IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI E BENCH, MUMBAI
(through web-based video conferencing platform)

[Coram: Justice P P Bhatt, President, and Pramod Kumar, Vice President]

ITA Nos 1423 and 1424/Mum/2018
Assessment years: 2011-12 and 2012-13

Tata Education and Development Trust ……...……..Appellant
Bombay House, 24 Homi Mody Street,
Fort, Mumbai 400 001 [PAN: AABTT5628C]

Vs

Assistant Commissioner of Income Tax
Exemptions Circle 2, Mumbai ……..….....Respondent

ITA No. 1535/Mum/2018
Assessment year: 2012-13

Assistant Commissioner of Income Tax
Exemptions Circle 2, Mumbai ……...……..Appellant

Vs

Tata Education and Development Trust ……..….....Respondent
Bombay House, 24 Homi Mody Street,
Fort, Mumbai 400 001 [PAN: AABTT5628C]

Appearances by

P J Pardiwalla, Sr Advocate, *along with* **Sukh Sagar Syal, Advocate**
T P Ostwal and Indra Anand , CAs *for the taxpayer*

R Manjunathaswamy, Commissioner (DR)
alongwith **Sundeep Kumar, Assessing Officer in person,** *for the Assessing Officer*

Date of concluding the hearing : July 13, 2020
Date of pronouncement : July 24, 2020

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Per Bench:

1. These three appeals pertain to the same assessee, involve some common issues and were heard together. As a matter of convenience, therefore, all the three appeals are being disposed of by this consolidated order.

Core issue in appeal:

2. The common ground of appeal, raised by the assessee, requiring adjudication in both of these years, i.e. assessment years 2011-12 and 2012-13, is "**whether or not the learned Commissioner of Income Tax (Appeals) ["CIT(A)"] was justified indenying deduction for the income applied outside India under section 11(1)(c) of the Income Tax Act, 1961 ["the Act"], even though the appellant has an order from the Central Board of Direct Taxes ["CBDT"] as required by the proviso to Section 11(1)(c) of the Act**".

3. Let us set out, in plain words, the controversy requiring our adjudication. The assessee trust had spent monies for creation of endowment funds, through contribution at the Cornell University USA, for scholarship of Indian students, as well as for foreign collaboration project between Indian and Cornell scientists, and grant of financial assistance to Harvard Business School for construction of a new executive building named Tata Hall. The amounts spent on this account, for the assessment year 2011-12, was Rs 197,79,27,500, and, for the assessment year 2012-13, was Rs 25,37,00,000. The question really is whether the amounts so spent by the assessee trust will be treated as permissible application of the trust income, and, accordingly, will be the assessee be eligible for tax exemption, under section 11, in respect of that income.

Facts of the case and developments leading to this litigation before us:

4. The assessee before us is a public charitable trust registered under Bombay Public Trust Act 1950 (now known as Maharashtra Public Trust Act 1950), as also as charitable institution under the Section 12A of the Income Tax Act, 1961. In both of these assessment years, the assessee had returned NIL income, but had also claimed amounts remitted to the educational universities outside India as application of income under section 11(1)(c). This amount, for the assessment year 2011-12, was Rs 197,79,27,500, and, for the assessment year 2012-13, was Rs 25,37,00,000. During the course of the scrutiny assessment proceedings, the Assessing Officer

noticed that in terms of proviso to Section 11(1)(c), unless the Central Board of Direct Taxes, by way of a general or special order, specifically approves that the income derived from property held under trust, applied for the purposes of specified under section 11(1)(c)(i) and (ii), shall not be included in the total income of the person in receipt of such income, it shall not be excluded from the total income of the person in receipt of such income. The Assessing Officer further noticed that as no such approval from the Central Board of Direct Taxes has been granted, the amounts remitted abroad for application of trust funds are required to be included in the income of the assessee. These amounts were thus added to the income of the assessee trust. Aggrieved, assessee carried the matter in appeal before the CIT(A), but, even as the appeal was pending before the learned CIT(A), the Central Board of Direct Taxes, vide order dated 10th November 2015, granted approval under section 11(1)(c), which was specifically "stated to have effect for the period covered by assessment years 2009-10 to 2016-17" and it permitted application of funds, by the trust, "for charitable purposes for grant of creation of endowment funds through contribution at the Cornell University USA, for scholarship of Indian students as well as for foreign collaboration project between Indian and Cornell scientists, and grant of financial assistance to Harvard Business School for construction of a new executive building named Tata Hall, as per details below" which included US $ 43.75 million for the assessment year 2011-12 and US $ 5 million for the assessment year 2012-13. Based on this approval issued by the CBDT, the Assessing Officer rectified, under section 154 of the Act, the assessment orders for the assessment year 2011-12, on 8th December 2015, and for the assessment year 2012-13, on 9th August 2016. The additions in question, i.e. on account of application of funds abroad without specific approval of the CBDT- Rs 197.79 crores for the assessment year 2011-12 and Rs 25.37 crores for the assessment year 2012-13, were thus deleted by the Assessing Officer himself. However, learned CIT(A) disregarded these rectification orders by observing that the rectification order under section 154 "does not merit consideration in this appeal as the present appeal has been filed against the order of the AO passed under section 143(3) of the Act". He proceeded to hold that the CBDT's approval dated 10th November 2015 "is not retrospective in nature", that "the said order of the CBDT has been passed in response to assessee's application dated 31st March 2015, and, therefore, it cannot apply to the assessment year 2011-

12 *(and 2012-13)*", and that the related verifications, as is the condition precedent for allowing the benefit, was not carried out in the original assessment proceedings. The impugned additions were thus, in effect, restored by the learned CIT(A), even though, based on the CBDT approval, the Assessing Officer himself had deleted those additions in the rectification proceedings. Aggrieved by the action of the CIT(A), the assessee is in appeal before us.

Rival contentions, and the facts as highlighted by the parties during the course of the arguments:

5. Shri Pardiwalla, learned senior counsel appearing for the assessee, begins by pointing out that principal issue in this appeal is with respect to claim of the assessee for exemption of income earned by the assessee trust in respect of the income applied for charitable purposes outside India. He submits that the appellant trust was constituted, in 2008, under the Bombay Public Trust Act 1950 (now known as Maharashtra Public Trust Act 1950), and had duly obtained its registration as a charitable institution under the Section 12A of the Income Tax Act, 1961. It was pointed out that admittedly there is no dispute about its objects being charitable in nature and this fact has been accepted as such all along by the Assessing Officer. It is submitted that during the previous years relevant to the assessment years 2009-10 to 2016-17, the assessee had spent monies, *inter alia*, on donations to two US based universities, namely Cornell University and Harvard University, pursuant to certain agreements. These payments were made with proper regulatory approvals of the Reserve Bank of India, and there is no dispute on that aspect. There is also no dispute, according to the learned counsel, that these amounts spent for the purposes for which the appellant trust was established. Learned counsel then submits that normally when an income of the trust is applied to the objects of the trust, ordinarily that it is exempted from tax. Elaborating upon this proposition, he invites our attention to the scheme of Section 11 of the Act, reads it out and points out that so far the amounts spent outside India are concerned, under section 11(c), the corresponding income is required to be treated as exempt, subject to condition, *inter alia*, that "the Board, by general or special order, has directed……that it shall not be included in the total income of the person in receipt of such income". It is thus

submitted that, for such an expenditure being treated as a qualifying expenditure for the charitable purposes of the assessee and resultant exemption income of the assessee, there has to be a general or special approval of the Central Board of Direct Taxes. Learned counsel then invites our attention to the letter dated 26th May 2010 written by the assessee trust to Member, Central Board of Direct Taxes (a copy of which is placed before us at paper-book pages 1-4) which, inter alia, states as follows:

> **We present this Application for favour of an issue of Requisite Order as contemplated under the proviso to Section 11(1)(c) of the Income-Tax Act, 1961, for the Assessment Years 2009-10 to 2011-12.**
>
> **1) Tata Education and Development Trust was founded in the Year 2008, by Mr. Ratan Naval Tata. [Trust Deed enclosed - Exhibit 'Al The Trust has been registered as a Public Charitable Trust with the office of the Charity Commissioner, Maharashtra State, under E-25973 (BOM) [Certificate enclosed - Exhibit 'B'). The Trust is also registered with the Commissioner of Income-Tax, Mumbai u/s 12-A(a1) under TR/42070 of September 15, 2008. [Certificate enclosed - Exhibit 'C']**
>
> **2) Clause 5(1) the Trust Deed dated July 25, 2008 lays down that:**
>
> **Across several countries globally, there have been significant scientific and technological developments, many of which have a crucial bearing on the growth and prosperity of India in the new emerging globalized world.**
>
> **Subject to regulatory approvals, as may be necessary, the Trust will invest in projects in India or outside India that promote the development of knowledge and expertise in several areas vital for India's growth and competitive ability. Projects that may be so established by the Trust by way of foundations or grants will cover several areas such as Nano Technology, agricultural sciences, climate change studies, ecological and human habitat studies, etc. The Trust will also support study and exchange programmes that promote the spread of knowledge by way of Scholarships and Freeships to students and teachers in Programmes in India or outside India with a view to bringing to bear upon Indian Institutions new technological initiatives and projects which foster the development of Indian capabilities. Foreign academic and research institutions will be duly selected for setting up such collaborative initiatives to be funded by the Trust in order to enhance India's strength.**
>
> **3(a) Tata Education And Development Trust established an endowment fund through contribution totaling $50 million at Cornell University at USA to establish *'Tata Scholarships for Students from India Fund" and "Tata-Cornell initiative in Agriculture and Nutrition Fund".***
>
> **Generations of Indian undergraduate students from India would be able to access educational opportunities in one of the best Universities in the world, 'Cornell University' to meet their ambitious goals.**

- ***'Tata Scholarships for Students from India Fund"*** **would provide financial assistance to only those undergraduate students with demonstrated financial need enrolled at Cornell University, who are citizens of India and who attended a secondary school in India.**

  'Tata-Cornell initiative in Agriculture and Nutrition Fund' **(TACO-AN) is a second joint collaboration project with Cornell scientists and students their Indian counterparts working in public and private sector.**

  The activities conducted of Tata-Cornell Initiative in Agriculture and Nutrition (TACO-AN), are designed to encourage collaboration among Indian and Cornell scientists that will spur strategic investments designed to accelerate agriculture productivity, and reduce malnutrition among the rural poor in India.

  Their main aim is to improve the livelihoods and nutritional status of rural poor in India. This core group is further supported by a Scientific Advisory Committee, who holds planning sessions at regular intervals.

(b) **Considering the growing economic conditions in India, Tata Education and Development Trust recognizes the need to have dynamic Indian business leaders for developing and implementing sustainable strategies for doing business in India and around the world. The Trust is planning to launch an executive education program in an association with Harvard Business School, USA which would benefit many deserving Indian students. The Social Mission of the Executive Education's is to enhance the School's reach into communities that might not otherwise have ready access to intellectual capital, teaching expertise, and programme experience offered by Harvard Business School.**

Harvard Business School plans to continue their commitment towards educating and training Indian business leaders in the years to come. Tata Education And Development Trust will provide financial assistance to Harvard Business School to construct Tata Hall at Harvard University which will provide classroom space, living quarters and common areas for Harvard Business School (HBS) Executive Education participants and programs. The Hall will comprise approximately 1,35,000 GSF consisting of 170 bedrooms. two 90-person classrooms, small seminar spaces, project rooms, living group spaces and administrative offices.

At present, more than 9,000 business leaders enroll in Executive Education programs at Harvard Business School (HBS) each year. With the construction of Tata Hall additional 1800 MBA and 100 Doctoral students will be benefited every year.

Having a building named Tata Hall on the Harvard Business School campus, in and of itself, will benefit India. Having the name of one of the largest and most well-respected business houses in India prominently displayed at Harvard Business School will provide tremendous global visibility for India and Indian business to a high powered, global group of business leaders.

4 **We now request for the issue of the Order u/s. 11(1)(c) for the three years period covered by the Assessment years 2009-10 to 2011-12 for the reasons set out in the succeeding paragraphs:-**

(a)(i) **The "Tata Scholarships" is funded to provide:**

- **assistance to undergraduate students with demonstrated financial need enrolled at Cornell University, who are citizens of India and who attended a secondary school in India.**

- **assistance for enrollment of Tata Scholarship for international undergraduate studentswhich has now increased to 128 percent**

- **assistance preferentially to qualified students from the College of Architecture, Art and Planning; the College of Engineering; the Applied Economics and Management major in the College of Agriculture and Life Sciences; and major across colleges in the biological sciences, physical sciences, any other hard sciences as well as the social sciences.**

(ii) The Tata-Cornell Initiative in Agriculture and Nutrition is funded to provide:

- **Community Development & Research projects on problems facing the small holders of rain fed regions of central India (geographical focus).**

- **preferentially students of Cornell who are included in the conduct of the research (travel and research cos.) under guidance of Cornell faculty.**

- **more over towards the critical areas in the field of agriculture and human nutrition, which require immediate attention, such as: increasing production under stress conditions; resource conversation technologies; post-harvest handling and agro-processing; fortification and dietary diversity for enhanced nutrition in India**

Payment Schedule:

Financial Year	**Amount**
2008 - 2009	**US $ 12.50 million**
2009 - 2010	**US $ 18.75 million**
2010 - 2011	**US $ 18.75 million**
Total	**US $ 50.00 million**

(b) Tata Hall at Harvard Business School

- **To develop a locally relevant body of knowledge, including case studies and course materials for use in MBA and Executive programs in India and around the world. The focus will be on disseminating the knowledge created in India directly to businesses and school in the country.**

- **To deepen faculty understanding of and exposure to Indian management issues, trends, and practices. HBS will be global in scope, the faculty will be knowledgeable about the most important, relevant and interesting management issues and practices everywhere in the world, with a special interest in India.**

- **To strengthen ties with important constituencies in the region (including companies, institutions, and HBS alumni). These relationships will be critical to School's distinctive strategy. The work in the region will be guided by an advisory panel of leading business and government leaders in India.**

Payment Schedule:

Financial Year	**Amount**
2010 - 2011	**US $ 25 million**

2011 - 2012	**US $ 5 million**
2012 - 2013	**US $ 5 million**
2013 - 2014	**US $ 5 million**
2014 – 2015	**US $ 5 million**
2015 - 2016	**US $ 5 million**
Total	**US $ 50 million**

5) We shall be extremely grateful if the requisite order is issued at your earliest convenience, with a view to enable the Trust to continue its activities effectively. The delay, if any, in making Application u/s 11(1)(c) for the Assessment Years 2009-2010 to 2011-2012 may please be condoned. Since, the part of the Income of the Trust is applied outside India, it is necessary to apply for an Order u/s.11(1)(c) and hence this Application.

6. Learned counsel submits that this plea of the assessee, however, did not find favour, at that point of time, with the Central Board of Direct Taxes. Vide letter dated 2nd June 2014, a copy of which is placed before us in pages 5-6 of the paper-book, the CBDT declined approval under proviso to Section 11(1)(c) and observed as follows:

4. After examining the information and documents as filed by the applicant from time to time, it is noted that while the aforesaid activities may be philanthropic in nature and for the purpose of aiding Higher Education, supporting research projects in the field of agriculture and nutrition, and beneficial for citizens of India in general, these cannot be said to be for a cause, which tends to promote international welfare in which India is interested as stipulated under section 11(1)(c). The aforesaid activities do not fit within the parameters prescribed under section 11(1)(c) which restricts the activities to be specific towards promotion of international welfare in which India is interested.

5. Thus, in view of the fact that the proposed activities of the Trust are not tending to promote "international welfare in which India is interested" the same are not covered for the purpose of section 11(1)(c) of the Act. I am therefore directed to convey that the application u/s 11(1)(c) filed by the Trust is rejected by the CBDT.

7. Learned counsel submit that it was in this backdrop that the Assessing Officer, during the course of assessment proceedings under section 143(3) for the assessment years 2011-12 and 2012-13, which were finalized on 28th March 2014 and 3rd March 2015 respectively, declined to grant exemption of income relatable to the application of funds, outside India, amounting to Rs 197,79,27,500, and Rs 25,37,00,000 respectively. Aggrieved by the stand so taken by the Assessing Officer, the assessee had carried the matter in appeal but the assessee also, in the meantime,

moved a fresh and more comprehensive application, justifying that it was a fit case for CBDT's approval under proviso to Section 11(1)(c), and its approval as such. Learned counsel then took us through the fresh application dated 31st March 2015, a copy of which is placed before us at pages 7 onwards on the paper-book filed by the assessee. This application, inter alia, submitted as follows:

1.1 TEDT is a public charitable trust founded by Mr Ratan Naval Tata in the year 2008. The Trust has been registered as a Public Charitable Trust with the office of the Charity Commissioner, Maharashtra State, under E-25973 (Bom). TEDT is also registered under Section I2AA of the Act and is eligible to claim exemption under Section 11 of the Act.

Copies of the Trust Deed along with born the abovementioned registration certificates are attached as Annexure 1.

1.2 The Trust has been set up, inter-alia with the object to invest in projects in India or outside India that promote the development of knowledge and expertise in several areas vital for India's growth and competitive ability. The projects that may be established by the Trust by Wily of foundations or grants will cover several areas such as namo technology, agricultural sciences, climate change studies, ecological and human habitat studies, etc. The Trust will also support study and exchange programs that promote the spread of knowledge by way of scholarships and freeships to students and teachers in respect to programmes in India or outside India with n view to introduce Indian institutions to die new technological initiatives and projects which foster the development of Indian capabilities. Foreign academic and research institutions will be duly selected for setting up such collaborative initiatives that will be funded by the Trust in order to enhance India's strength.

1.3 In furtherance of its charitable objects like promoting education, research, etc., TEDT has made/ will make the following grants:

• USD 50 million to Cornell University ('Cornell'), towards scholarships to students being Indian citizens and for supporting initiatives towards agriculture and nutrition; and

• USD 50 million to Harvard Business School ('Harvard') for an educational infrastructure and facility at Harvard University, particularly classroom, residential, research facilities for students enrolled for Executive Education programmes of Harvard Business School.

2 Provisions of Section 11 of the Act

2.1 As per provisions of the Act, income of a Trust registered under the Section 12A/12AA of the Act is required to be computed in accordance with the provisions of Section 11 of the Act.

2.2 Section 11(1)(c) of the Act (reproduced below) provides that certain income of a trust shall not be included in the total income:

"(c) Income derived from properly held under trust —

(i) created *on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare which India is interested,to the extent to which such income is applied to such purposes outside India and*

(ii) *for charitable or religious purposes, created before the 1st day of April, 1952, to the extent which such income is applied such purposes outside India:*

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

2.3 As can be seen from the above, income of a charitable find religious trust (created on or after 1 April 1952), if applied for a charitable purpose outside India which tends to promote international welfare in which India is interested, shall not be included in the total income of the trust subject to a general or special order of CBDT issued under Section 11(1)(c) of the Act.

2.4 As submitted above, since TEDT has been created post 1 April 1952, funds applied/ proposed to be applied by TEDT to a charitable purposes outside India that tend to promote international welfare in which India is interested can be excluded from its total income subject to an approval granted by the Hon'ble Board.

2.5 The term 'charitable purpose' is defined in Section 2(15) of the Act ns mentioned below:

"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."

2.6 While 'charitable purpose' is defined under Section 2(15) of the Act, no explanation, or clarification, or guidance is available under the Act for the words 'tend to promote international welfare in which India is interested'. In absence of any specific definition/ explanation of the term, its meaning could be understood based on general parlance.

Here, it is pertinent to note that the Section has two significant phrases, 'tend to promote' and 'international welfare in which India is interested'. The phrase 'tend to promote' only signifies that such an activity undertaken which may lead to promotion of international welfare, should have a tendency to lead to such promotion in present or in near future.

Further, in absence of any specific definition, 'international welfare in which India is interested' will have to be interpreted in a wide manner, meaning thereby any activity in the nature of welfare on an international scale which will benefit/ impact various countries of the world including India.

2.7 We have in the following paragraphs provided our submission as to how income of the trust applied by TEDT for giving grants to overseas universities fulfill the abovementioned conditions prescribed under Section 11(1))(c)(i) of the Act mid thereby should 52 66 included in the total income of the Trust.

3 Grants to Cornell:

3.1 TEDT has entered into two agreements dated 16 October 2008 with Cornell for providing the following grants:

• USD 25 million for Tata Scholarships for students from India Fund ('Tata Scholarships')

• USD 25 million for Tata- Cornell initiative in Agriculture and Nutrition ('TACO-AN')

A copy of these agreements is attached as Annexure 2 and 3 respectively.

3.2 The details of the amount of grant provided to Cornell by TEDT is as under:

Financial Year ('FY')	Amount USD (in Million)	Date of remittance
2008-09	12.50	23 December 2008
2009-10	18.75	24 December 2009
2010-11	18.75	23 December 2010
Total	50.00	

Details of grant for Tata Scholarship and our submissions:

3.3 As mentioned above, TEDT has given grant to Cornell to support students being citizens of India through scholarship for their higher studies at Cornell. The agreement with Cornell specifically provides that an Indian student, to be eligible for Tata Scholarship, must have attended secondary school in India and should demonstrate financial need for high quality education at the University of Cornell.

3.4 The quality of undergraduate education in India (except IITs and some other prestigious colleges) is unsatisfactory and much below international standards. Invariably, educational institutions are stifled by excessive regulations, unclear procedures and lack, of incentives/ facilities for inducing independent thinking ability in students. At times, securing admissions at IITs and other colleges of repute becomes extremely difficult due to limited seats (as compared to the number of eligible candidates). Lack of premiere education institutions coupled with limitations on availability of diverse undergraduate programmes compel Indian students to seek overseas opportunities for higher education. However, considering the high cost involved in pursuing studies abroad, this ambition for several Indian students remains a dream and does not become a reality for want of adequate financial resources.

3.5 Cornell is rated as one of the 8 prestigious universities in the USA and there are very few universities globally which can be ranked at par with it. Educationally and socially, Cornell is the most diverse university among other Ivy League universities. At a time, over 3,200 undergraduate and graduate international students from more than 120 countries are enrolled for various courses hi Cornell. Over years, the number of international undergraduates enrolled at Cornell increased many folds front 1,060 in 2006 to 1,464 in 2014. As per the latest data available, the proportion of international students (pursuing undergraduate program) is approximately 10 percent to total number of students.

3.6 It is noteworthy that the number of students applying for admission to undergraduate program from India has increased from 128 applications in 2004 to 291 applications in 2008. Unfortunately, however, enrolments have remained on the lower side. On an average, the university enrolls only 4-6 undergraduates directly from India in any given year (not including students from India who come to Cornell through secondary schools in the United States). This number is far too low as compared to the number of first year students enrolled from Singapore (39), Korea (23), China (14) and Hong Kong (13).

3.7 Though there is no dearth of talent and academic brilliance in India, insignificant financial resources is one of the primary reason due to which very few Indian students are able to pursue courses at Cornell. Whereas Cornells entire endowment for international scholarships stands approximately at USD 1.5-2 million, it is sufficient to provide need based scholarships to only a few international students each year. On an average, only one student front India benefits from this scholarship in a year. While it is endeavour of the University to offer financial aid to all deserving international students, lack of availability of requisite funds makes this goal impossible. A study shows that out of 700 international students who are eligible and allowed admission at Cornell, 500 students cannot enroll duo to non-availability of requisite financial resources.

3.8 All these and more has led to TEDT taking an initiative to introduce Tata Scholarships Cornell to facilitate Indian stud... As per agreed norms, the Tata Scholarships would be granted to Indian snide fulfilling the following criteria:

• is a citizen of India;

• Have completed secondary schooling in India;

• Possesses the required intelligence and academic brilliance to qualify for admission in Cornell; and

• Demonstrates financial need.

3.9 In this regard, while selecting students for granting Tata scholarships, it hits been agreed that preference shall be given to qualified students from colleges of Architecture, Art, and Planning, colleges of Engineering, Applied Economics and Management, majors from colleges of Agriculture and Life Sciences; and majors across colleges in the biological sciences, physical sciences and any other hard sciences as well as social sciences.

3.10 It is also pertinent to note that the 'Tata Scholarship for Students from India Fund' is administered by Provost, in consultation with Associate Provost, Cornell University, USA, for Admissions and Enrolment, in accordance with the financial aid policy of the university then in effect, as amended by the Board of Trustees of Cornell University from time to time. The grant of Tata Scholarship is solely at the discretion of Cornell and Cornell in its wisdom and judgment disburses scholarships to the qualified Indian students. All students who are offered the Tata Scholarship meet the university's criteria for need-based financial aid. In selecting the scholars, the university gives preference to students who attend non interactional/non-private secondary schools, are the first in their family to attend college, and demonstrate the greatest financial need. Priority is also given 5 students who attend schools from which a large number of students do not go on to attend elite American institutions.

3.11 The detailed procedure adopted by Cornell for selection of students for grant of Tata Scholarship is attach as Annexure 4. We have also attached the published data regarding the financial aid policy of Cornell University available on the website of Cornell as Annexure 5.

3.12 The goal of the This Scholarship is to ensure that the very best Indian students have access to Cornell, regardless of their financial circumstances. While Cornell University is committed to providing financial aid to any matriculating undergraduates from the United States who demonstrates need, the scholarship resources available for international students are extremely limited. The Tata Scholarship has allowed Cornell to increase dramatically, the number of students front India who receive support and the level at which they are supported.

3.13 As you would note, the endowment is used to set up a scholarship hind to bring more Indian students to Cornell who may be otherwise discouraged by costs associated with education at Cornell and cannot join the University.

Average tuition fees payable per student per year at Cornell is approximately USD 28,000 and in addition to that another USD 26,000 for living expenses is approximately USD 54,000 per student per year currently. This would be further increased by the personal expenses of the student. Thus, your Honour would appreciate that the cost of learning mid living abroad would normally be beyond the reach of most middle class families in India. The objective of the grant is to ensure that the most deserving students w. arc in need of financial aid for higher education courses abroad secure an opportunity to realise their dreams of learning la Ivy League Universities.

It would be important to note that the intention is not to provide scholarships only to the poorest of the poor students, but the level of minimum standard of education and the merits of the students are major parameters for selection. This would mean that even students from modest family backgrounds are selected for scholarship who can at least afford to bear the gap in the estimated cost of the course against the scholarship received.

3.14 It is important to note that 3 years prior to this scholarship, ie, 2006, 2007 and 2008 in all only 20 Indian undergraduate students went admitted to Cornell. However, it is to be noted that post the Tata Scholarships there were 14 undergraduates in 2009 (4 a whom were Tata Scholars) and 18 undergraduates in 2010 (7 of whom were Tata Scholars) who were admitted to Cornell. Thus, the Tata Scholarship has definitely helped in reaching far more Indian students than previously possible, in addition to providing them with an opportunity to significantly gain from Cornells expertise. Moreover, it is submitted that based on the Trust recommendation, Cornell has started:

• Specifically identifying Indian students in agriculture and nutrition to benefit from this scholarship, and

• Identifying prospective students from Tier 11 and Tier III cities in India, thus expanding the outreach of this Scholarship.

3.15 It is well recognised globally that Indians arc technically world class and front runners in technological, scientific and astronomical fields and their presence has a positive impact on others. Apart from this, Indians also bring along with them rich heritage and cultural diversity. This has led to immense amount of

cross-learning, which inter-alia benefit students of other countries by sharing of knowledge and experiences and vice versa.

3.16 This sharing of knowledge has created avenues for Indian students to learn .d address issues of Natural Resource Management (NRM) in Africa, after which they were keen to transfer this learning to Indian conditions. Similarly, international students visit India and bring their knowledge on nutrition, for example, to address issues of malnutrition in women tea plantation workers in Darjeeling.

3.17 This cross learning and sharing of experience leads to direct and immediate contribution to international welfare to students at the University level. However, this is just the beginning of the process of international welfare that will follow in the years to come. Learning at a prestigious university like Cornell, would definitely provide international outlook and develop personalities of Indian students and will thereby contribute to international welfare in future from wherever they are situated/ placed.

3.18 To give example, one graduate student, Mr. Jishnu, who, had received admission for undergraduate studies in Cornell University, but was unable to accept it owing to financial reasons was selected for the scholarship. The scholarship has enabled him to pursue graduate studies from Cornell University and together with his Advisor, he is mapping genetic similarities in multiple diseases, which would improve the way diseases arc treated world over, including India (as it would provide a holistic approach to treatment, rather than treating diseases as separate and unrelated). This is one of the many examples of promotion of international welfare in which India is interested.

3.19 We have also provided at Annexure 6, the details pertaining to the current Tata Scholars on the campus, i.e, the Indian students who have been benefitted by the Tata Scholarship Fund. The details provided duly mention the courses undertaken by the scholars as well as their academic background.

Moreover, testimonials of these Tata Scholars addressed to Mr Ratan Tata, expressing their gratitude for the endowment received for the respective courses at Cornell arc attached as Annexure 7. As can be concluded from the letters, all scholars have unanimously expressed that but for the scholarship; they would not have been able to take up the courses at Cornell.

3.20 Front the above, your Honour would appreciate that provision of grant to Cornell by the Trust is in the nature of furthering education, which falls within the objects of the Trust and also within the Meaning of charitable purpose defined under Section 2(15) of the Act. Further, as narrated above, the Tata scholarship has definitely helped far more Indian students (than previously possible) A providing an opportunity to significantly gain from Cornell's expertise.

3.21 Given the same, TEDT wishes to reiterate that Tata Scholarship has definitely promoted international welfare in which India is interested and thereby it has fulfilled all the requirements of Section 11(1)(c)(i) of the Act in respect of its grants to Cornell.

Detail of grant to Cornell for TACO-AN initiative and our submissions:

3.22 Cornell is a major research hub and there are over 100 institutions and research centres that flourish at Cornell. In addition, research is also carried out at the colleges on the campus.

3.23 Cornell offers a significant edge to students who are interested in agriculture and nutrition. The University's College of Agriculture and Life Sciences is known worldwide as a leader in agriculture. It supports nearly 400 faculties, and serves 3,100 undergraduates, 1,100 graduate students. In terms of Cornell's stature among USA institutions, Cornell is the only Ivy League University with an agriculture program. In 2010, the National Research Council reviewed 15 of Cornell's graduate fields A agriculture and life sciences and ranked 14 of them among the top 20 in the USA, and 10 of them among the top 10 including crop and soil sciences, plant biology, entomology, natural resources, nutrition, horticulture, and animal science.

3.24 Cornell's Division of Nutritional Sciences ('DNS'), which encompasses departments and programs in the colleges of Agriculture and Life Sciences and Human Ecology, is among the largest academic units in the world devoted to the study of human nutrition. The division has over 33 professorial faculties who concentrate in such areas as community, international, human, and molecular nutition.

3.25 Cornell has worked with the public and private institutions in India to strengthen agriculture and improve nutrition. Research and outreach in India, as well as, other countries demonstrate Cornell's commitment to improving the lives of people around the globe. The TACO-AN initiative is focused on India and is designed to stimulate research connections among scientists in India and Cornell, which thereby would make n lasting contribution to the lives and livelihoods of India's rural poor.

3.26 The grant for 'TACO-AN' has been given to promote:

• Collaboration among Indian and Cornell scientists that will spur strategic investments designed to accelerate agricultural productivity, and reduce malnutrition among the poor in India;

• The activities shall include but not limited to, research costs, graduate and undergraduate assistantships, public-private sector collaborations, sabbaticals for Indian and Cornell faculty, student exchanges, conferences, publications and guest speaker programs; and

• Sustained faculty and student engagement in joint India — Cornell agriculture and nutrition projects.

3.27 Cornell utilizes the funds extended by TEDT for undertaking cutting edge research and interventions that address the complex intersection of agriculture, human nutrition, and poverty (The link: https.//tci.cals.contell.edu/ can be referred for details). The subjects of this research arc:

• Agriculture - led growth strategies;

• Food and micronutrient programmes;

• Nutrition behaviour change;

• Water and Sanitation; and

• Metrics on ag-nutrition.

3.28 Over the last 40 years, progresses made possible by plant breeding and other techniques have increased agricultural production in India and reduced the country's dependence on food imports. However, despite these gains as well as a decade of unprecedented economic growth, India still has the greatest incidence of malnutrition in the world. This burden is aggravated by the new challenges such as the declining per capita income in agriculture, landholdings that arc increasingly fragmented and the shrinking natural resources.

3.29 The TACO-AN initiative has bought together Cornell faculty, researchers and students with their counterparts in India to collaborate on solutions to some of the greatest challenges facing India today. The activities undertaken are focused on improving the productivity, sustainability and profitability of India's food system, with the aim of reducing poverty and malnutrition as well as on improving the lives and nutritional status of rural poor in India.

3.30 TACO-AN has created a network of universities that participate in and benefit from the initiative's research efforts. TACO-AN has in fact already provided the impetus for Memoranda of Understanding ('MOUs') with the Tata institute of social Sciences ('TISS') and Dr.Panjabrao Deshmukh Krishi Vidyapeeth University in Akola ('PDKV'). These collaborations in India coupled with Cornell's extensive linkages around the world will result in creation of an effective network of universities in turn leading to promotion and strengthening of agriculture, nutrition and development.

3.31 The impact of TACO-AN initiatives is and will continue to be much broader and will benefit many countries globally. It is to be noted that Cornell has arena institutes devoted to the reduction of poverty and malnutrition, including the Cornell international Institutes for Fond, Agriculture, and Development ('CIIFAD), the Institute for the Social Science (ÍSS'), and Program in International Nutrition ('PIN'). These programs are already active in various parts of Asia, Africa, and Latin America, and have effective outreach programs that enable the knowledge gained through TACO-AN to be disseminated across the world and vice-versa.

3.32 Further, it is also submitted that it is not necessary that the scientists who are funded to undertake project work should be of Indian origin or that their research work should be directed only towards India. The research and the findings of such work undertaken by TACO-AN are shared amongst the scientists, research fellows, professors, etc. of Cornell, who in turn share their work with people from various countries and thus, the benefits of TACO-AN are reaching the international community and are not only restricted to India.

3.33 In this regard, we have summarised below activities/ projects undertaken by the Cornell University in terms of TACO-AN initiative:

• Considering the severe agrarian distress and recurrent farmer suicides; the Vidharbha region, Maharashtra was selected as a primary field research and implementation project area for TACO-AN project. Cornell, through its students and faculty, had undertaken a number of studies in the Vidharbha region. The broad issues which the studies focus on are:

(i) Value chain analysis of cotton, soya bean, tur and wheat;

(ii) Malnutrition and under nutrition amongst women and children;

(iii) Analysis of potential for livestock development; and

(iv) Situation analysis for soil and water.

In respect to the same, attached for your reference is the study report on lifestock production potential provided by researchers at Cornell as Annexure 8.

- **In late January 2012,5 workshops on spray technology were held in different parts of the 6 distress districts in Maharashtra. Over 500 participants attended these workshops. Post the workshop 70% fanners were well-versed with spray technology as compared to the 30% farmers who were aware pre-workshop. In respect to the same, the study report on pesticide application technique, provided by researchers at Cornell is attached as Annexure 9.**

- **Further, 6 Indian students (details of the students alongwith their travel plans is attached as Annexure 10) in Cornell had expressed their keenness to study various issues in Vidharbha, which would be a significant contribution in creating a knowledge repository on Vidharbha. This is in line with the idea proposed by TISS, Mumbai of having a 'Vidharbha Observatory' which would serve as a knowledge base for students, teachers, academicians, village level field workers, government officials etc. Ill addition, due to its broad based nature, the Vidharbha Observatory would generate awareness on the multi-dimensionality of issues faced by not only farmers, but also the women and children of the region. The experience so gained will also be shared with other countries.**

- **The representatives of Cornell covered under TACO-AN have not only visited areas such as Vidharbha in India but have extensively travelled iu other developing as well as developed countries to learn and comprehend the experiences faced by the locals which would in turn be mutually beneficial to all the countries in the world. A write up from Cornell on how the initiative is internationally beneficial has been attached as Annexure 11. A relevant extract of the report explaining benefit of the initiative of TACO-AN to various countries of the world is reproduced below foryour ready reference:**

"4. <u>Benefits of International exchanges and education</u>: Having worked in semi-arid areas of Ghana, South Sudan, Kenya, South Africa, India, Afghanistan, Niger, Mali. Zimbabwe and Botswana, the similarity of the problems facing these dry regions is striking. Unpredictable rainfall, limited technologies to harvest hat rain does fall, limited availability of crop varieties that can withstand drought and unsustainable use of ground water are common, These problems often are coupled with poor infrastructure, weak government institution and dysfunctional markets (hat often exclude small holders., While aspects of agriculture are very context specific because of variation in rainfall patterns, soil fertility and pests and diseases, exchanges among development practitioners, farmers and scientists who are contending with these problems in similar environments are likely to result in exchanges that benefit all In addresses to groups of farmers, frequently the most appropriate approach is to facilitate such knowledge exchanges. However, today's technologies provide many better options to this approach. One of TACO-AN's goals is to make contributions such knowledge exchanges"

3.34 In addition to the above, we have also attached following documents in relation to TACO-AN initiatives:

- **Details of additional activities undertaken under the TACO-AN project vide Annexure 12.**

- **Annual Report on TACO-AN for the period 2013-14 summarizing the progress of the research activities undertaken as a part of the initiative is attached as Annexure 13.**

3.35 As can be seen from the above, grant to Cornell by the Trust with respect to TACO-AN initiative is in the nature of providing relief to the poor, therefore falls within the objects of the Trust and also within the meaning of charitable purpose as defined under Section 2(15) of the Act and the activities of TACO-AN also contribute to the international welfare in which India is interested.

3.36 Thus, the Hon'ble Board will appreciate that all the requirements of Section 11 (1)(c)(i) of the Act have been complied with by TEDT in respect of its grant to Cornell.

4 Grant to Harvard

4.1 TEDT has entered into an agreement dated 17 March 2010 with Harvard to donate USD 50 million for an educational infrastructure and facility within Harvard University campus which will provide classroom and residential facilities for Harvard's Executive Education program participants. A copy of the agreement is attached as Annexure 14.

4.2 The details of the amount of donation made/ to be made are provided below:

Financial Year (*FY')	Amount USD (in Million)	Date / proposed date of remittance
2010-11	25.00	4 March 20 11
2011-12	5.00	20 March 2012
2012- 13	5.00	22 February 2013
2013- 14	5.00	13 March 2014
2014- 15	5.00	—
2015-16	5.00	—
Total	50.00	

Details of grant to Harvard for an educational infrastructure and facility at Harvard University (Tata Halt or Tata Facility) and oar submissions:

4.3 Harvard is the oldest institution of higher education in the USA, established in 1636. Harvard has 12 degree-granting schools in addition to the Radcliffe Institute for Advanced Study. The University has grown from 9 students with a single master to an enrollment of more than 20,000 degree candidates including undergraduate, graduate, and professional students.

4.4 Harvard, consistently ranked as one of the top Universities in the world, is committed to welcome students from all over the world, and providing them global education. Today Harvard's scholars have gained eminence in various fields in various countries in the world and made substantial contribution to making the world a better place to live.

4.5 Harvard through its programs and campaigns aims to shape up the future of education with a focus on advancing new approaches to teaching and learning, attracting and supporting the best students and faculty, creating a campus for the 21st century, and supporting multidisciplinary research. During a year, Harvard organizes more than 100 courses / events / conferences, which are attended by world leaders from business, government and society across the globe, where issues having global impact / significance are discussed and solutions are sought. For instance, considering the lethal consequences of global warming, Harvard had organized a campaign on research for Green initiatives which seeks to transform the building industry by connecting architectural research with real-world development processes and production. Through organizing several events and conferences on the subject, it has created a platform to bring together leaders in subject field and develop strategies on climate change.

4.6 As one of the world's leading universities, Harvard attracts more than 10,000 students each year. These students are either young leaders who join the undergraduate program or graduate program. These remarkable students have a significant impact on global business and play vital leadership roles in almost every field of economic activity in the world.

4.7 We have attached as Annexure 15, a list of Indians who have studied at Harvard University. The names of the leaders included in the list speak for itself about the significance and benefits of studying at Harvard University and the benefit to the global economy.

4.8 Considering the importance of infrastructure for students pursuing Executive Education program at Harvard, TEDT has agreed to give a grant to Harvard for construction of state of the art infrastructure facility within Harvard University campus.

4.9 In addition to the contribution committed by TEDT, Harvard has also invested USD 60 million of additional capital for the same. It is pertinent to note that the name or reference to the facility as 'Tata Hall' that has been constructed in the Harvard university campus was decided by Harvard and there was no condition attached to the grant provided by TEDT.

4.10 We have attached as Annexure 16, following documents in relation to the Tata Hall:

- **Press release in relation, to approvals received for the construction of Tata Hall**

- **Request for quotation floated by Harvard for the construction of Tata Hall**
- **Pictures of the Tata Hall constructed at Harvard**

The Tata Hall will comprise approximately 135,000 Gross Square Feet ('GSF') consisting of 170 bed rooms, two 90-person classrooms, small seminar spaces, project rooms, living group spaces and administrative offices.

4.11 Executive Education at Harvard is an immersive learning experience - one that empowers senior executives to reflect, recharge, and reemerge as visionary leaders. The programs offer the rare opportunity to develop fresh insights on professional and personal strengths, strategies for taking leadership skills of the participants. With a global curriculum and international participant mix, the program aim to reflect vision of interconnected global economy. The diversity of the participant mix encourages a lively exchange of different points of view, bringing valuable perspectives to bear on relevant business challenges and thereby help in building better understanding of the global issues.

4.12 With increased awareness and recognition to the benefits of learning in universities like Harvard, there is a tremendous increase in the number of aspirants applying to various Executive Education programs. Harvard being rated as one of the topmost business school in the world, always has a situation where many deserving candidates are unable to join courses due to limitation on the number of seats available. Given the benefit of learning at Harvard as narrated above, the Tata Facility is aimed to create additional infrastructure which would increase the number of seats for the Executive Education program, thereby benefit more aspirants, both from India as well as from other countries in the world of studying at Harvard.

4.13 In the last decade, Harvard has educated 404 MBAs and 2,228 executives and senior government officials from India. With the additional infrastructure in the form of Tata Hall, there is a scope for many experienced leaders attending the Executive Education program in the years to come, which would definitely have a significant impact in their leadership roles in almost every field of economic activity.

4.14 Over past years, more than 550 senior executives and government officials (both from India as well as other countries of the world) attended the Advanced Management Program (which is one of the Executive Education Programme) at Harvard University in Tata Hall. It is undisputed that the Harvard experience truly creates a transformational impact on its participants, thereby not only elevating their knowledge of India but also bring India to the forefront in the global economic perspective. Thus, pursuant to its construction, Tata Hall has played/ continues to play an ambassadorial role for India with regards to both domestic and international visitors to Harvard.

4.15 This fact is evident from the letter (attached as Annexure 17) from Mr Nitin Nohria, the Dean of Harvard University to the Ministry of Finance, which explains as to how the contributions received from TEDT has helped / would help Harvard to support the cause of education for Indian as well as other international students.

4.16 As the above donation to Harvard by the TEDT is for furthering education, it falls within the objects of the Trust and also within the meaning of the term 'charitable purpose' as defined under Section 2(15) of the Act. Also, by

contributing to the construction of Tata Hall, which has supported students from all over the world including India, the donation has promoted international welfare wherein India is interested.

4.17 Thus, the Hon'ble Board will appreciate that all the requirements of Section 1 l(l)(c)(i) of the Act have been complied with by TEDT in respect of its donation to Harvard.

5 Our request

5.1 In light of the above facts and submission, we humbly request your Honour to consider our application under Section 11(l)(c) of the Act favourably in respect of grants provided to Cornell and Harvard and issue an order directing that the income of the Trust to the extent applied/ to be applied for aforesaid donations should not be included in the total income of the Trust.

We request a favourable consideration to our above request in order to enable the Trust to continue its activities effectively.

Should the Hon'ble Board require any clarifications / information in this regard, please do let us know. We request opportunity to provide detailed explanations and clarifications in person, in this regard.

8. Learned counsel submits that this time the assessee's application, which contained exhaustive details about the manner of application of funds, for charitable purposes of the trust, outside India and the benefits such an application of funds was to yield, was accepted, and, accordingly, the CBDT passed an order 10th November 2015 granting the approval. Learned counsel then points out that in the said approval, the CBDT has been categorical in stating that the period covering the aforesaid approval will be from 2009-10 to 2016-17, and then he takes us through the said order, a copy of which was placed before us at page 20 of the paper-book, which reads as follows:

F. No. l80/9/2010-ITA.l
Government of India
Ministry of finance
Department of Revenue (CBDT)
(ITA-I Division)
….
Order u/s 11(l)(c) of the Income-tax Act, 1961

Name of the applicant	**: Tata Education and Development Trust**
Address of the applicant	**: Bombay House, Homi Mody Street, Mumbai-400 001**
Date of Application	**: 31.03.2015**
Date of Order	**: 10.11. 2015**

With reference to your application dated 31.03.2015, the undersigned is directed to convey that under the proviso to clause (c) of sub-section (1) of Section 11 of the Income-tax Act, 1961 (4c of 1961), the Central Board of Direct Taxes now directs that the income derived from property held under the trust known as "Tata Education and Development Trust, Mumbai" shall not be include in the total income of the person in receipt of such income to the extent such income is applied outside India for charitable purpose for grant for creation of endowment funds through contribution at the Cornell University, for scholarship of Indian students as well as for joint collaboration project between Indian and Cornell scientists, and grant for financial assistance to Harvard Business School for construction of a New Executive Building named "Tata Hall", as per the details provided below :

Sl. No.	Assessment Year	Amount (in USD)
1.	2009 – 10	12.50 million
2.	2010- 11	18.75 million
3.	2011- 12	43.75 million
4.	2012- 13	5 million
5.	2013- 14	5 million
6.	2014-15	5 million
7.	2015- 16	5 million
8.	2016- 17	5 million
	TOTAL	100 million

2. The claim as above of the applicant regarding the extent to which such income is applied to such purposes outside India will be subject to verification during the course of assessment proceedings as per the Income-tax Act, 1961.

3. This order shall have effect for the period covered by Assessment Years 2009-10 to 2016-17.

Sd/-
(Deepshikha Sharma)
Director (ITA.I)

9. It is then submitted that immediately upon receipt of the aforesaid order, the assessee trust moved rectification petitions, both dated 24th November 2015, to the Assessing Officer pointing out that now that the CBDT approval is granted, the exemption may also be granted in respect of application of income outside India, namely to Cornell University USA and Harvard University USA, and, accordingly,

taxable income of the appellant trust may be revised to "nil" taxable income. Vide two separate orders, both dated 8th December 2015, this plea of the assessee was accepted and, accordingly, the assessed income of the assessee was reduced to "nil" taxable income.

10. Learned counsel then points out that, in the meantime, the matter was pending for adjudication before the CIT(A). When the matter came up for hearing before the learned CIT(A), a copy of the CBDT order dated 10th November 2015 and the orders passed by the Assessing Officer under section 154, deleting the additions impugned in appeal, were submitted before the CIT(A). The arguments were then advanced justifying as to how, on merits and in the light of the CBDT order (supra), the assessee deserves to succeed in appeal. As pointed out by the learned counsel, the CIT(A), however, proceeded to decide the matter on merits and observe as follows:

> **5.3. After considering the submissions of the appellant in the light of the above referred order of the CBDT. I am of the considered view that the action of the AO in rejecting claim of the assessee u/s. 11(1)(c) of the Act in respect of assessee's income applied outside India aggregating to Rs. 197,99,94,581/- on the ground that in respect of the said amount, there is no direction given by the CBDT by general or special order as contemplated in proviso to sec. 11(l)(a) of the Act and consequently, denying the benefit U/s. 11(l)(a) of the Act in respect of the said amount of Rs. 197,99,94,581/- is correct and tenable in law for the following three independent reasons:**
>
> > **i) The above referred order of the CBDT dated: 10-11-2015 is not retrospective in operation as no where in the said order it has been specifically mentioned that the said order would apply retrospectively for the year under consideration i.e A.Y.2011-12. Nor has the appellant cited any judicial precedent on the issue wherein claim of any assessee was allowed under the similar circumstances.**
> >
> > **ii) The said order of the CBDT has been passed in response to the assessee's application dated;31-03-2015 and therefore, it can not apply to A.Y.2011-12.**
> >
> > **iii) Vide the aforesaid order of the CBDT, exemption has been granted in respect of income applied outside India subject to the condition that the claim as above of the applicant regarding the extent to which such income is applied to such purposes outside India will be subject to verification during the course of assessment proceedings as per the Income-tax Act, 1961. However, it is seen that in the present case no such verification has been carried out by the AO during the assessment proceedings.**
>
> **In view of the above, the action of the AO as stated above is sustained and consequently, the amount of Rs. 197,99,94,581/- shall be included in the total income of the assessee of A.Y 2011-12 and the benefit u/s. 11(1)(a) of the Act in respect of the said amount of Rs. 197,99,94,581/- shall be denied to the assessee.**

5.4 As regards the appellant's reliance place on the AO's u/s. 154 of the Act dated 08.12.2015 is concerned, the same does not merit consideration in this appeal as the present appeal has been filed against the order of the AO passed u/s. 143(3) of the Act.

Hence, the grounds of appeal no. 1,2 and 4 of the assessee are dismissed.

11. Learned counsel, after setting out this factual matrix, vehemently assails the order of the learned Commissioner (Appeals). submits that the action of the learned CIT(A) is vitiated in law on a variety of grounds. He first points out that except for these two assessment years in appeal before us, i.e. assessment year 2011-12 and assessment year 2012-13, in all the related assessment years, the exemption under section 11(1)(c) has been allowed in respect of income in respect of the amounts paid to Cornell University and Harvard University towards the application of funds for the objectives of the trust. It is pointed out that the stand so taken by the Assessing Officer, for the remaining six years, is a conscious and well considered call. Our attention is then invited to the fact that the assessment of the assessee trust, for the assessment year 2009-10, was reopened on 10th March 2015, on the ground that the amounts paid to Cornell University and Harvard University were not eligible for consideration under section 11(1)(c), and, to that extent, exemption of income was not available. However, in the final assessment order under section 143(3) r.w.s. 147 framed on 30th March 2016, the exemption was duly allowed in the light of the CBDT approval dated 10th November 2015. Learned counsel then invites our attention to the assessment orders for the assessment years 2010-11, 2013-14, 2014-15, 2015-16 and 2016-17 copies of which were placed before us in the paper-book at pages 63-85. Except for the assessment year 2010-11, which was a summary assessment under section 143(1), all other assessments were detailed scrutiny assessments under section 143(3) taking into account all the relevant facts and taking a conscious call on the availability of benefit under section 11(1)(c) in respect of amounts spent by the assessee trust outside India. He submits that it is difficult to comprehend as to how a different treatment could be justified, so far as availability of benefit of application of income of the trust outside India is concerned, for these two assessment years. Learned counsel submits that there is no difference whatsoever in the facts of the cases for these two assessment year- the agreements under which the payments are made are the same, the recipients of remittances made by the assessee trust are the same, the CBDT approval specifically covers all these

payments and the CBDT approval for all these years is the same. On account of the principle of consistency alone, according to the learned counsel, the assessee must succeed. He invites our attention to Hon'ble Supreme Court's judgment in the case of **Radhasoami Satsang Vs CIT [(1992) 193 ITR 321 (SC)]** wherein it is held that, while strictly speaking *res judicata* does not apply to income-tax proceedings but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other, and the parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. It is submitted that, for this short reason alone, the stand of the CIT(A) cannot be approved.

12. Coming to the reasoning employed by the CIT(A) in the impugned order, learned counsel submits that the first reason, as set out in the impugned order, is that the order of the CBDT is not retrospective, nor stated to be retrospective by the CBDT, but then this is factually incorrect. Our attention is pointed out to 3 of the CBDT's approval dated 10th November 2015, which categorically states that, "**This order shall have effect for the period covered by Assessment Years 2009-10 to 2016-17**". Once the order categorically states so, it cannot be open to the CIT(A) to interpret the order in a manner so as to give it only prospective effect. The second reason in support of the conclusions of the learned CIT(A), according to the learned counsel, is that the assessee has made an application for approval on 31st March 2015, and, therefore, it cannot apply to the assessment year 2011-12, or, for that purpose, assessment year 2012-13. This argument proceeds on the fallacious assumption that, for the purposes of section 11(1)(c), prior approval by the Board is a must so as to be entitled to the corresponding benefits. Learned counsel submits that section 11(1)(c) does not set out the time frame within which the application for approval of the CBDT is to be sought, whereas, in sharp contrast to this position, there are statutory provisions wherein it is provided that similar approvals must be applied for within certain time frame. He then invites our attention to the requirements of 10(23C) wherein, in the first proviso to the said section, it is stated that the exemption "shall not be available" unless the application is made within the time framework set out in (i) to (iv) in the said proviso. Similarly, a time frame of "a period of one year from the date of the creation of the trust or the establishment

of the institution" is also provided for in Section 12A(1)(a), and exception to the said time frame are set out in section 12A(1)(ac). A reference is then made to proviso to Section 80HHD(4) which provides that so far as any utilization of reserve which would result in creation of any asset owned by the assessee outside India, "such asset should be created only after obtaining prior approval of the prescribed authority". It is then again pointed out that no such time frame for CBDT approval are set out in Section 11(1)(c). In the absence of a time limit for taking approval of the CBDT, such a time limit cannot be inferred, and, on the basis of that inference, benefit of section 11(1)(c) cannot be declined approval is subsequently obtained by the assessee and such an approval is specifically applicable to an earlier period as well. The third reason assigned by the learned CIT(A) is that in terms of the approval of the CBDT, the approval subject to verification during the course of assessment proceedings as per the Income-tax Act, 1961 but then, according to the learned CIT(A), no such verification is carried out. Learned counsel submits that its wholly incorrect to say that the verification has not been carried out as all the details of amounts applied for charitable proposes abroad have been duly given to the Assessing Officer, the RBI approval were duly obtained and the same have been duly placed before the Assessing Officer, and based on examination of all this material, the Assessing Officer has quantified the amounts spent outside India for the charitable purposes. It is thus contended that all the reasons given in support of the conclusions arrived at by the learned CIT(A), are wholly erroneous and unsustainable in law.

13. Learned counsel further submits that, in any case, once an authority, which has the jurisdiction to pass an order, passes an order, unless that order is set aside by the process of law, it cannot be ignored. He submits that the powers of granting approval in respect of application of income of the trust, for charitable purposes outside India, vests in the Central Board of Direct Taxes, and it is in exercise of these powers that the CBDT has granted the approval on 10th November 2015. Learned counsel submits that it cannot now be open to the Assessing Officer to disregard the approval so granted. In support of this contention, reliance is placed on the judgment of Hon'ble Supreme Court, in the case of **Gestetner Duplicators Pvt Ltd Vs CIT [(1979) 117 ITR 1 (SC)]** wherein it is inter alia held that once recognition was granted to the provident fund trust was granted by the

Commissioner, and it remains valid, "**it was not open to the taxing authorities to question the recognition in any of the relevant years on the ground that the assessee's provident fund did not satisfy any particular condition mentioned in rule 4**". Their Lordships further added that "**it would be conducive to judicial discipline and the maintaining of certainty and uniformity in administering the law that the taxing authorities should proceed on the basis that the recognition granted and available for the particular assessment year implies that the provident fund satisfies all the conditions under rule 4 of Part A of the Fourth Schedule to the Act and not sit in judgment over it**". It was thus contended that by the same logic, once the Board has granted approval under section 11(1)(c), it cannot be open to the Assessing Officer to question the same.

14. Learned counsel then invites our attention to two judgments of Hon'ble jurisdictional High Court, broadly in support of the same proposition i.e. when an approval is granted by the prescribed authority, the Assessing Officer cannot question correctness of the same. Our attention is invited to Hon'ble Bombay High Court's judgment in the case of **CIT Vs Parrys (Eastern) Pvt Ltd[(1989) 176 ITR 449 (Bom)]** wherein it was held that once the Central Government granted approval the approval, the Assessing Officer could not have questioned the same. In the said case it was observed that "**the Central Government having found in respect of the assessee's application under section 85C that the three essential and common requirements were met, the Addl. Commissioner ought to have so proceeded and not held to the contrary**". Our attention is then invited to Hon'ble jurisdictional High Court's judgment in the case of **Maharashtra Academy of Engineering & Educational Research Vs DGIT [(2009) 319 ITR 399 (Bom)]** wherein it was held that when the approval is granted by the CBDT, a lower authority, i.e. Director General of Income Tax cannot rescind the approval so granted or act contrary to the approval. As summed up in the headnotes of the reported judgment, "**having held that the prescribed authority was CBDT for the years 1999-2000 to 2000-01, the authority to pass the order reviewing grant of permission would be CBDT. Once a power is conferred by the Act and the rules, it is only that authority, who has been conferred power under the Act and the rules, who alone can assume jurisdiction. Merely because in the reply to the show-cause notice, an objection**

was not raised, would not confer power on an authority which otherwise had no jurisdiction".

15. Learned counsel then submits that the CIT(A) ought to have held that the effect is to be given to the order as it existed at the relevant point of time. In support of this proposition, he relies upon the judgment of Hon'ble Rajasthan High Court in the case of **Prakash Chitra Vs ITO [(2001) 249 ITR 760 (Raj)]** wherein it is, inter alia, held that "**The efficacy of the order does not depend on its acceptance or non-acceptance by litigating party but it depends on operating force of the order. Once the order of the Commissioner was set aside by the Tribunal, the order of the Commissioner ceased to be operative. Unless the Tribunal's order is set aside in appropriate proceedings and the order of the Commissioner is resurrected, the only operative order as with effect from the date of the Tribunal's order was the order of the Tribunal and not the order of the Commissioner. It is not within the jurisdiction of ITO to continue with the proceedings in pursuance of the order of the Commissioner by ignoring the order of the Tribunal which binds same. There is no provision under the Act which permits the ITO to continue with the proceedings even if order of the ITO by the appellate or revisional order is set aside because the revenue has not accepted the order and matter is *sub-judice***". The principle that the learned counsel thus seeks to rely upon is that the operative order is to be given effect, and submits that the operative order is the order of the Board dated 10th November 2015 which holds the field, and the Commissioner (Appeals) ought to have applied the same.

16. On the strength of these submissions, learned counsel urges us to vacate the order of the learned Commissioner (Appeals) on this point, and hold that the benefit of exemption under section 11(1)(c) was also available to the assessee in respect of amounts spent, on charitable objects outside India, by way of payments to Cornell University and Harvard University.

17. Learned Departmental Representative, on the other hand, vehemently supports the order of the learned Commissioner (Appeals) and justifies the same. He begins

by pointing out that the learned counsel has gone to the merits without looking at the applicable legal position inasmuch as the CBDT approval is not an absolute or unconditional approval, and that this approval needs to be read in entirety, rather than partly. He then submits that as the CBDT approval itself states in so many words, the Assessing Officer is to examine the facts of the case and that is what is the condition on which the approval is granted. It is therefore the duty of the Assessing Officer to examine the facts of the case while considering application of CBDT approval on the facts of the case. It is then pointed out that admittedly the CIT(A) has not examined the facts of the case, and it is only upon such an examination that the effect of the approval can be implemented. Learned Departmental Representative then invites our attention to the written submissions filed by the Assessing Officer which, inter alia, states as follows:

2.0 <u>GROUND NO. (1)</u>

2.1 The first ground of appeal related to denial of deduction for income applied outside India under section 11(1)(c) of the Act even though the CBDT has provided approval to the assessee. The said section reads as under:

(c) income derived from property held under trust—

(i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

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

2.2 Vide order no. CIT(A)-7/IT-10/69/2017-18 and CIT(A)-7/IT-9/102/2017-18 both dated 29.12.2017, the Ld. CIT(Appeals) - 7, Mumbai, upheld the original assessment order of the AO and directed him to disallow the exemption u/s 11 (1)(c) of the Act vide the following observations :

1. **The order of the CBDT dated 10.11.2015 is not retrospective in operation and does not mention that the order would apply to the year under consideration.**

2. **The said order of the CBDT has been passed in response to the assessee's application dated 31.03.2015 and, therefore, it cannot apply to AY 11-12 or AY 12-13.**

3. **The order of CBDT allows income applied outside India subject to verification during the course of assessment proceedings. However, the AO has not done any such verification during the assessment proceedings.**

The AO has given effect to the order of the CIT (Appeals), Mumbai determining tax and interest payable for the AY's 2011-12 and 2012-13.

2.3 The assessee-trust was created on 25.07.2008 and, hence, provisions of clause 11(1)(c)(i) of the Act would apply where the conditions to be fulfilled are as below :

1. **for charitable purpose which tends to promote international welfare in which India is interested; and**
2. **general or special order of the Board**

18. The Assessing Officer, in the written submissions before us, then reproduced the CBDT approval and proceeded to observe as follows:

2.4 The first condition *"for charitable purpose which tends to promote international welfare in which India is interested",* it is to be noted that the aforesaid order of the CBDT explicitly mentions that such 'purpose' is subject to verification during course of assessment proceedings. The verification mandated by the Board is to be undertaken during assessment proceedings and the aforesaid order of the CBDT did not grant an automatic approval. Due application of mind was required after ascertaining the underlying facts/documents as to whether or not the application of income made by the appellant was consistent with and in compliance to the governing stipulations specified in the order of the CBDT . It is worth noting that the approval was accorded on the basis of details as mentioned in the application made to the CBDT by the appellant. An important component that required due consideration of the Assessing Officer was whether the application of income promoted international welfare in which India is interested. This is also evident from order/approval letter dated 10.11.2015 of the CBDT. On a careful analysis of the same, it is notedthat nothing is mentioned about how the foreign donation of funds had promoted the international welfare in which India is interested. This aspect is clearly mentioned that the approval of the Board was subject to the verification of Assessing Officer.

It is, therefore, respectfully submitted for consideration that the approval given by the CBDT was not absolute, but a conditional one with a crucial requirement that mandated the Assessing Officer to verify the application of funds. Since the assessment order dated 28.03.2014 for AY 11-12 and dated 03.03.2015 for AY 12-13 were completed prior to the said approval dated 10.11.2015 from the Board, the AO did not have an opportunity to verify the application of funds in compliance to the order of the Board.

In view of the foregoing, the claim of the appellant of allowability of expenditure outside India under section 11(1)(c) of the Act, is to be considered after the requisite verification during course of assessment.

> **2.5 It may also be mentioned that earlier, the CBDT vide letter dated 02.06.2014, had rejected the assessee's application stating that there is no cause in the application to promote the International welfare in which India is interested and, hence, the activities are not covered in the parameters mentioned in section11(1)(c) of the Act.**

19. The Assessing Officer then, in the written submissions before us, reproduced the CBDT letter 2nd June 2015 whereby the application of the assessee was rejected and observed that "**the above order of Board clearly mentions that the activities of the Trust are not tending to promote international welfare in which India is interested**" and that "**subsequently, even when the application was approved by the Board, it was unambiguously stated that the approval was subject to verification by the AO**". It is then submitted that on a "**the combined reading of the above it is undisputed that the AO has not verified the details during the course of assessment proceedings as mandated by the CBDT**" and that "**it is humbly but emphatically submitted that the learned CIT (Appeals)'s order denying the exemption u/s 11(1)(c) of the Act deserves to be upheld**". The Assessing Officer has then made an alternative prayer by stating that "**it is prayed that alternatively, that the entire matter may kindly be set aside to the file of the Assessing Officer so that due verification as envisaged in CBDT's approval letter dated 10.11.2015 can be undertaken. It is respectfully submitted that allowing the assessee's appeal at this juncture without any verification as mandated would run contrary to said order of the CBDT in this regard"**. When learned Departmental Representative was asked whether it was at all open to the learned CIT(A) to adjudication on a grievance, which did not at all survive at the stage of adjudication because the assessee was granted the relief by the Assessing Officer himself, learned Departmental Representative relied upon the stand of the CIT(A) and contented that once an issue is raised before the CIT(A), he was duty bound to adjudicate on the same. Learned Departmental Representative then painstakingly took us through these submissions filed by the Assessing Officer. It was submitted that no verification has at all been carried out in this case, and, for this reason alone, the judicial precedents relied upon by the learned counsel for the assessee are distinguishable. It is then submitted that in this case relief was granted under section 154, and, as such, such a factual verification was not possible, whereas, in the remaining six assessment years, the claim was allowed in the

scrutiny assessment proceedings under section 143(3). It is contended that admittedly no verification was, and could have been, done in the proceedings under section 154- as in the present case. When asked as to what is the nature of verification that the Assessing Officer would like to carry out, the Assessing Officer, who was present in this video conference, submitted that he would like to examine as to how the international relations, in which India is interested, are promoted by assessee's expenditure in question. He also submitted that material on record suggests that no such verification was carried out by the Assessing Officer for these two years. When asked whether this exercise was carried out for the other years, the Assessing Officer had nothing to say. Learned Departmental Representative was then asked whether the verification was carried out at the stage of giving effect to the CBDT approval, he submitted that the subject matter of this appeal is the order passed under section 143(3) and not the order under section 154. It cannot, therefore, be open to us to examine what transpired in the rectification proceedings under section 154. When the Assessing Officer was asked for the reasons for deviation in these two years, the Assessing Officer submitted that "**in the earlier years, there was a verification as to whether there was any international welfare in which India was interested whereas in the assessment years 2011-12 and 2012-13, no such verification was done**" and that "**we would like to verify what purpose has it***(overseas expenditure in question)***served**" It is submitted that the relief was wrongly given by the Assessing Officer under section 154, without necessary verifications, but then the scope of that section is limited and no such exercise could have been carried out. He further submitted that he can answer the question regarding deviation in these two years in more specific terms after discussion the matter with his senior officers.Learned Departmental Representative, however, added that the rule of consistency, as laid down in the case of **Radhasoami Satsang***(supra),* is not absolute. It is then pointed out that in the said judgment itself comes with a rider that "**the facts of this case being very special, nothing should be said in a manner which would have general application**" and that "**we are inclined to accept this submission and would like to state in clear terms that the decision is confined to the facts of the case and may not be treated as an authority on aspects which have been decided for general application**". Learned Departmental Representative, on the strength of these submissions, urged us to

confirm the order of the learned CIT(A), or at best remit the matter to the file of the Assessing Officer for fresh verifications in the terms indicated, and decline to uphold the plea of the assessee.

20. In his brief rejoinder, learned counsel for the assessee pointed out that the purpose for which the Departmental Representative states that factual verification is to be carried out is factually incorrect. He once again takes us through the approval granted by the Central Board of Direct Taxes, reads out the related observation to the effect and points out that the verification is only to verify the "extent to which income is applied" and submits that such a verification has been verified in the assessment proceedings itself as application of monies outside India is separately quantified and then exemption in respect of the same is declined. He submits that it is not the case that Board has done something and the Board wants the Assessing Officer to verify whether they have been correct, in this exercise, or not. He submits that, for example, when registration under section 12A to a chartable institution, it is not open to the AO to see the purpose to which income is applied. Once again, he refers to the judgments of Hon'ble Supreme Court in the case of **Gestetner Duplicators** *(supra)* and of Hon'ble jurisdictional High Court in the cases of **Parry's (Eastern) Pvt Ltd** *(supra)* and **Maharashtra Academy of Engineering & Educational Research** *(supra)* in support of his stand that once approval is granted by the CBDT, the Assessing Officer cannot address himself to the question whether the object of promotion of international welfare in which India is interested is served at all or not. It is submitted that all that is to be verified whether the money is actually spent for that purpose, and that is what the AO has already verified. There could be difference in the amount approved vis-à-vis the amount actually spent by the assessee for charitable purposes outside India, and in that case, the benefit is to be confined to the money actually spent by the assessee. On theprinciple emerging out of Hon'ble Supreme Court's judgment in the case of RadhasoamiSatsang *(supra),* being a conditional and caveated principle, learned counsel submits that Hon'ble Bombay High Court has dealt with that aspect of the matter, in a rather recent case of **PCIT Vs Quest Investment Advisors Pvt Ltd [(2018) 419 ITR 545 (Bom)]**, noted similar objection of the revenue before them, but relying on a subsequent judgment in the case of **Bharat Sanchar Nigam Ltd. v. Union of India**

[2006] 282 ITR 273 (SC)] rejected the same. We were taken through relevant observations in these judicial precedents. It is thus submitted that the objection raised by the learned DR, therefore, cannot be accepted. Learned counsel submits that in any case promotion of international welfare in which India is interested cannot be said to be non-existent for the two years, when it is found to exist in the remaining six years. It is thus submitted that as is the principle laid down in Radhasomai Satsang's case *(supra)*, when a factual aspect permeating through the different years has been found one way or the other, it cannot be ordinarily deviated from. We are thus urged to uphold the plea of the assessee that exemption under section 11(1)(c) is admissible in respect of the amounts paid by the assessee to Cornell University and Harvard University, as permissible application of trust income for the purposes of the trust outside India, and grant relief accordingly.

Our analysis:

21. We have given our careful consideration to the rival contention in the light of the applicable legal position and the material on record.

22. It is necessary to bear in mind the fact that as on the point of time when the appeal came up for adjudication before the CIT(A), the impugned disallowance of claim of exemption, amounting to Rs 197,79,27,500, for the assessment year 2011-12 and to Rs 25,37,00,0000 for the assessment year 2012-13, was already deleted by the Assessing Officer by passing orders under section 154 dated 8th December 2015. These orders are identically worded, and, for ready reference, extracts from the order for the assessment year 2011-12 are reproduced below:

> **The assessee has filed rectification application on 26.11.2015 for grant given to Cornell University and Harvard Business School to be considered income applied outside India. In support, the assessee has submitted copy of CBDT Order No. F.No.180/9/2010-ITA-1 dated 10.11.2015.**
>
> **In the assessment order u/s.143(3) passed in the case of the assessee on 28/03/2014 the A.O. had not allowed Rs.197,99,94,581/- as income actually applied towards objects outside India against the income of Rs.229,34,27,501/-.**
>
> **On perusal of the records, it is found that during the assessment proceedings, the A.O. observed that the assessee had filed an application seeking approval**

u/s. 11(1)(c) of the Act. As there was no direction by the Board, CBDT by general or special order stating that the assessee's income applied outside India shall not be included in the total income of the person in receipt of such income, the A.O. had disallowed Rs.197,99,94,581/- and treated the same as taxable income.

Now, the assessee has submitted a copy of order u/s. 11(1)(c) of the Income Tax Act, 1961 vide CBDT order No.180/9/2010-ITA-1 dated 10.11.2015 wherein CBOT has directed the claim of the assesee regarding the extent to which such income is applied to such purposes outside India will be subject to verification during the assessment proceedings as per the Income Tax Act, 1961. Further, CBDT has directed this order shall have effect for the period covered by Assessment Years 2009-10 to 2016-17.

Issue is covered as per CBDT order No.180/9/2010-1TA-1 dated 10.11.2015 for A.Y.2011-12.

Since the mistake is apparent from record (in light of the said Board's order) is hereby rectified u/s 154 of the Income Tax Act, 1961. The Revised income computed as under:-

Gross receipts as per computation		**Rs. 229,34,27,501.00**
Less: Income actually applied towards Objects		
(i) In India	**Rs. 8,16,25,444.00**	
(ii) Outside India	**Rs, 197,79,37,500.00**	
	Rs. 205,95,62,944.00	
Rs. 23,38,64,557.00		
Exemption u/s.11(1) of the Income Tax Act allowed to the extent of income available		**Rs. 229,34,27,501.00**
Total Taxable Income		**Rs. N I L**

Give credit for taxes paid after verification. Issue revised notice of demand/refund order accordingly.

23. The rectification order so passed and the original assessment order were, for all practical and for all legal purposes, stood merged, and the disallowance thus ceased to exist as on 8th December 2015. To this extent, grievances raised in the appeals before the CIT(A), against the aforesaid disallowances, became wholly academic and infructuous. Yet, on 29th December 2017, when learned CIT (A) disposed of these appeals, he proceeded to adjudicate on these issues. That course of action, in our considered view, was not permissible. When the very disallowance of exemption, which was agitated in appeal, stood deleted, it was not open to the learned CIT(A) to adjudicate on the correctness of the disallowance. While on this

aspect of the matter, we may usefully refer to the following observations made by Hon'ble Gujarat High Court, in the case of **Nitin Babubhai Rohit Vs Dharmendra Vishnubhai Patel [(2018) 409 ITR 276 (Guj)]** wherein Their Lordships have, inter alia, observed as follows:

> **"……. we find it somewhat unusual to note that the Commissioner (Appeals) even after the revisional authority had set aside the order of penalty, proceeded to decide the appeal of the assessee. Even if the Commissioner of Income Tax (Appeals) was personally of the opinion that the revisional order should not have been passed, once such order was passed, he must abide by the discipline of a quasi-judicial structure and respect the order as it stands. Unless the order of the revisional authority was set aside by competent authority or Court, its effect must be allowed to be felt on record with full force. The only effect of the order was that the order of penalty passed by the Assessing Officer does not survive. If the penalty order was thus set aside by revisional authority, it was thereafter not open for the appellate Commissioner to still examine the merits of such an order and declare his legal opinion on the same**….."

24. Clearly, therefore, once a grievance does not survive because of some other order having been passed giving relief, on that count, having been given by some other authority, it is not open to the CIT(A) to adjudicate on that grievance. Once the disallowance of exemption was thus deleted by the Assessing Officer, by way of a rectification order which stood merged with the assessment order, it was not open to the CIT(A) to still examine the merits of such a disallowance of exemption and declare his legal opinion on the same. In our considered view, therefore, even if the CIT(A) was personally of the opinion that the rectification order should not have been passed, as he apparently was, once such a rectification order was passed, he must abide by the discipline of a quasi-judicial structure and respect the order as it stands. Even if learned CIT(A)'s reservations, on the correctness of rectification order passed by the Assessing Officer under section 154 and thus deleting the disallowance of exemption, had any merits, the remedy was not with him. He was not seized of the matter regarding correctness of relief granted by the Assessing Officer under section 154, and, at the same time, legal effect of the order under section 154 was that the issue, which he was called upon to adjudicate on, was rendered academic. As held by Hon'ble Calcutta High Court in the case of **PCIT Vs KPC Medical College and Hospital [(2018) 95 taxmann.322 (Cal)]**, in view of the

scope of Explanation to Section 251, the CIT (A) can deal with **"any matter arising out of the proceedings in which the order appealed against was passed"** but then when different sub clauses of section 251(1) provide for different appeals for the orders, while dealing with appeal against one order, the CIT(A) cannot deal with the subject matter of the other order. This is evident from Their Lordships' observations to the effect that "**As would be evident from Section 251(1) of the Act, an appeal against an order of assessment is covered by clause (a) thereof and an appeal against an order imposing a penalty is covered by clause (b) thereof. In other words, independent appeals arise out of orders of assessment and orders imposing any penalty. In this case, the order that was before the Commissioner (Appeals) was an order imposing a penalty and not an assessment order. If the assessment order that resulted in the penalty proceedings being instituted was before the Commissioner (Appeals), the direction may have been justified. However, in the appeal arising out of the order imposing the penalty, the matter pertaining to some other income escaping assessment did not fall within the purview of the expression "any matter arising out of proceedings in which the order appealed against was passed**". It is only elementary in law that what cannot be done directly cannot be done indirectly either. If authority is needed even for this fundamental legal proposition, the same is contained in numerous judgments of Hon'ble Supreme Court of India, including in the rather recent cases of **Ram Jethmalani Vs Union of India [(2011) 13 taxmann.com 189 (SC)]**and**CIT Vs Paharpur Cooling Towers Pvt Ltd [(1996) 219 ITR 618 (SC)]**.The rectification order under section 154 could have been at best subjected to revision under section 263, and the time limit under section 263(2) was very well available at that point of time, but then such a revision could only have been done by the Principal Commissioner of Income Tax concerned, and not by the CIT(A); as we have noted earlier in these discussions, it is only elementary in law that what cannot be done directly, cannot be done indirectly either. As long as such a revision does not take place, and that has not happened till now, and as long as the rectification orders passed under section 154 are set aside by any other mechanism provided under the law, it was not open to the CIT(A) to ignore the effect of the rectification order, on the order impugned in appeal before him, and thus proceed to adjudicate on a question which was wholly academic and infructuous at that point of time.

25. In our considered view, therefore, the very adjudication on denial of exemption, in respect of monies spent on application of charitable objectives of the appellant trust outside India, by the learned CIT(A) was incorrect in law, and is, accordingly, liable to be set aside for that short reason alone.

26. That, however, is not the only reason as to why the assessee must succeed in appeal on this point.

27. As learned counsel for the assessee rightly contends, once an authority, which has the jurisdiction to pass an order, passes an order, unless that order is set aside by the process of law, it cannot be ignored. The powers of granting approval for the purpose of application of income of the trust, for objects of the charitable institution, vests with the Central Board of Direct Taxes, and, in exercise of these powers, the Central Board of Direct Taxes had granted the approval dated 10th November 2015. On the question as to whether, in the course of assessment proceedings, such an approval can be called into question, we find guidance from Hon'ble Supreme Court's judgment in the case of **Gestetner Duplicators***(supra)* wherein Their Lordships have, inter alia, observed as follows:

> **…….However, we would like to make some observations with regard to the true impact of the recognition granted by the Commissioner of Income-tax to a provident fund maintained by an assessee. The facts in the present case that need be stressed in this behalf are that it was as far back as 1937 that the Commissioner of Income-tax had granted recognition to the provident fund maintained by the assessee under the relevant rules under 1922 Act, that such recognition had been granted after the true nature of the commission payable by the assessee to its salesmen under their contracts of employment had been brought to the notice of the Commissioner and that said recognition had continued to remain in operation during the relevant assessment years in question; the last fact in particular clearly implied that the provident fund of the assessee did satisfy all the conditions laid down in rule 4 of Part A of the Fourth Schedule to the Act even during the relevant assessment years. In that situation we do not think that it was open to the taxing authorities to question the recognition in any of the relevant years on the ground that the assessee's provident fund did not satisfy any particular condition mentioned in rule 4. It would be conducive to judicial discipline and the maintaining of certainty and uniformity in administering the law that the**

> **taxing authorities should proceed on the basis that the recognition granted and available for the particular assessment year implies that the provident fund satisfies all the conditions under rule 4 of Part A of the Fourth Schedule to the Act and not sit in judgment over it…….**
>
> *[Emphasis, by underlining, supplied by us now]*

28. It was, therefore, not open to the CIT(A) to question, directly or indirectly, the decision of the CBDT in granting approval, under section 11(1)(c), to the assessee. In any case, whether the approval was justified on merits or not, as long as that order subsisted, it was not open to the CIT(A) to ignore the same. As Hon'ble Rajasthan High Court has observed, in the case of **Prakash Chitra** *(supra)*, **"The efficacy of the order……. depends on operating force of the order".**

29. As regards learned Departmental Representative's stand that the approval granted by the Board was a conditional approval, let us first take a look at the scheme of Section 11(1)(c)(ii), as it stood at the relevant point of time, which is reproduced below for ready reference:

> **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—
>
> ……
>
> ……
>
> (*c*) income derived from property held under trust—
>
> ……
>
> (*i*) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and
>
> **Provided** that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income

30. In the present context, in plain words, section 11(1)(c)(i) provides that so far as any income from any property held under trust is concerned, in respect of the trusts created on or after 1st April 1952, as long as such income is appliedfor a charitable purpose which tends to promote international welfare in which India is

interested, to the extent to which such income is applied to such purposes outside India. There is, however, a common proviso to Section 11(1)(c) (i) and 11(1)(c)(ii) which lays down the condition that the CBDT, by general or special order, has directed that "it shall not be included in the total income of the person in receipt of such income".

31. It is in this backdrop that the assessee trust made an application to the CBDT on 26th May 2010 but apparently this application did not adequately highlight as to who the proposed disbursements to Harvard University and Cornwell University "promote international welfare in which India is interested" and that was the reason as to why the said application was rejected by observing that "(a)fter examining the information and documents as filed by the applicant from time to time, it is noted that while the aforesaid activities may be philanthropic in nature and for the purpose of aiding Higher Education, supporting research projects in the field of agriculture and nutrition, and beneficial for citizens of India in general, these cannot be said to be for a cause, which tends to promote international welfare in which India is interested as stipulated under section 11(1)(c)". The assessee, however, made a fresh, much more detailed, application to the CBDT on 31st March 2015 wherein the assessee had taken pains to describe as to how the payments in question made by the assessee to the Harvard University and Cornell University "promote international welfare in which India is interested". As evident from the content of application, reproduced earlier in this order, it was explained that this expenditure would include USD 50 million to Cornell University ('Cornell'), towards scholarships to students being Indian citizens and for supporting initiatives towards agriculture and nutrition; and USD 50 million to Harvard Business School ('Harvard') for an educational infrastructure and facility at Harvard University, particularly classroom, residential, research facilities for students enrolled for Executive Educati1on programmes of Harvard Business School. It was then explained that this application of funds will also result in "promoting international welfare in which India is interested by giving detailed explanation such as stating that, so far as contribution to Cornell University is concerned, the "**cross learning and sharing of experience leads to direct and immediate contribution to international welfare to students at the University level. However, this is just the beginning of the process of international welfare**

that will follow in the years to come. Learning at a prestigious university like Cornell, would definitely provide international outlook and develop personalities of Indian students and will thereby contribute to international welfare in future from wherever they are situated/ placed"., The point was clarified further, and it was explained that "**To give example, one graduate student, Mr. Jishnu, who, had received admission for undergraduate studies in Cornell University, but was unable to accept it owing to financial reasons was selected for the scholarship. The scholarship has enabled him to pursue graduate studies from Cornell University and together with his Advisor, he is mapping genetic similarities in multiple diseases, which would improve the way diseases arc treated world over, including India (as it would provide a holistic approach to treatment, rather than treating diseases as separate and unrelated). This is one of the many examples of promotion of international welfare in which India is interested**". Similarly, justifying the contribution to Harvard University is concerned, it was explained that "**as the above donation to Harvard by the TEDT is for furthering education, it falls within the objects of the Trust and also within the meaning of the term 'charitable purpose' as defined under Section 2(15) of the Act. Also, by contributing to the construction of Tata Hall, which has supported students from all over the world including India, the donation has promoted international welfare wherein India is interested**". The impact of the application of funds outside India, by way of contributions to Cornell University and Harvard University, on the promotion of "international welfare in which India is interested" was thus unambiguously addressed to, and quite clearly as a result of this exercise, the CBDT granted the approval under section 11(1)(c). If it was the case that the CBDT was not satisfied with these submissions on the manner in which these contributions to Cornwell University USA and Harvard University USA tend to promote the "international welfare in which India is interested", the CBDT could have, as it did vide letter 2nd June 2014 while dealing with an earlier application, said that "**After <u>examining the information and documents as filed by the applicant from time to time</u>, it is noted that……these***(contributions)***cannot be said to be for a cause, which tends to promote international welfare in which India is interested as stipulated under section 11(1)(c)**". This position, however, changed as detailed explanations, as noted above, were furnished justifying as to jow

these contribution to the Cornell University USA and Harvard University USA tend to promote "international welfare in which India is interested". This time, quite contrary to the stand taken earlier, the CBDT approval, apparently satisfied with all the conditions under section 11(1)(c)- including obviously the requirement of promoting the international welfare in which India is interested stated, that "**under the proviso to clause (c) of sub-section (1) of Section 11 of the Income-tax Act, 1961 (4c of 1961), the Central Board of Direct Taxes now directs that the income derived from property held under the trust known as "Tata Education and Development Trust, Mumbai" shall not be include in the total income of the person in receipt of such income to the extent such income is applied outside India for charitable purpose for grant for creation of endowment funds through contribution at the Cornell University, for scholarship of Indian students as well as for joint collaboration project between Indian and Cornell scientists, and grant for financial assistance to Harvard Business School for construction of a New Executive Building named 'Tata Hall'."** It cannot, therefore, be said that the condition regarding promotion of international welfare in which India is interested was not considered by the CBDT.Once this aspect of the matter has been examined by the Central Board of Direct Taxes- the highest authority under the Income Tax Act 1961 and the prescribed authority under proviso to Section 11(1)(c), as has clearly been examined in our considered view, it cannot be open to any other authority to conduct the same exercise again. That would not only be contrary to the law laid down by Hon'ble Supreme Court in **Gestetner Duplicator's** case *(supra)*, but also a wholly superfluous and parallel exercise by an authority which does not statutory powers to conduct that exercise.

32. A plain reading of the CBDT approval would show that only condition attached to in the CBDT approval, as learned counsel for the assessee so correctly point out, is the condition that **"the claim as above of the applicant** *(regarding contributions made to Cornell University USA and Harvard University USA)***regarding the extent to which such income is applied to such purposes outside India will be subject to verification during the course of assessment proceedings as per the Income-tax Act, 1961"** *[Emphasis, by underling, supplied by us]*.While it is true that in terms of paragraph 2 of the CBDT approval dated

10.11.2015, a copy of which is set out below paragraph 8 earlier in this order, the approval of the CBDT does require verification in the assessment proceedings, but that verification is only with respect to "the extent to which such income is applied for such purposes outside India". It is also important to bear in mind the fact that this paragraph 2 needs to be read in conjunction with paragraph 1 of the CBDT approval which sets out amounts up to which contributions are permitted by the CBDT in each of the eight assessment years covered by the approval. It would show that for the assessment years 2011-12 and 2012-13, permitted contribution is US $ 43.75 millions and US $ 5 millions respectively. All that the verification requires is, as the CBDT approval states in so many words, "the extent to which such income is applied for such purposes outside India". Clearly, where the income of the trust is applied for such purposes upto the specified amount, the actual application of income, and not the amount so specified in the CBDT approval, will be covered by exemption available under section 11(1)(c). It goes without saying that where the actual application of income of the trust exceeds the permitted contribution in paragraph 1 of the CBDT approval, the exemption under section 11(1)(c) will be available only to the extent specified in paragraph 1 of the CBDT approval. That is the limited verification, in terms of the CBDT approval, required to be made by the Assessing Officer.

33. Ironically, however, when we asked, during the course of hearing before us, as to what verifications would the Assessing Officer like to carry out now, learned Departmental Representative, as also the Assessing Officer appearing in person, submitted that the verification required is for the purposes of ensuring that such an application of income of the trust outside India, i.e. by contributions to the Cornell University and Harvard University, tend to promote "international welfare in which India is interested". That exercise, for the detailed reasons set out above, cannot be conducted by the Assessing Officer, nor does the scheme of the Act, or facts of the case- particularly in the light of material on the basis of which the CBDT has granted the approval, permit so.

34. It is also important to bear in mind the fact that the Assessing Officer has in the other assessment years covered by the same CBDT approval, including four

subsequent years and including an earlier year of which the assessment was reopened, allowed the benefit of Section 11(1)(c) in the course of scrutiny assessment proceedings under section 143(3). By implication, therefore, it is accepted that either the verification about promotion of international welfare in which India is interested was not required as the same was done by the CBDT, or, in the opinion of the Assessing Officer, the application of income outside India as such tends to promote the international welfare in which India is interested. Whichever way one looks at it, that is a fundamental fact which permeates from year to year, and, the principle of consistency requires that once a fundamental fact permeating through different assessment years has been found, as a fact, one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in another year. That is what Hon'ble Supreme Court has held in the case of **Radhasoami Satsang** *(supra).*

35. As regards the caveat that Their Lordships put in the case **Radhasoami Satsang***(supra)*, by stating that "**the decision is confined to the facts of the case and may not be treated as an authority on aspects which have been decided for general application**", we may point out that the development of law did not stop at this judicial precedent. In the case of **Quest Investment Advisors***(supra)*, explaining the subsequent development of law on this point, Hon'ble jurisdictional High Court has, *inter alia*, observed as follows:

> **7. We note that the impugned order of the Tribunal records the fact that the Revenue Authorities have consistently over the years i.e. for the 10 years years prior to Assessment Years 2007-08 and 2008-09 and for 4 subsequent years, accepted the principle that all expenses which has been incurred are attributable entirely to earning professional income. Therefore, the Revenue allowed the expenses to determine professional income without any amount being allocated to earn capital gain. In the subject assessment year, the Assessing Officer has deviated from these principles without setting out any reasons to deviate from an accepted principle. Moreover, the impugned order of the Tribunal also records that the Revenue was not able to point out any distinguishing features in the present facts, which would warrant a different view in the subject assessment year from that taken in the earlier and subsequent assessment years. So far as the decision of *Radhasoami Satsang* (*supra*) is concerned, it is true that there are observations therein that restrict its applicability**

only to that decision and the Court has made it clear that the decision should not be taken as an authority for general applicability.

8. However, subsequently the Apex Court in *Bharat Sanchar Nigam Ltd.* v. *Union of India* [2006] 282 ITR 273 has after referring to the decision of *Radhasoami Satsang* (*supra*) has observed as under :—

> **"20. The decisions cited have uniformly held that res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision of where the earlier decision is per incuriam. However, these are fetters only on a co-ordinate Bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior strength or in some cases to a Bench of superior jurisdiction."**

(emphasis supplied)

9. The principle accepted by the Revenue for 10 earlier years and 4 subsequent years to the Assessment Years 2007-08 and 2008-09 was that the entire expenditure is to be allowed against business income and no expenditure is to be allocated to capital gains. Once this principle was accepted and consistently applied and followed, the Revenue was bound by it. Unless of course it wanted to change the practice without any change in law or change in facts therein, the basis for the change in practice should have been mentioned either in the assessment order or atleast pointed out to the Tribunal when it passed the impugned order. None of this has happened. In fact, all have proceeded on the basis that there is no change in the principle which has been consistently applied for the earlier assessment years and also for the subsequent assessment years. Therefore, the view of the Tribunal in allowing the respondent's appeal on the principle of consistency cannot in the present facts be faulted with, as it is in accord with the Apex Court decision in *Bharat Sanchar Nigam Ltd.'s* case (*supra*).

36. The plea of the learned Departmental Representative, relying on the caveat put in by Hon'ble Supreme Court in the case of **Radhasoami Satsang***(supra)*, does not have legally sustainable merits. We reject the same.

37. As regards the plea of the Assessing Officer that the verification could not be carried out in these two years as the claim was allowed in the rectification proceedings under section 154, with its inherent limitations of scope, whereas in all other years, the claim was allowed in the scrutiny assessment proceedings under section 143(3), with much wider scope, we are unable to see any merits in this plea either. The order under section 154 is in respect of the assessment order under section 143(3) and the explanation and material before the Assessing Officer were the same in all the assessment years- the assessment years in which he allowed the exemption claimed and the assessment years in which he did not allow the exemption claimed. In all the assessment years, he has quantified the amounts of application of income outside India by contribution to these two universities, and that is the only verification that the Assessing Officer has carried out. As a plain reading of all these assessment orders would show, there is not even whisper of a discussion, and rightly so, about the manner in which the contributions made by the assessee trust tend to promote the international welfare in which India is interested. The only place in the material before us where this aspect of the matter is discussed and justified is the application dated 31st March 2015 filed by the assessee trust before the Central Board of Direct Taxes, and, by granting approval to the said application, by unambiguous implication, the Central Board of Direct Taxes has approved the said justification. The distinction in facts canvassed by the Assessing Officer is thus a distinction without material difference.

38. In the light of the above discussions, even though there is no *res judicata* in the income tax proceedings, the principles of consistency apply to the income tax proceedings nevertheless, and, in the light of these principles of consistency, it was not open to the Assessing Officer to decline the benefit of section 11(1)(c), in respect of application of income of the trust outside India by making contributions to Cornell University USA and Harvard University USA, only for these two years,

when, on the same set of facts, the benefit of section 11(1)(c) has been allowed for all other years.

39. We have taken note of the stand of the CIT(A) that the approval granted by the CBDT is not specifically stated to be retrospective in nature, and, therefore, it cannot be given retrospective effect. We do not see any merits in this line of reasoning. Whether the expression "retrospective effect" is specifically used in the approval or not, when it is specifically stated that "the order shall have the effect for the period covered by assessment years 2009-10 to 2016-17", there is no escape from the position that the order applies to the period so covered from the assessment years 2009-10 to 2016-17. Learned CIT(A) has clearly been hyper pedantic in his approach, and, in any case, there is no justification for his obsession with the expression "retrospective effect"- particularly when the fact of retrospective effect is so glaring from the content of the CBDT approval.

40. As regards learned CIT(A)'s stand that since application for approval under section 11(1)(c) is made only on 31st March 2015, "it cannot apply for the assessment year 2011-12 *(and 2012-13)*", it proceeds on the assumption that the prior application for the CBDT's approval for application of income of the trust "outside India" is required but then this assumption is not correct inasmuch as no such time limit is stipulated under section 11(1)(c). Wherever time limits for taking approvals of the prescribed authorities are stipulated, such as in 10(23C), 12A(1)(a), 80 HHD(4), the legislature has specifically provided for the same. In the absence of a time limit prescribed by the statute, no matter how desirable- even if that be so, it cannot be inferred. As observed by Hon'ble Supreme Court, in the case of **Tarulata Shyam vs CIT [(1977) 108 ITR 345 (SC)]**, "**There is no scope for importing into the statute words which are not there. Such importation would be, not to construe, but to amend the statute. Even if there be a *casus omissus,* the defect can be remedied only by legislation and not by judicial interpretation**". Their Lordships, in the said case, have further observed that "**To us, there appears no justification to depart from the normal rule of construction according to which the intention of the legislature is primarily to be gathered from the words used in the statute. It will be well to recall the words of Rowlatt J. in Cape Brandy**

Syndicate v. Inland Revenue Commissioners [1921] 1 KB 64 (KB) at page 71, that: '……in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.'" Viewed thus, a time limit for making application for approval under section 11(1)(c) cannot be inferred, and, in the absence of such a time limit, it could not be said, as was impliedly held by the CIT(A), that an application for approval under section 11(1)(c) cannot be made after the end of the relevant assessment year. The reasoning employed by the learned CIT(A), on this count as well, does not meet our approval. The last reason for rejecting the impugned claim of exemption by the CIT(A) was that the exemption under section 11(1)(c) was subject to necessary verification during the assessment proceedings and that verification has not been done. There is no merit in this plea either. The only verification required, as we have held earlier in this order, was with respect to "the extent to which such income is applied for such purposes outside India" and that verification is not even in dispute as all the related payment details and RBI remittance approvals have already been filed before the Assessing Officer, at the assessment stage, and the same have not been faulted at all. When the Assessing Officer appeared before us in person, he did not even dispute that; all he wanted to verify was as to how the contributions to Cornwell University USA and Harvard University USA tend to promote the international welfare in which India is interested, but then, for the detailed reasons set out earlier in the order, that is what he cannot be permitted to do, as it falls beyond the call of his duty. We reject this plea as well.

Our conclusions on the core issue in appeal:

41. For the detailed reasons set out above, we are of the considered view that the learned CIT(A) was in error in upholding the denial of claim of the assessee for exemption in respect of application of income of the trust outside India, by way of contributions made to Cornell University USA and Harvard University USA and amounting to Rs 197,79,27,500, for the assessment year 2011-12, and of Rs 25,37,00,000 for the assessment year 2012-13. The claim of the assessee must be allowed, and, we order so.

42. As we part with the matter, we may however add that this is unique case in which the CBDT has approved the exemption being granted in respect of payments made by the assessee trust to the Cornell University USA and Harvard University USA, in which the Assessing Officer has duly given effect to the stand so taken by the CBDT, and yet a hyper-pedantic, even if a *bonafide*, approach of the learned CIT(A), seemingly more loyal to the CBDT than CBDT itself, has resulted in this wholly avoidable litigation which does not only clog the serious litigation before the judicial forums but also diverts scarce resources of the philanthropic bodies, like the assessee before us, to the areas which do no good to the society at large. It appears that the view taken in the matter by the CIT(A) in reviving an issue which was already concluded by the Assessing Officer in favour of the assessee, and in the Assessing Officer defending the action of the CIT(A), is inherently incompatible with much appreciated and very forward looking approach of the Government of India towards minimising litigation and thus creating a taxpayer friendly environment. We hope that the admirable work being done by the Government of India, in pursuing such forward looking policies at the macro level, is not allowed to be overshadowed by the isolated situations like this, at the field level, which must be minimized by sensitising the authorities concerned. An effort should be made to create a taxpayer friendly atmosphere by adopting just and fair approach at every level of the tax administration.

Ground wise disposal of appeals before us:
Assessment year 2011-12

43. We first take up the appeal filed by the assessee for the assessment year 2011-12, i.e. ITA No. 1423/Mum/ 2018, directed against the order dated 29th December 2017 passed by the CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2011-12.

44. Learned counsel for the assessee fairly submits that the only issue that requires our adjudication in this appeal is first ground of appeal, i.e. "on the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) ["CIT(A)"] has erred in denying deduction for the income applied outside India under section 11(1)(c) of the Income Tax Act, 1961 ["the Act"], even though

the appellant has an order from the Central Board of Direct Taxes ["CBDT"] as required by the proviso to Section 11(1)(c) of the Act", and that in the event of this ground of appeal is being allowed, all other grounds of appeal will be rendered academic and infructuous. For the detailed reasons set out earlier in this order, we have decided this issue in favour of the assessee and thus allowed this ground of appeal. We, therefore, uphold the plea of the assessee, and delete the resultant disallowance of claim of exemption of Rs 197,79,27,500. The assessee gets the relief accordingly.

45. In the result, appeal for the assessment year 2011-12 is allowed in the terms indicated above.

Assessment year 2012-13

46. We now take up the cross appeals for the assessment year 2012-13, i.e. ITA Nos. 1424 and 1535/Mum/ 2018, directed against the order dated 29th December 2017 passed by the CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2012-13.

47. So far as appeal filed by the assessee (ITA No. 1424/Mum/2018) is concerned, learned representatives fairly agree that whatever we decide for the assessment year 2011-12 will equally apply here, and facts are the same. We, therefore, uphold the plea of the assessee, and delete the resultant disallowance of claim of exemption of Rs 25,37,00,000. The assessee gets the relief accordingly.

48. In the result, the appeal filed by the assessee is allowed in the terms indicated above.

49. In the appeal filed by the assessee, in the three grounds of appeal taken by the Assessing Office, the only grievance of the Assessing Officer is against learned CIT(A)'s direction for allowing carrying forward of deficit of Rs 9,79,43,270 on account of excess expenditure, but then, this issue is admittedly covered in favour of the assessee by Hon'ble jurisdictional High Court's judgment in the case of **CIT Vs Institute of Banking Personnel Selection [(2003) 264 ITR 110 (Bom)]** inasmuch as

one of the grounds of appeal itself, inter alia, states that "the Department has not accepted the said decision of Hon'ble jurisdictional High Court on merits of the case, but, due to smallness of tax effect, appeal was not filed before Hon'ble Supreme Court". Respectfully following the esteemed view of Hon'ble jurisdictional High Court, in the case of Institute of Banking Personnel Selection *(supra)*, we approve the stand of the CIT(A) and decline to interfere in the matter.

50. In the result, the appeal of the Assessing Officer is dismissed.

51. To sum up, while the appeals filed by the assessee for the assessment years 2011-12 and 2012-13 are allowed in the terms indicated above, the appeal filed by the Assessing Officer for the assessment year 2012-13 is dismissed. Pronounced in the open court, through video conferencing, today on the 24th day of July, 2020.

Sd/- ***Sd/-***

Justice P P Bhatt **Pramod Kumar**
(President) (Vice-President)

Dated: 24th day of July, 2020

Copies to: *(1)* *The appellant* *(2)* *The respondent*
(3) *CIT* *(4)* *CIT(A)*
(5) *DR* *(6)* *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai