a).**

15. From the above discussion, it is absolutely clear that objects of M/s Nazareth Hospital Society are running of hospital. **Only that application of income of this society can be treated as exempt in terms of Section 11(1)(a) which are utilized for fulfillment of objects of this society i.e. running of charitable hospital.** However, this society has made donation of Rs.72 lacs to another charitable society, namely, M/s Roman Catholic Diocese Pvt. Ltd. whose objects are clearly distinct from the objects of donor society. The donation made by donor society of Rs.72 lacs has admittedly be utilized by the donee society in fulfilling objects of running of educational institutions. Thus, it is clear that the donation of Rs.72 lacs has not been utilized by the donee society for fulfilling the

objects of M/s Nazareth Hospital Society, which is maintaining hospital and medical relief.

16. The appellant has further argued that the decision of the Allahabad High Court in the case of **J.K. Charitable Trust** is binding for lower authorities within the territorial jurisdiction of the Allahabad High Court. There is no doubt that the decision of the jurisdictional High Court is binding upon the lower authority within territorial jurisdiction of that High Court. However, the ratio-decidenti of case law has to be properly understood in the case of **J.K. Charitable Trust**. The Hon'ble High Court of Allahabad has very clearly mentioned that **donation made by donor trust to the donee trust shall be treated as proper application if the donee trust "advances that cause"**. Thus, it is clear that the decision of the **Hon'ble Allahabad High Court** in the case of **J.K. Charitable Trust** is also not in favour of the appellant case. The donation received by donee trust has not been utilized for advancement of cause of donor trust which is running of hospital and medical relief.

17. Further the appellant has relied on the case of **ACIT vs. Velliappa Textiles Ltd. (2003) 263 ITR 550 (SC)** with respect to interpretation of law. Relevant portion is reproduced as under –

"The Court only interprets the law and cannot legislate. To legislate is the prerogative of the Parliament or the State Legislature. A casus omissus should not be readily inferred and for the purpose all the parts of the statute or section must be constructed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provisions makes a consistent enactment of the whole statute. It is not open to court to add something or read something in statute on basis of some supposed intendment of statute. The maxim "Judicis est iudicare, non dare" pithily expounds the duty of the Court. It is to decide what the law is and apply it, not to make."

18. I am of the opinion that this case is also not going to help the appellant as it is not open to any Court to add any word or read something in statute on the basis of some supposed intendment of the statute. However, in the present case only the statute as appearing on the I.T. Act were properly appreciated. The provisions of Section 11(1)(a) clearly stipulate that only that income which has been applied for **"such purposes" will not be included** in total income of the trust which has been used **for such purposes by the trust**. The meaning of word "such purposes" has been clearly discussed in preceding paragraphs of this order to **mean as purposes for which the donor trust has been established**. The donation given by donor trust to donee trust can be considered as application of income of donor trust within the meaning of Section 11(1)(a) of the Act, **only if the same are utilized by donee trust for fulfilling the charitable objects of donor trust**. However, in the present case the donor trust i.e. the appellant whose objects are running maintaining hospital and nursing school

have made donation to another charitable trust namely M/s Roman Catholic Diocese Pvt. Ltd., whose objects are clearly different from the objects of the donor trust and who have admittedly utilized the donations not on running and maintaining any hospital but educational institutions maintained by it. **Thus, this donation is clearly not utilized by donee trust for the purposes of objects of the donor trust and, accordingly, in the light of the provisions of the Income Tax Act and also in the light of the decision of Hon'ble Delhi High Court in the case of Mool Chand Khairati Ram Trust (supra), it is held that donation of Rs.72 lacs made by the M/s Nazareth Hospital Society has not been utilized for the purposes of appellant trust.**

19. In view of the above discussion, I find no fault in the order of the A.O. and the addition made by him of Rs.72 lacs is confirmed and these grounds of appeal failed.”

5. Aggrieved by appellate order dated 27th February 2018 passed by Id.CIT(A), the assessee filed second appeal with tribunal. The appeal is heard by tribunal through video conferencing mode through Virtual Court. The Id. Counsel for the assessee opened arguments before the Bench and submitted that the assessee made contribution(donation) of Rs. 72 lacs to 'Roman Catholic Diocese Private Limited' , during the year under consideration. The Id counsel for the assessee submitted that the said amount is to be considered as application of income towards charitable purposes within the meaning of Section 11(1)(a) of the 1961 Act. It was submitted by Id. Counsel for the assessee that the assessee is running an hospital and school of nursing, while M/s Roman Catholic Diocese Private Limited is running educational institutions and is in the field of education. It was submitted that both the entities viz. assessee as well Roman Catholic Diocese Private Limited are registered u/s 12AA of the 1961 Act as charitable institutions. Our attention was drawn to CBDT circular No. F.No. 176/89/77-II(AT) , dated 5th January , 1978. The Id. Counsel for the assessee relied upon decision of Hon'ble Gujarat High Court in the case of CIT v. Sarladevi Sarabhai Trust No. 2 reported in (1988) 172 ITR 698(Guj.) , decision of Hon'ble Allahabad High Court in the case of CIT v. J K Charitable Trust reported in (1992) 196 ITR 31(All.) , decision of Hon'ble Delhi High Court in the case of Mool

Chand Khairati Ram Trust v. Director of Income Tax(Exemption), reported in (2015) 377 ITR 650 (Del.). The ld. Counsel for the assessee submitted that facts in the case of Mool Chand Khairati Ram Trust(supra) are not applicable to the facts of the assessee. On being asked by the Bench that the assessee's objects are approved , then diverting the money to other society whose objects are different , how the same can be treated as application of income for the objects of the assessee, the ld. Counsel for assessee submitted that provisions of Section 12 does not put restrictions on donating to other trust for other purposes. Our attention was drawn to provisions of Section 2(15) of the 1961 Act. The ld. Counsel for the assessee drew our attention to page 9 , 11 and 16 of ld. CIT(A) order. The ld. Counsel for the assessee relied upon the decision of Hon'ble Supreme Court in the case of CIT v. Sun Engineering Works Private Limited, (1992) 198 ITR 297(SC) and submitted that judgment is to be read in whole. It was submitted that Section 12 of the 1961 Act does not prohibit grant of donation to other trust and then it is to be treated as application of income. The ld. Counsel for the assessee also relied upon written submissions filed by assessee , containing 11 pages which are part of paper book filed by assessee and the same is placed in file. The ld. Counsel for the assessee in the aforesaid paper book containing in all 50 pages has also relied upon three case laws namely Hon'ble Allahabad High Court decision in the case of CIT v. J.K.Charitable Trust (1992) 196 ITR 31(Alld. HC) ; Hon'ble Delhi High Court decision in the case of Mool Chand Khairati Ram Trust v. Director of Income Tax(Exemption), (2015) 377 ITR 650(Del. HC) and decision of Hon'ble Gujarat High Court in the case of CIT v. Sarladevi Sarabhai Trust No. 2 reported in (1988) 172 ITR 698(Guj.HC) The ld. DR on the other hand relied upon appellate order passed by ld. CIT(A) and drew our attention to Section 11(1) , 11(2) read with Explanation, 11(3)(d) and 11(3A) of the 1961 Act. The ld. DR drew our attention to decision in the case of J K charitable Trust(supra), Sarladevi Sarabhai(supra) . It was submitted that the assessee is relying on old decision while the law is amended by Finance Act,

2005. The ld. Counsel for assessee submitted in rejoinder that Section 11(3)(d) and 11(3A) does not speak of donation made by one trust to other. Our attention was drawn to page 29 of the paper book filed by assessee with tribunal , para 20 of the decision of Hon'ble Delhi High Court in the case of MoolchandKharaiti Ram Trust(supra) . The ld. Counsel for the assessee submitted that the relevant provisions of the 1961 Act does not say that the income of the trust is to be applied for the purposes of the trust. The ld. Counsel for the assessee submitted that Hon'ble jurisdictional High Court in the case of J K Charitable Trust has considered both the pre-amended and post amended provisions of the 1961 Act.

6. We have heard both the parties through video conferencing mode through Virtual Court and perused the material on record including case laws cited before us. The assessee is admittedly an charitable organization engaged in medical relief and is running hospitals and school of Nursing at 13-A ,Kamla Nehru Road, Allahabad. The assessee was constituted and executed from 05.01.1976 . The assessee was registered as a charitable society registered u/s 12AA of the 1961 Act, vide orders dated 16.07.1976 passed by learned Commissioner of Income Tax ,Lucknow. The assessee had claimed exemption u/s 11 of the 1961 Act. The assessee had received total receipts of Rs. 21,45,14,778/- during the year under consideration, out of which Rs. 16,52,82,644/- was applied as application of fund, and surplus of Rs. 4,92,32,124/- was shown, which was more than 15% accumulation permitted u/s 11(1)(a) of the 1961 Act. The assessee has contributed Rs. 72,00,000/- as donation to Roman Catholic Diocese Private Limited, a charitable organization which is also admittedly registered u/s 12AA of the 1961 Act , and is engaged in the field of education as it is running educational institution during the year under consideration. It is an admitted position that although objects of the donee entity namely Roman Catholic Diocese Private Limited provided for engaging in the activity of running hospitals , but it was engaged only in the field of education and is

running educational institutions and had not undertaken any activity relating to medical relief or of running of an hospital, during the year under consideration. The short question which has arisen in this appeal for our consideration is as to whether contribution/donation of Rs. 72,00,000/- made by assessee who is a charitable origination engaged in the field of medical relief and running hospitals and school of nursing and registered u/s 12AA of the 1961 , to another charitable organization namely Roman Catholic Diocese Private Limited who is also registered u/s 12AA of the Act but was engaged in educational activities by running educational institutions, can be treated as application of income within the meaning of Section 11(1)(a) of the 1961 Act. It is also an admitted position that donee entity namely Roman Catholic Diocese Private Limited did not apply donation of Rs. 72 lacs received by it from the assessee for the activities of medical relief or for running hospitals , but the said donation received by it was applied for its educational activities and for running educational institution. Both the authorities below have concurred that since donation/contribution of Rs. 72 lacs was made by assessee to an charitable entity engaged in different object, it can not be said that the assessee has applied its income for the objects for which it was set up and hence the said amount cannot be treated as application of income within the provisions of Section 11(1)(a) of the 1961 Act and the same was accordingly brought to income-tax. Before we proceed further , it will be profitable to extract and discuss relevant provisions of the 1961 Act as are applicable for relevant period viz. ay: 2012-13, which are reproduced hereunder :-

“Definitions.

2. In this Act, unless the context otherwise requires,—

(15) "charitable purpose" includes relief of the poor, education, 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:]*

*[**Provided further** that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is [ten lakh rupees] or less in the previous year;]*"

Thus, perusal of Section 2(15) of the 1961 Act as was applicable during the relevant period did , inert-alia, provided that charitable purposes , inter-alia, included activities in the field of education and medical relief. However, the trust or societies or Companies incorporated under Section 25 of the then relevant Companies Act, 1956 (companies engaged in charitable activities) etc. , as the case may be, are governed by their trust deed, bye laws , Memorandum of Association , as the case may be, which are required to be registered under the relevant statute governing the said entities. These registered trust deed, bye laws or memorandum of association , as the case may be , provides for the objects for which the said trust,society or Section 25 Companies is set up. The settler of the trust expresses its intention for the purposes the trust is created by defining objects in object clause of trust deed and trustees are required to carry on their activities as specified and authorized by its object clause, else their activities shall be declared as ultra vires , as the trustees are acting in a fiduciary capacity while dealing with the trust funds. Similar is the case with society as well by Section 25 Companies. The trust deed , byelaws and Memorandum of Association, as the case may be, are Public Document and public at large has notice of the objects for which the said trust, society or Section 25 Company is formed. The voluntary contribution/donation made by Public to said entities is normally for the purposes of carrying on the activities as

specified in the object clause of trust deed, bye laws and Memorandum of Association , and any deviation beyond approved object clause shall be ultra vires and is diversion of fund which will tantamount to breach of trust by trustees who are holding fiduciary position as to trust money. Hence, the assessee whose activities are medical relief and running of hospital can make donation to another charitable entity engaged in education , and any diversion of funds to another charitable entity who is engaged in activity of education is an act which is ultra vires to its object clause and is not permitted. If the assessee intends to undertake activities of education in addition to existing activities of medical relief and running of hospitals, it necessarily needs to amend its object clause and then seek approval of authorities such as Charity Commissioner by getting the amended objects registered with Charity Commissioner as is provided under law. The registration of amended objects to carry on new activities in the field of education with Charity Commissioner will act as notice to Public at large that the trust intends to engage in newer activities of education apart from existing activities of medical relief and running of hospitals. The donors while contributing / making donation to the trust will have notice that contributions/donations made by them shall, inter-alia , will be applied for the activities of medical relief , running of hospitals and also new activities in the field of education . Similar is the position with Society or Section 25 Companies. In the 1961 Act, it provides for Commissioner to make enquiries as to objects of the trust or institution who is claiming benefits of Section 11 , before granting registration u/s 12AA of the 1961 Act. Provision of Section 12AA(1)(b) of the 1961 Act , are reproduced hereunder:

“Procedure for registration.

12AA. (1) The [] Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) [or clause (aa) of sub-section (1)] of [section 12A](#), shall—***

- (a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or***

*institution and may also make such inquiries as he may deem necessary in this behalf;
and*

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant :

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

***”

Thus, the Commissioner has to be satisfied as to the objects of the tax-payer being charitable in nature as also as to genuineness of the activities of the trust or institution , before granting registration u/s 12AA of the 1961 Act. Further, it is provided u/s 12AA(3) of the 1961 Act that in case the activities of the trust of institution are not genuine or are not carried out as per objects of the trust or institution, as the case may be, the Commissioner shall then pass an order in writing cancelling the registration of such trust or institution. Thus, the 1961 Act itself provided that the activities of the trust or institution, as the case may be, has to be carried out as per objects of the such trust or institution, otherwise consequences by way of cancellation of registration of the said charitable organization is provided for. The said Sub-section 12AA(3) is reproduced hereunder:

“Procedure for registration.

12AA.

(1)***

(1A) ***

(2)***

[(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under [section 12A](#) [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)]] and subsequently the

Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]”

Now , proceeding further , It is important at this stage to reproduce provisions of Section 11(1)(a) of the 1961 Act , as it stood at that relevant period:

“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; :

Thus, the provision of Section 11(1)(a) of the 1961 Act provides that (subject to provisions of Section 60 to 63 of the 1961 Act) income derived from property held under trust wholly for charitable or religious purposes shall not be included in the total income of the previous year or the person in receipt of the income, to the extent 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 percent of the income from such property. Thus, the AO while granting exemption u/s 11 of the 1961 Act has to make enquiry that income derived by assessee from property held under trust wholly for charitable or religious purposes is applied for ‘such’ purposes in India. Thus, the use of the word ‘such’ here necessarily has to be given restrictive meaning and refers to the purposes for which the trust or institution was established which is defined in its object clause, otherwise the law makers would have used the words that the income is applied for charitable or religious purposes instead of using the word ‘such purposes’ which , in our

considered view , shall relate back/refer to the income derived from property held under trust wholly for charitable or religious purposes , as the tax-payer will be granted exemption u/s 11(1)(a) of the 1961 Act of the income derived from property held under wholly for charitable or religious purposes and its utilization for such purposes in India, as per the language used in Section 11(1)(a) itself. The Id. CIT has already made enquiry/satisfaction as to genuineness of the activities of the trust and of its objects , before granting registration u/s 12AA of the 1961 Act. Thus, the utilization of voluntary contribution/donation received by trust/institution has to be for such purposes as are **intra-vires to its object clause** and it cannot be extended to cover each and every object which is charitable or religious in nature which otherwise is ultra-vires to its object clause. It is well established principle of interpretation that every word used by lawmakers in the statute has to be taken into effect while interpreting statute and no word used by lawmaker is surplus. Thus, the use of word 'such purposes' in Section 11(1)(a) of the 1961 Act, in our considered view, narrows the application of income derived from property held under trust wholly for charitable or religious purposes to the purposes as are **intra-vires to its object clause** and it cannot be stretched to cover each and every object which is charitable or religious in nature , but is otherwise not authorized by its object clause and are found to be ultra vires. Even , referring to provisions of Section 11(2) of the 1961 Act clearly stipulates that in case of voluntary contribution having not been applied to charitable or religious purposes in India during the previous year , but is accumulated or set apart , for application to such purposes in India. Thus, the accumulation of income is also given a restrictive meaning by qualifying to accumulation to such purposes in India , which shall again relate back to the object clause of the charitable entity and has to be intra-vires to its object clause. The provisions of Section 11(3) of the 1961 Act provides that in case of accumulation of income , if the same is applied to purposes other than charitable or religious purposes as aforesaid, then the same shall be deemed to be income of

the tax-payer in the year in which it is so applied. Thus, the charitable or religious purposes is qualified by use of words 'as aforesaid' to give it restrictive meaning to charitable or religious purposes as are provided in the object clause of the trust or institution . Similarly, provisions of Section 11(3A) of the 1961 Act provides that in case of accumulation of income , if due to circumstances beyond the control of person having received income, any income deposited or invested in accordance with 11(2)(b), cannot be applied or accumulated for the purposes for which it was accumulated or set apart, the AO , may on application , made to him in this behalf, allow such person to apply such income for such other charitable or religious purposes in India as is specified in application made by said person to AO and **as in conformity with the objects of the trust**. Thus even under provisions of Section 11(3A),the purposes of application has to be in conformity with the object clause of the trust or institution. The said sub-section 11(2), (3) and (3A)of the 1961 Act are reproduced below:

"[(2) [Where ¹[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:—]

(a) such person specifies, by notice in writing given to the [Assessing] Officer in the prescribed manner, 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 ten years;

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

[Provided that in computing the period of ten 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:]

[Provided further that in respect of any income accumulated or set apart on or after the 1st day of April, 2001, the provisions of this sub-section shall have effect as if for the words "ten years" at both the places where they occur, the words "five years" had been substituted.]

[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 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.]

[(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 or in the year immediately following the expiry thereof,

[(d) is credited or paid to any trust or institution registered under [section 12AA](#) 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 in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or [credited or paid or], as the case may be, of the previous year immediately following the expiry of the period aforesaid.]

[(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 ⁵[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](#):]

[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.]”

***”

Now, coming to the case laws cited before us during the course of hearing. The reliance has been placed on decision of Hon'ble Jurisdictional High Court decision in the case of CIT v. J.K.Charitable Trust, 196 ITR 31(Alld.). The year under consideration before Hon'ble High Court was ay: 1972-73 and 1973-74. This was a reference made u/s 256(1) of the 1961 Act and as many as eleven questions were stated before Hon'ble High Court (eight at the instance of the Revenue and three at the instance of the assessee). The relevant question for us as was referred by Revenue was question number 3 , which is reproduced as hereunder:

“3. Whether, on the facts and in the circumstances of the case, the donations made to other charitable trusts would be hit by the provisions of section 11(3) of the Income-tax Act, 1961 ?”

The Hon'ble High Court answered the above question in favour of assessee and against the Revenue, by holding as under:

“5. We shall now take up question No. 3 referred at the instance of the revenue, which was the main question canvassed before us. Before we take up the question proper, it would be appropriate to briefly notice the relevant provisions of the Act, as they stood at the relevant time. Section 11(1) provided inter alia, that income derived from property held under trust wholly for charitable/religious purposes shall not be included in the total income to the extent to which the said income is applied to charitable/religious purposes in India. Sub-section (2) of section 11 provided that even if the income is not so applied but is accumulated or set apart for application to such purposes in India, even then it shall be exempt, provided certain conditions specified in the sub-section are complied with. Sub-section (3) of section 11 then said that in case any income referred to in sub-section (2) is applied to purposes other than charitable or religious purposes or ceases to be accumulated or set apart for application to such purposes, it shall cease to be exempt and shall be included in the income of the previous years in which it is so applied for other purposes or ceases to be accumulated or set apart for application to such purposes. Section 12, as it obtained prior to 1-4-1973, contained two sub-sections. Under sub-section (1), any income of a trust created for charitable/religious purposes,

derived from voluntary contributions and applicable solely to charitable or religious purposes, shall be exempt. Sub-section (2) dealt with a case where a charitable/religious trust received contributions from another religious/charitable trust, to which section 11 applied. The sub-section said that such contributions shall, in the hands of the recipient-trust, be deemed to be income derived from property for the purposes of section 11 and all the provisions of section 11 shall apply accordingly. It would be appropriate to set out section 12 in its entirety, as obtained prior to 1-4-1973:

"Income of trusts or institutions from voluntary contributions.—(1) Any income of a trust for charitable or religious purposes or of a charitable or religious institution derived from voluntary contributions and applicable solely to charitable or religious purposes shall not be included in the total income of the trustees or the institution, as the case may be.

(2) Notwithstanding anything contained in sub-section (1), where any such contributions as are referred to in sub-section (1) are made to a trust or a charitable or religious institution by a trust or a charitable or religious institution to which the provisions of section 11 apply, such contributions shall, in the hands of the trust or institution receiving the contributions, be deemed to be income derived from property for the purposes of that section and the provisions of that section shall apply accordingly."

Section 12 was substituted in its entirety by the Finance Act, 1972 with effect from 1-4-1973. The substituted section 12 reads as follows:

"Income of trusts or institutions from contributions.—Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly."

Section 13 provided situations where the exemption provided by sections 11 and 12 shall not apply. The several provisions of section 13 are designed to ensure the religious/charitable nature of the trust and to ensure further that its functioning does not result in any benefit to the authors of the trust or relatives or concerns controlled by them.

6. Now, the question is whether the donations made by the assessee-trust to other charitable trusts are hit by section 11(3). For the sake of convenience, we may set out sub-section (3) in full. It reads:

"Income from property held for charitable or religious purposes.—

(1)and(2)*****

(3) Any income referred to in sub-section (1) or sub-section (2) as is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto or is not utilised for the purpose for which it is so accumulated in the year immediately following the expiry of the period allowed in this behalf shall be deemed to be the income of such person of the previous year in which it is so applied, or ceases to be so accumulated or so set apart or, as the case may be, of the previous years immediately following the expiry of the period aforesaid."

The Tribunal was of the opinion that contribution to other charitable trusts is within the power and competence of the income of the trust for "the advancement of any other object or general public utility as the trustees may, in their absolute discretion, deem fit and in such way as they may consider most advantageous to the recipients". We are inclined to agree with it. A charitable purpose may be served in more than one way. One is to directly contribute for the promotion of that cause, the other is to contribute money to another charitable organisation which advances that cause. In the absence of allegations of device and or mala fides, the amount contributed to other charitable institutions out of the income accumulated under sub-section (2) is outside the mischief of sub-section (3) of section 11. In other words, such contribution does not amount to application of the income for purposes other than charitable or religious.
(Emphasis supplied by us)

7. A good amount of controversy, however, arises as to the position where such contributions are made, not out of the income accumulated under sub-section (2), but out of contributions received by the assessee-trust. We have already set out section 12 as it obtained prior to 1-4-1973 and also as it obtains with effect from the said date. Out of the two assessment years, the assessment year 1972-73 is governed by the un-amended section 12, whereas, the assessment year 1973-74 is governed by the amended section 12. The change in section 12, however, makes no difference insofar as the facts of the present case are concerned. Under section 12(1) as it stood prior to 1-4-1973, the income of a charitable/religious trust, derived from voluntary contributions and applicable solely to charitable/religious purposes, was not liable to be included in the total income of the trust or the trustees, as the case may be. It is not the case of the

revenue that contributions were made to the assessee-trust with a direction to apply them to purposes other than charitable or religious; evidently, the persons/organisations contributing the amounts to the assessee-trust intended them to be applied to charitable or religious purposes. Once we hold that contribution to another charitable trust is an application for charitable purposes, no further question arises. In other words, such contribution to another charitable trust by the assessee-trust cannot be treated as the income of the assessee-trust in the year of contribution. Even if we apply section 12 as it obtained from 1-4-1973, and applicable to the assessment year 1973-74, the result is not different. According to the amended section 12, voluntary contributions received by a religious/charitable trust shall, for purposes of section 11, be deemed to be income derived from property held under trust wholly for charitable/religious purposes and the provisions of sections 11 and 13 shall apply accordingly. Therefore, so far as the assessment year 1973-74 is concerned, the position (with respect to the amounts contributed by the assessee-trust to other charitable trust from out of contributions received by it) is the same as the one obtaining with respect to income derived by the assessee-trust from the properties held under trust wholly for charitable or religious purposes.

9. For the above reasons, question No. 3 is answered in the negative, that is, in favour of the assessee and against the revenue.”

As could be seen above from the judgment, the Hon'ble High Court noted in the above reference that the tribunal was of the opinion that contribution to other charitable trust is within the powers and competence of the trustees. The Hon'ble High Court further observed that tribunal relied upon **sub-clause (k) of clause 2 of the deed of the trust which , inter-alia , empowers the trustees to apply the income of the trust for “ the advancement of any other object of general public utility as the trustees may in their absolute discretion deem fit and in such way as they may consider most advantageous to the recipients”**. The Hon'ble High Court agree with the findings of the tribunal. The clause 2(k) of the trust deed in the case of J. K. Charitable Trust (as extracted from judgment of Hon'ble High Court) is reproduced hereunder:

“ (2)(k) And generally for the benefit of the poor and the incapacitated and/or such deserving persons including the marriage of poor women and the advancement of any other object of general public utility as the trustees may in their absolute discretion deem fit and in such way as they may consider most advantageous to the recipients.”

Then Hon'ble jurisdictional High Court went on to hold that charitable purpose may be served in more than one way .One is to directly contribute for promotion of that cause ; the other is to contribute money to other charitable organization, which advances that cause. Thus, it was in contemplation of Hon'ble High Court that contributing money to other charitable organization **which advances that cause**, while granting exemption to the tax-payer The Hon'ble High Court held that in the absence of allegation of device and or mala fides, the amount contributed to other charitable institutions out of income accumulated under Section 11(2) was held to be outside the mischief of provisions of Section 11(3). Thus, it was held that such contribution does not amount to application of the income for purposes other than charitable or religious purposes. Thus, the act of contributing to other charitable entity was held to be entitled for exemption keeping in view that the same was found to be intra-vires keeping in view wide scope of clause 2(k) in the trust deed, while in the instant case before us, we do not find that any clause in the object clause of Memorandum of Association of the assessee was wide enough to cover the activities in the field of education , as all the clauses are towards incidental and attainment of main object of the assessee to establish and run hospitals, nursing homes , welfare homes , rest houses for the good and benefit of the people. The entire object clauses of the assessee as well of the donee are reproduced by Id. CIT(A) in its appellate order. The Residuary clause 'M' is also towards the attainment of main object of the assessee to establish and run hospitals, nursing homes , welfare homes , rest houses for the good and benefit of the people, which reads as under:

“ M. To do or to cause to be done any or all such acts or things as shall be in keeping with the objects of the Society, provided such things or acts be not contrary or inconsistency with the spirit and principles of the law under which the Society has been organized and registered.”

Thus, in our considered view the act of donating/contributing Rs. 72,00,000/- as donation by the assessee to donee viz. Roman Catholic Diocese Private Limited , was ultra vires the object clause of the donor and does not comply with the mandate of Section 11(1)(a) of the 1961 Act , and authorities below have rightly rejected the claim of exemption filed by assessee. Our view is supported by decision of Hon'ble Delhi High Court , dated 27.07.2015 in the case of Mool Chand Khairati Ram Trust(supra) for ay: 2006-07, in which the Hon'ble Delhi High Court considered this issue of applying the income for the objects of the trust and held as under:

“19. *At the outset, it would be necessary to refer to clause (a) of sub Section (1) of Section 11 of the Act which reads as under:—*

“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;”*

20. *A plain reading of Section 11(1)(a) of the Act indicates that for income to be excluded under the said clause the following conditions must be met:—*

- (a) *That the income is derived from property held under Trust wholly for charitable purposes; and*
- (b) *The income is applied for such purposes in India.*

Income from the property, which is set apart for application for such purposes, is also exempted to the extent that it is not in excess of 15% of the income from such property.

21. The expression "such purposes" clearly refers to the purposes for which the property is held in Trust. Both the conditions i.e. the income should be derived from the property held in Trust for charitable or religious purposes and the condition that the income is applied for such purposes, are cumulative.

22. We are unable to accept the contention that the expression "such purposes" would mean any charitable or religious purpose, even if the said purpose is not the purpose for which the property is held in Trust. The contention that as long as the Assessee applies the income from a property held in Trust for charitable or religious purpose, to any charitable or religious purpose, the exemption under Section 11(1)(a) of the Act would be available, notwithstanding that the purpose for which the income is applied is not the purpose for which the property is held in Trust, cannot be sustained as the same would be contrary to the plain language of Section 11(1)(a) of the Act. In order for any income to be excluded from the scope of total income, the same must be derived from a property held in Trust for a charitable or religious purpose and must also be applied for that purpose.

23. In Dawoodi Bohara Jamat (supra), the Supreme Court had referred to Section 11 of the Act and observed as under:—

" The income of a charitable or religious trust is exempt from taxation under the correlated provisions of sections 11, 12, 12A, 12AA and 13. Section 11 deals with income from trusts for charitable and religious purposes and sets out which income shall be exigible to taxation. 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."

24. Mention may also be made of the decisions rendered by this Court in CIT v. Hotel & Restaurant Association [\[2003\] 261 ITR 190/132 Taxman 76 \(Delhi\)](#), Bharat Kalyan Pratisthan v. DIT (Exemption) [\[2008\] 299 ITR 406/\[2007\] 160 Taxman 216 \(Delhi\)](#), DIT (Exemption) v. Daulat Ram Education Society [\[2005\] 278 ITR 260/\[2006\] 156 Taxman 399 \(Delhi\)](#), DIT (Exemption) v. Mamta Health Institute for Mother & Children [\[2007\] 293 ITR 380/162 Taxman 235 \(Delhi\)](#) and NBIE Welfare Society (supra). In these decisions, the Court affirmed that if income is accumulated for applying towards the object of the Trust, which is wholly charitable or religious, the exemption under Section 11(2) of the Act would be available to the Assessee, provided the conditions as specified under Section 11(2) of the Act are met. Although these decisions were rendered in the context of Section 11(2) of the Act, the same would also be applicable while interpreting Section 11(1)(a) of the Act, as Section 11(2) of the Act also uses the expression "such purposes" which has been interpreted to mean the charitable/religious objects for which the properties are held in Trust. At this stage, it is necessary to refer to Section 11(2) of the Act, which reads as under:—

"11(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:-

- (a) such person specifies, by notice in writing given to the Assessing Officer in the prescribed manner, 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 ten years;*
- (b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5):"*

25. *The expression "such purposes", obviously, has the same meaning as used in Section 11(1)(a) of the Act. Section 11(2) of the Act has to be read in conjunction with Section 11(1) of the Act. While Section 11(1)(a) of the Act provides for exemption for income applied during the relevant previous year, Section 11(2) of the Act provides for conditions subject to which such income could be accumulated for use in later years.*

26. *In the aforesaid circumstances, the Assessee would be entitled to the exemption under Section 11(1)(a) of the Act, only if the income is applied for the charitable purpose for which the properties are held in Trust.*

27. *We also do not find any merit in the contention that the AO is not entitled to inquire whether the income is applied towards the charitable or religious purpose for which the property, from which the income is derived, is held in Trust. It is necessary for the AO to satisfy himself that the conditions for exclusion, as specified under Section 11(1)(a) of the Act, are met and for the said purpose the AO can make such inquiries as necessary.*

28. *The contention that since the Commissioner, by virtue of Section 12A(3) of the Act, is empowered to cancel the registration granted to an Assessee if it is found that the activities of a Trust or an institution are not genuine or are not being carried out in accordance with the object of the Trust or institution, the AO is precluded from examining whether the Assessee had applied its income for the object of the Trust or institution, is wholly without merit. The opening words of Section 12A(1) of the Act read as under:—*

"Section 12A(1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:-"

29. *The opening words of Section 12A(1) of the Act clearly indicate that the conditions imposed under that section are in addition to the conditions or exemptions as specified under Sections 11 and 12 of the Act. Thus, if the conditions as specified under Section 12A(1) of the Act are not met, then the exemption available under Section 11 of the Act would not be available to the Assessee. This does not mean that if a trust is registered under Section 12A of the Act, exemption under Section 11 and Section 12 of the Act would necessarily follow. The provisions of Section 12 of the Act do not curtail or in any manner dilute the mandatory requirements of Section 11 of the Act. Thus, notwithstanding that an Assessee has been granted a registration under Section 12A of the Act, it would be necessary for the Assessee to comply with the conditions of Section 11 of the Act in order to claim any benefit under the provisions of that Section.”*

Thus, the Hon'ble Delhi High Court has held that to avail exemption u/s 11(1)(a), income derived from property held under trust wholly for charitable or religious purposes, has to be applied for such purposes as are specified in object clause and are not ultra vires to the object clause. It is true that the assessee can either itself carry out charitable activities or it can contribute to other trust or institution who is carrying on the activities which are also the same/similar as per assessee's object clause in Memorandum of Association. The assessee's Memorandum of Association permit carrying on activities to establish and run hospitals, nursing homes, welfare homes, rest houses for the good and benefit of the people and the assessee in fact is engaged in running hospital and school of nursing at Allahabad, while the donee entity namely Roman Catholic Diocese Private Limited is engaged in the activities in the field of education.. Although, the object clause of Roman Catholic Diocese Private Limited refers to hospitals, but what transpires from enquiries conducted by lower authorities that during the year under consideration admittedly the said donee entity was never engaged in the activities of medical relief and running of hospitals, and in fact it utilized the donation of Rs. 72 lacs received from assessee for the purposes of education. Even, in the decision of Hon'ble Gujarat High Court in the case of CIT v. Sarladevi Sarabhai Trust No. 2 reported in (1988) 172 ITR 698(Guj.) relied upon by assessee was a decision for ay: 1975-76, a reference is made to decision of Hon'ble Bombay High Court in the case of CIT v. Trustees of Jadi

Trust(1982) 133 ITR 494(Bom. HC), wherein Hon'ble Bombay High Court placed with approval reliance on English Authority of the Chancery Division in the case of IRC v. Helen Slater Charitable Trust Limited (1980) 1 All ER 785. The relevant extract from decision in the case of Sarladevi Sarabhai Trust No. 2(supra) are reproduced hereunder:

"If any authority were needed to support the aforesaid conclusion of ours, it is supplied by a decision of the Division Bench of the Bombay High Court in the case of Trustees of the Jadi Trust (supra). In that case, the Division Bench consisting of Chandurkar, J. (as he then was) and Sawant, J., had to consider a similar question. The assessee-trust called Jadi Trust was to make over net income of its trust fund by way of gift or donation to another trust called H.C. J. Charitable Trust so that the donee-trust could utilise the net income in its hands for all or anyone or more of the charitable purposes mentioned in the trust deed dated 29-3-1963 under which the H.C. J. Charitable Trust was created. The question was whether such type of utilisation of net income of Jadi Trust the donor trust could entitle the donor trust to the benefit of section 11. The Commissioner contended before the Bombay High Court that provision of section 11 would not be satisfied in such a case. Repelling this contention and placing reliance on a decision of the Chancery Division in IRC v. Helen Slater Charitable Trust Ltd. [1980] 1 All. E.R. 785 wherein Slade, J., spoke for the Court of Chancery the Division Bench of the Bombay High Court quoted with approval the following observation of Slade, J., in the case of Helen Slater Charitable Trust Ltd. (supra) rendered in the context of a parallel statutory scheme reflected by section 360(1) of the Income and Corporation Tax Act, 1970 and section 35(1) of the Finance Act, 1965 as in force in England at the relevant time:

*"Any charitable corporation which, **acting intra vires**, makes an outright transfer of money applicable for charitable purposes to any other corporation established exclusively for charitable purposes, in such manner as to pass to the transferee full title to the money, must be said, by the transfer itself, to have 'applied' such money for 'charitable purposes' within the meaning of the two sub-sections, unless the transferor knows or ought to know that the money will be misapplied by the transferee. In such circumstances and subject to the lastmentioned exception the transferor corporation is in my judgment entitled to claim*

exemption under the two sub-sections, without having to show how the money has been dealt with by the transferee." (p. 505)"

(Emphasis Supplied by us)

In the instant case before us, we have observed that the objects of the donor viz. assessee only permitted to engage in activities to establish and run hospitals, nursing homes, welfare homes, rest houses for the good and benefit of the people, and other objects which are incidental to the attainment of above main object . The objects as are approved by assessee no where stipulated engaging in educational activities and its act in donating Rs. 72 lacs to a charitable organization namely M/s Roman Catholic Diocese Private Limited who is engaged in educational activities, is an act ultra vires to the object clause of the assessee and also does not fulfill the condition as stipulated u/s 11(1)(a) to apply its income for such purposes in India . Thus, based on detailed discussions above, we hold that the assessee will not be entitled for exemption of Rs. 72 lacs paid by it as donation to M/s Roman Catholic Diocese Private Limited, under the provisions of Section 11(1)(a) of the 1961 Act and the appeal filed by assessee fails. We order accordingly.

7. In the result, the appeal filed by the assessee in ITA no. 165/Alld/2018 for ay" 2012-13 is dismissed.

Order pronounced on 18/02/2021 in Open Court at Allahabad.

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 18/02/2021
sh

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant -
2. Respondent -
3. CIT(A) -
4. CIT
5. DR -

By order
Assistant Registrar