IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES " **C** " BENCH: BANGALORE

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**
**AND**
**SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.552 & 553/Bang/2018
(Assessment Years : 2009-10 & 2014-15)

M/s. Navodaya Grama Vikas Charitable Trust,
14-7-1005, SC DCC Bank Ltd.,
Head Office Building, Kodialbail,
Mangaluru-575 003
….Appellant
PAN AAATN 7594E

Vs.

Assistant Commissioner of Income Tax (Exemptions),
Circle 1, Mangaluru.
……Respondent.

| Assessee By: | Shri V.Srinivasan, Advocate. |
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| Revenue By: | Smt. R. Premi, JCIT (D.R) |

| Date of Hearing : | 01.09.2020. |
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| Date of Pronouncement : | 16.10.2020. |

**O R D E R**

**PER SHRI CHANDRA POOJARI, A.M. :**

These two appeals are filed by the assessee against different orders of Commissioner of Income Tax (Appeals)-10, Bangalore Dt.11.01.2018 for the Assessment Years 2009-10 & 2014-15. Since certain issues are common in both the appeals, they are heard together and consolidated order is passed for the sake of convenience.

**ITA No.552/Bang/2018**

2. The assessee has raised the following grounds :

1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2A. The order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the re-assessment requires to be cancelled.

2B. The learned CIT [A] ought to have appreciated that there was no reason to believe that the income has escaped assessment on the basis of the reasons recorded for issuance of the notice u/s. 148 of the Act under the facts and in the circumstances of the appellant's case and hence, the impugned order passed ought to have been cancelled.

2C. The learned CIT [A] ought to have appreciated the objections of the appellant that the reasons recorded showed that there was only a reason to suspect and not a "reason to believe" that the income has escaped assessment and consequently, the proceedings initiated were opposed to law and hence, the impugned order passed ought to have been cancelled.

2D. Without prejudice to the above, the re-opening of the assessment after 4 years from the end of the assessment year under appeal especially in light of the earlier assessment order passed u/s 143[3] of the Act without any fresh material is opposed to law and consequently the re-opening of the assessment is liable to be quashed.

2E. Without prejudice to the above, the re-opening of the assessment is also bad in law as no previous sanction u/s 151 of the Act has been obtained by the learned A.O., which is clear from the reasons recorded and consequently, the impugned order passed deserves to be cancelled.

2F. Without prejudice to the above, the impugned order passed u/s 143[3] rws 147 of the Act is bad in law since the learned A O has not disposed off the objections filed by the appellant for reopening the assessment by passing the separate speaking order and consequently, the impugned order passed without disposing off the objections, deserves to be annulled.

3A. The learned CIT[A] is not justified in upholding the finding recorded that the land advance of Rs.2.5 Crores given by the appellant trust to Mr. Pushparaj Jain amounted to diversion of the funds of the Trust for the benefit of the trustees and thus, the said transaction was hit by the provisions of Sec.13[2] of the Act under the facts and in the circumstances of the appellant's case.

3B. The learned CIT[A] is not justified in upholding the taxation of the aforesaid sum of Rs. 2.5 Crores at maximum marginal rate under the facts and in the circumstances of the appellant's case.

4. The learned CIT [A] is not justified in upholding the method of computation of the income and application followed by the A.O., excluding the loans recovered by the appellant from Self Help Groups [SHG] that was regarded as income and simultaneously excluding the loans advanced to SHG that was regarded as application by the appellant without appreciating that the appellant was engaged in the activity of financing SHG and therefore, the loans recovered and advanced are to be regarded as income and application under the facts and in the circumstances of the appellant's case.

5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s.234-B of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

3. The Brief facts of the case are that the assessee is a charitable trust registered under Section 12AA of the Act dt.10.01.2005 by the CIT, Mangalore. The assessee trust is engaged in the charitable activities of helping the rural poor by forming Self Help Groups (SHG) and providing them with financial and other assistance. The assessee had filed Return of Income on 29/09/2009 declaring NIL income after claiming exemption under Section 11 of the Act and thereafter assessment was completed by the Assessing Officer under Section 143(3) of the Act dt.25.11.2011 accepting the income declared by the assessee. The Assessing Officer issued Notice under Section 148 of the Act on 13.4.2015 to submit the books of accounts and details and the same were furnished from time to time before the Assessing Officer. The Assessing Officer recorded reasons for reopening of assessment and provided the same to the assessee vide letter dt.28.3.2016. The assessee filed objections by letter dt.8.12.2016 objecting to the reopening of assessment and filed other details in connection with the assessment proceedings. The Assessing Officer

passed order under Section 143(3) r.w.s. 147 of the Act dt.30.12.2016 determining the total income of the assessee at Rs.85,29,235 as excess of income over application under Section 11 of the Act by changing the method of computing the income and application excluding the loans advanced by the assessee to SHG and recovery of the loans from SHG that was considered as income. The Assessing Officer has arrived at the belief that income has escaped assessment by virtue of the fact that Shri Pushparaj Jain has received an advance of Rs.2.50 Crores towards sale of land from the assessee and has also made certain advances to Sri M N Rajendra Kumar, the trustee of the assessee trust. The Assessing Officer was of the opinion that the trust is diverting its funds violating section 13(2) of the Act to specified people mentioned in Sectin 13(3) of the Act without adequate security or compensation resulting in loss of revenue to the trust, improper application of trust funds in investments and the income of Rs.2.5 Crores diverted to the trustee and treated as taxable income and is charged at maximum marginal rate. Aggrieved by the order of Assessing Officer, the assessee filed an appeal with the CIT (Appeals). The CIT (Appeals) concurred with the action of the Assessing Officer and dismissed this ground of appeal. The assessee is in appeal before the Tribunal.

4. The Ld. AR submitted that the assessee is challenging the re opening and consequential assessment order passed by the learned A.O. on the ground that the mandatory requirements for re-opening the assessment have not been complied with by the AO. It was submitted that there was no reason to believe

that income has escaped assessment on the basis of the reasons recorded and that ;

(a) There was only a reason to suspect that income has escaped assessment and there was no reason to believe that income has escaped assessment;

(b) The re-opening of the assessment after 4 years was opposed to law since there was an earlier assessment u/s. 143[3] ;

(c) No sanction u/s. 151 of the Act, has been obtained by the learned AO for issue of notice u is. 148 for re -opening the assessment; and

(d) The learned A.O. has not disposed off the objections filed by the appellant by passing a separate speaking order and thus, it renders the assessment order a nullity;

After recording the aforesaid facts, the AO stated that there was a reason to believe that income chargeable to tax has escaped assessment on this score due to violation of the provisions of section 13(1)(c) r.w.s. 13(2)(g) of the

4.1 The Ld. AR submitted that in terms of section 147 of the Act, the assessment can be re-opened if the AO has the reason to believe that income escaped assessment. It was submitted that the phrase employed u/s. 147 of the Act, 'reason to believe' postulates a belief, which is in that income chargeable to tax has escaped assessment. This live link must also be apparent from the reading of the reasons recording. The Ld. AR placed reliance on the ratio of the following decisions:

1) M/s. Calcutta Discount Co. reported in 41 ITR 191[SC]

[2] Gangasaran reported in 130 ITR 1

[3] Chuharma( Rajpal reported in 79 ITR 603[SC]

[4] Lakhmani Mewat Das reported in 103 ITR 437 (SC)

The Ld. AR submitted that the concept of live-link as explained by the Supreme Court in the case of CIT. Vs. Lakhmani Mewat Das reported in 103 ITR 437 wherein it was held that the reasons set out by the A.O. to the belief that income has escaped assessment is totally absent in this. The Ld. AR relied on the relevant observations of the Supreme Court in the aforesaid case of Lakhmani Mewal Das (supra) as below:

> *The reasons for the formation of belief* must *have a rational connection or relevant bearing on the formation of the belief. Formation of belief postulates that there must be a direct nexus or live link between the material coming to the notice of the income tax offices and the formation of his belief that there has been an escapement of income of the assessee from assessment.*

4.2 The Ld. AR submitted that testing the aforesaid reasons recorded on the ratio of the judgment of the Supreme Court in the case of Lakhmani Mewat Das [supra], it is seen that there are no objective reasons set-out by the AO for entertaining a bonafide belief that income has escaped assessment. According to the Ld. AR, this is because, the A.O. had arrived at the belief that income had escaped assessment by virtue of the fact that Shri Pushparaj Jain had received an advance for sale of land from the assessee and had also made certain advances to Sri M.N. Rajendra Kumar, the trustee of the assessee trust. However, it was submitted that there is nothing in the reasons recorded to support the belief that the above transaction is hit by 13(1)(c) r.w.s. 13(2)(g) of the Act, which is a mere surmise drawn by the AO.

4.3 The Ld. AR submitted that the transaction of advancing monies by the assessee tp Sri Pushparaj Jain, is a separate and unconnected transaction with the amount advanced by Sri Pushparaj Jain to Sri M.N. Rajendra Kumar and merely on the score that these two unconnected transactions have taken place simultaneously during the year under consideration is no ground to hold that there is a violation of the provisions of section 13[1][c] rws 13[2][g] of the Act. It was further submitted that the A.O. had not examined Sri Pushparaj Jain to ascertain the nature of the transaction with the appellant trust and the nature of the advance given by him to Sri M.N. Rajendra Kumar before arriving at the aforesaid conclusion. Thus, it was submitted that the mere mention of these transactions without bringing on record any material to support the said inference leads to the irresistible conclusion that the said reason stated by the AO is a mere pretense and cannot be regarded as bonafide reasons inducing a belief that income has escaped assessment. Thus, at best, it was submitted that the reasons mentioned by the AO shows only a belief in the existence of reasons and nothing more. Therefore, it was submitted that there is absolutely no live-link between the reasons stated by the A.O. and the belief held by him that the income of the assessee had escaped assessment and hence, it was submitted that the reopening of the assessment is bad in law.

4.4 The Ld. AR placed reliance on the judgment of the Karnataka High court in the case of CIT Vs Thippa Shetty 322 ITR 525 and the unreported decision

of the Karnataka High court in the case of CIT Vs Nagappa in Writ Appeal Number 928 of 1991. It was submitted that the single bench judgment of the Karnataka High Court in the case of A. Nagappa V. ACIT, wherein the reasons of the Assessing Officer, were elaborate, were reproduced, yet the High Court proceeded to quash the notice issued to the assessee under section 148 of the Act. According to the Ld. AR this Order was the subject matter of challenge at the instance of Revenue in W.A. No. 928/ 1991 before the Division Bench of the Karnataka High Court which held as under :

> *"More than the AO's report which the learned judge characterized as evasive and speculative, it* is *the statement of reasons for the reopening which is evasive and speculative. We find no basis therein which could have led the appellant* to *entertain reasons to believe that income chargeable to tax had escaped assessment for the relevant assessment year. it is imperative that the reasons should have a rational and relevant nexus to the formation of such belief. We do not find* such *nexus".*

The Ld. AR submitted that the ratio of the above judgment squarely applies in the instant case. According to the Ld. AR, it is because, the learned AO had entered into a speculative assumption there is a violation of the provisions of section 13(1][c] rws 13[2][g] of the Act which has not been established at all. Hence, it was submitted that it cannot be said that there was a bonafide belief entertained by the learned AO that income of the assessee has escaped assessment for the above assessment year. It was submitted that there was absolutely no live link between the reasons stated by AO and the belief entertained by him that income of the assessee has escaped assessment.

4.5 The Ld. AR submitted that the reasons by the AO at best betrays a mere "reason to suspect" that has escaped assessment and it does not make out a case of “reason to believe that income has escaped assessment”. The Ld. AR relied on the judgment of the Supreme Court in the case of Indian Oil Corporation Vs ITO reported in 159 ITR 956 at page 970 wherein it was held that reason to believe is not the same thing as reason to suspect. It is well settled that reason to suspect is narrower than reason to believe. It is submitted that the phrase employed in section 147 of the Act is “reason to believe" and not a “reason to suspect”. It has been held that where the reasons recorded merely showed that there was a mere suspicion that income has escaped assessment, it would not amount to a “reason to believe" and hence, the reopening of the assessment would not be proper. Having regard to the ratio of the aforesaid decisions and considering the reasons recorded, it was submitted that the re-opening of the assessment is bad in law and therefore, the impugned order of assessment passed deserves to be cancelled.

4.6 The Ld. AR further submitted that re-opening of the assessment after the expiry of 4 years from the end of the assessment year is opposed to law especially, since, there was an assessment order passed u/s.143[3] of the Act earlier. It was submitted that in terms of the proviso to

section 147 of the Act, it has been laid down that no action shall be taken under this Section after the expiry of 4 years from the end of the relevant assessment year the income chargeable to tax has escaped assessment for the failure of the assessee to file returns of income or to disclose fully and truly all material facts necessary for his assessment for that assessment year. It was submitted that the period of 4 years from the end of the assessment year under appeal expired on 31/03/ 2014 and the AO issued a notice u/s. 148 of the Act, on 13/04/ 2015, which is after the period specified under the proviso to section 147 of the Act.

4.7 With the aforesaid background, the Ld. AR submitted that there is no allegation in the reasons recorded that the assessee has failed to disclose fully and trully all material facts necessary for the assessment year. Thus, according to the AO, the proviso to section 147 of the Act, bars re-opening of the assessment since the conditions permitting the reopening do not exist and the same is not the basis on which the assessment stands reopened. The Ld. AR placed reliance for this proposition on the ratio of the judgment of the Bombay High Court in the case of Nirmal Bang Securities Pvt. Ltd., reported in 382 ITR 93 wherein after noticing the reasons recorded and the legal position as well as the statutory provisions of the Act in para [24] of the judgment, it was held as under: -

> *"In view of the aforesaid* well-settled *legal position and there adm it tedly being not even an allegation in the reasons recorded that there was any failure on the port of the petitioner to disclose truly and fully all material facts*

*necessary for assessment, let alone the details thereof, the impugned notice dated March 30,2007 and the impugned order dated December 8, 2007 are liable* to *be quashed and set aside on this ground of our".*

4.8 The Ld. AR placed reliance on the judgment of the Jurisdictional High Court in the case of CHAITANYA PROPERTIES PRIVATE LIMITED reported in 240 659 [Kar] wherein, the Hon'bte jurisdictional High Court has considered the substantial question of law as to whether the absence of spelling out that the escapement of income was due to the fact that the assessee has not disclosed truly and fully all material facts necessary for completion of assessment, in the reasons recorded, would be a valid reopening. Noticing that the ITAT, Bangalore Bench had quashed the assessment holding that the re-opening of the assessment was invalid, on this count, the jurisdictional High Court upheld the aforesaid order of the ITAT in para [23] by observing as follows :

> "23. *We are also of the view that initiation of reassessment proceedings will have to be held as invalid for the reason that reasons recorded by the AO do not spell out that escapement of income was due to the* assessee *not fully and truly disclosing all material facts necessary for completion of assessment for the relevant assessment vear. In this record, we are also of the view that all legal toys in para 19 of the reasons recorded do not spell out the belief that there was a failure on the part of the assessee to fully and truly disclose all material facts. In fact, the assessee had disclosed all facts in the original assessment proceedings u/s. 43[3] of the Act".*

In view of the above, the Ld. AR submitted that the re-opening of the assessment is bad in taw judging the same on the basis of the reasons as

recorded and in the absence of any allegation that the assessee had not fully and truly disclosed all material particulars for making the assessment and hence, the re-opening of the assessment requires to be cancelled.

4.9 The Ld. AR submitted that for testing the validity of reopening of the assessment, the reasons recorded alone has to be looked into. The Ld. AR submitted that the reasons recorded have to be viewed as they are and they cannot be supported by reference to any extraneous materials. The reason recorded must either stand or fall on the reasons as recorded alone and nothing else. Reliance is placed on the decisions of Jamanalal Kabra reported in 69 ITR 461 (All.), Equitable investment Vs. CIT reported in 174 ITR 714 (Cal) and N.D. Bhat VS. IBM reported in 216 ITR 811 (Bom). In the case of Hindustan Lever Limited V.R.B. Wadkar vs. Assistant Commissioner of Income Tax, 268 ITR 332, the Bombay High Court in its decision at page 338 it has been held that:

> *"It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be mode to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing 0fficer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. lt is for the Assessing Officer to reach the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. lt is for the Assessing officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous or it should not suffer from any vagueness. The reasons recorded must disclose his mind. The reasons are the manifestation of the mind of the Assessing Officer. The reasons recorded should be self*

*explanatory and should not keep the assessee guessing for the reasons. Persons provide the link between conclusion and evidence. The reason recorded must be based on evidence. The Assessing Office , in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the Assessee fully and truly necessary for assessment of that assessment year, so as to establish the vital link between the reasons and evidence. That vital link is the safeguard against the reopening of the concluded assessment."*

The reasons recorded must either stand or fall on the reasons as recorded alone and nothing else. The Ld. AR placed reliance on the judgment of the Allahabad High Court in the case of Jamnalal Kabra reported in 69 ITR 461, Calcutta High Court in the case of Equitable Investment vs. CIT reported in 174 ITR 714 and Bombay High Court in the case of N.D. Bhat vs. IBM reported in 216 ITR 811. The Ld. AR relied on the judgment of the Bombay High Court in the case of Hindustan Lever Limited vs. V.R.B. Wadkar, ACIT reported in 268 ITR 332 wherein it was held as follows:

4.9.1 The Ld. AR relied on the judgment of the Calcutta High Court in the case of Equitable Investment Ltd. vs. ITO (174 ITR 74) wherein it was held as follows:

> *"The powers of the Income-tax Officer to reopen assessments though wide, are not plenary. The words of the statute are 'reason to believe' and not 'reason to suspect'. The reopening of the assessment after the lapse of many years is a serious matter. The Act no doubt, contemplates the reopening of the assessment if grounds is fit for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the income - tax authorities after the*

*assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, final its about orders made in judicial and quasi-judicial proceedings. lt is, therefore, essential that before such action is token the requirements of law should be satisfied".*

4.9.2 The Ld. AR submitted that the Assessing Officer had not obtained the previous sanction for issue of notice u/s. 148 of the Act after the expiry of 4 years from the end of the relevant assessment year has to be issued after the satisfaction of the Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner or Commissioner on the reasons recorded by the Assessing Officer. From the reasons communicated to the assessee, there is no mention of the Assessing Officer having obtained the previous sanction of the aforesaid authorities. The Ld. AR submitted that the notice was issued after obtaining necessary satisfaction of the Commissioner of Income-tax (Exemptions). However, the Ld. AR submitted that in the absence of the satisfaction of the Commissioner being recorded in the reasons, the said notice issued contravenes the provisions of section 151 of the I.T. Act and hence, the notice so issued is bad in law. The Ld. AR relied on the judgment of the Jurisdictional High Court in the case of Manjunatha Cotton & Ginning Industries 359 ITR 565 wherein it was held that penalty levied on the basis of notice is bad in law and the same was cancelled. According to the Ld. AR, the reasoning of the above judgment squarely applied to the instant case and the reassessment order is to be cancelled.

4.9.3 The Ld. AR submitted that the assessment passed by the Assessing Officer is contrary to the judgment of the Supreme Court in the case of GKN Driveshafts 259 ITR 19. The Ld. AR submitted that the Assessing Officer did not furnish the order sheet entries recording the reasons for reopening of the assessment and upon receipt of reasons, the assessee filed objections vide letter dated 08/12/2016, however, the Assessing Officer did not pass a speaking order. On the other hand, it was submitted that the Assessing Officer proceeded to conclude the assessment by passing the order by rejecting the objections of the assessee . According to the Ld. AR, the failure of the Assessing Officer to pass a separate speaking order disposing of the objections taken by the assessee renders the assessment a nullity. For this, the Ld. AR relied on the following judgments:

1) Trend Electronics (379 ITR 81) (Bom)
2) C.V. Mahadeva vs. CIT (69 ITCL 340) (Kar)
3) General Motors India P. Ltd. (354 ITR 244) (Guj)
5) Sahakari Khand Udyog Mandal Ltd. (370 ITR 107) (Guj)
6) Gouthamchand (44(T) ITCL 163 (Kar)
7) G.N. Mohan Raju (113 DTR 19 (ITAT Bang)
8) A.S. Chinnaswamy Raju ITA 1569 to 1562/B/10 dated 25/07/2016

4.9.4 In view of the above submissions, it was submitted that the impugned assessment order, after re-opening of assessment order is bad in law and since the

AO has not passed a separate speaking order disposing of the objections taken by the assessee, the assessment order is to be cancelled.

5. On the other hand, the learned Departmental Representative submitted that there was no full and true disclosure by the assessee in its original Return of Income. It cannot be said that it is mere routine in such circumstances. The Assessing Officer is justified in reopening the assessment on the issue of payment of Rs.2.5 Crores to Shri Pushparaj Jain was not raised in the original assessment. The books of accounts have been maintained in such a way that the fact of amount of Rs.2.5 Crores paid to Shri Pushparaj Jain could not come to the notice of Assessing Officer during the assessment proceedings. It was only because of the fact that the assessment in the case of Shri Pushparaj Jain was also with the same Assessing Officer and issue of diversion of funds came to the notice of Assessing Officer. Therefore, it is not correct to state that no new information has came to the possession of the Assessing Officer. Further the assessee has maintained its accounts in such a fashion that the fact of diverting the funds of the trust would never come to the notice of the Assessing Officer. Therefore as per the provisions of Section 147 Expln. 1, the income has escaped assessment within the meaning of the section. He drew our attention to the Expln. 1 of Section 147 of the Act and supported the orders of CIT (Appeals).

6. We have heard both the parties and perused the material on record. At this stage, it is appropriate to mention the principles of law governing reassessment as below :

(i) The Court should be guided by the reasons recorded for the reassessment and not by the reasons or explanation given by the Assessing Officer at a later stage in respect of the notice of reassessment. To put it in other words, having regard to the entire scheme and the purpose of the Act, the validity of the assumption of jurisdiction under Section 147 can be tested only by reference to the reasons recorded under Section 148(2) of the Act and the Assessing Officer is not authorized to refer to any other reason even if it can be otherwise inferred or gathered from the records. The Assessing Officer is confined to the recorded reasons to support the assumption of jurisdiction. He cannot record only some of the reasons and keep the others upto his sleeves to be disclosed before the Court if his action is ever challenged in a court of law.

(ii) At the time of the commencement of the reassessment proceedings, the Assessing Officer has to see whether there is prima facie material, on the basis of which, the department would be justified in reopening the case. The sufficiency or correctness of the material is not a thing to be considered at that stage.

(iii) The validity of the reopening of the assessment shall have to be determined with reference to the reasons recorded for reopening of the assessment.

(iv) The basic requirement of law for reopening and assessment is application of mind by the Assessing Officer, to the materials produced prior to the reopening of the assessment, to conclude that he has reason to believe that income has escaped assessment. Unless that basic jurisdictional requirement is satisfied - a postmortem exercise of analysing the materials produced subsequent to the reopening will not make an inherently defective reassessment order valid.

(v) The crucial link between the information made available to the Assessing Officer and the formation of the belief should be present. The reasons must be self evident, they must speak for themselves.

(vi) The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. To put it in other words, something therein, which is critical to the formation of the belief must be referred to. Otherwise, the link would go missing.

(vii) The reopening of assessment under Section 147 is a potent power and should not be lightly exercised. It certainly cannot be invoked casually or mechanically.

(viii) If the original assessment is processed under Section 143(1) of the Act and not Section 143(3) of the Act, the proviso to Section 147 will not apply. In other words, although the reopening may be after the expiry of four years from the end of the relevant assessment year, yet it would not be necessary for the Assessing Officer to show that there was any failure to disclose fully or truly all the material facts necessary for the assessment.

(ix) In order to assume jurisdiction under Section 147 where assessment has been made under sub-section (3) of section 143, two conditions are required to be satisfied;

(i) The Assessing Officer must have reason to believe that the income chargeable to tax has escaped assessment;

(ii) Such escapement occurred by reason of failure on the part of the assessee either

(a) to make a return of income under section 139 or in response to the notice issued under sub-section (1) of Section 142 or Section 148 or

(b) to disclose fully and truly all the material facts necessary for his assessment for that purpose.

(x) The Assessing Officer, being a quasi judicial authority, is expected to arrive at a subjective satisfaction independently on an objective criteria.

(xi) While the report of the Investigation Wing might constitute the material, on the basis of which, the Assessing Officer forms the reasons to believe, the process of arriving at such satisfaction should not be a mere repetition of the report of the investigation. The reasons to believe must demonstrate some link between the tangible material and the formation of the belief or the reason to believe that the income has escaped assessment.

(xii) Merely because certain materials which is otherwise tangible and enables the Assessing Officer to form a belief that the income chargeable to tax has escaped assessment, formed part of the original assessment record, per se would not bar the Assessing Officer from reopening the assessment on the basis of such material. The expression "tangible material" does not mean the material alien to the original record.

(xiii) The order, disposing of objections or any counter affidavit filed during the writ proceedings before the Court cannot be substituted for the "reasons to believe".

(xiv) The decision to reopen the assessment on the basis of the report of the Investigation Wing cannot always be condemned or dubbed as a fishing or roving inquiry. The expression "reason to believe" appearing in Section 147 suggests that if the Income Tax Officer acts as a reasonable and prudent man on the basis of the information secured by him that there is a case for reopening, then Section 147 can well be pressed into service and the assessments be reopened. As a consequence of such reopening, certain other facts may come to light. There is no ban or any legal embargo under Section 147 for the Assessing Officer to take into consideration such facts which come to light either by discovery or by a fuller probe into the matter and reassess the assessee in detail if circumstances require.

(xv) The test of jurisdiction under Section 143 of the Act is not the ultimate result of the inquiry but the test is whether the income tax officer entertained a "bona fide" belief upon the definite information presented before him. Power under this section cannot be exercised on mere rumours or suspicions.

(xvi) The concept of "change of opinion" has been treated as a built in test to check abuse. If there is tangible material showing escapement of income, the same would be sufficient for reopening the assessment.

(xvii) It is not necessary that the Income Tax Officer should hold a quasi judicial inquiry before acting under Section 147. It is enough if he on the information received believes in good faith that the assesee's profits have escaped assessment or have been assessed at a low rate. However, nothing would preclude the Income Tax Officer from conducting any formal inquiry under Section 133(6) of the Act before proceeding for reassessment under Section 147 of the Act.

(xviii) The "full and true" disclosure of the material facts would not include that material, which is to be used for testing the veracity of the particulars mentioned in the return. All such facts would be expected to be elicited by the Assessing Officer during the course of the assessment. The disclosure required only reference to those material facts, which if not disclosed, would not allow the Assessing Officer to make the necessary inquiries.

(xix) The word "information" in Section 147 means instruction or knowledge derived from the external source concerning the facts or particulars or as to the law relating to a matter bearing on the assessment. An information anonymous is information from unknown authorship but nonetheless in a given case, it may constitute information and not less an information though anonymous. This is now a recognized and accepted

source for detection of large scale tax evasion. The non-disclosure of the source of the information, by itself, may not reduce the credibility of the information. There may be good and substantial reasons for such anonymous disclosure, but the real thing to be looked into is the nature of the information disclosed, whether it is a mere gossip, suspicion or rumour. If it is none of these, but a discovery of fresh facts or of new and important matters not present at the time of the assessment, which appears to be credible to an honest and rational mind leading to a scrutiny of facts indicating incorrect allowance of the expense, such disclosure would constitute information as contemplated in clause (b) of Section 147.

(xx) The reasons recorded or the material available on record must have nexus to the subjective opinion formed by the Assessing Officer regarding the escapement of the income but then, while recording the reasons for the belief formed, the Assessing Officer is not required to finally ascertain the factum of escapement of the tax and it is sufficient that the Assessing Officer had cause or justification to know or suppose that the income had escaped assessment. It is also well settled that the sufficiency and adequacy of the reasons which have led to the formation of a belief by the Assessing Officer that the income has escaped the assessment cannot be examined by the court.

Now, we go through the provisions of Section 147 of the Act.

147. Income escaping assessment.--

If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year)."

6.3 Considering the above, the Apex Court in the case of Kelvinator of India Ltd. (320 ITR 561) (SC) observed and held in para 4 as under :-

> *"4. On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act [with effect from 1st April, 1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re- open the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to*

*re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove.*

*Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No.549 dated 31st October, 1989, which reads as follows:*

> "7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression `reason to believe' in Section 147. A number of representations were received against the omission of the words 'reason to believe' from Section 147 and their substitution by the 'opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, 'reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression 'has reason to believe' in place of the words 'for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same."
>
> For the afore-stated reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs."

6.4 The reopening of assessment being based on a mere change of opinion, the assumption of jurisdiction on the part of the A.O. lacks validity and the notice u/s 148 of the Act cannot be sustained.

6.5 The Assessing Officer has power to reopen the assessment, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment and the reasons must have a live link with the formation of belief. In the present case, there is no tangible material. The issuance of the impugned notice u/s.148 is nothing but mere change of opinion. In absence of any new

tangible material available with the A.O., it is not open to the A.O. to change his opinion by issuing the notice of re-assessment.

7. From the reasons recorded it can be said that the original assessment is sought to be reopened in exercise of powers under section 147/148 of the Act on change of opinion by the AO, which is not permissible more particularly when the original assessment is sought to be reopened after a period of four years from the end of the assessment year. In the present case, the original assessment for the assessment year 2009-10 was completed u/s. 143(3) of the I.T. Act on 25/11/2011 and notice for re-opening of assessment was issued to the assessee on 13/04/2015. As per the provisions of section 147 of the I.T. Act if in any assessment year and if after expiry of four years from the end of the relevant assessment year, action sought to be taken u/s. 147 of the I.T. Act, such action can be only in cases where income chargeable to tax has escaped assessment in such assessment year by reason of failure on the part of the assessee to disclose truly and fully all material facts necessary for his assessment in such assessment year. It is seen from the reasons recorded for re-opening of assessment that it does not show that there was escapement of income due to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment of income of the assessee for the assessment year 2009-10. Under the circumstances, the conditions stipulated

under first proviso to section 147 are not satisfied and therefore, on the aforesaid ground alone, the impugned notice deserves to be quashed and set aside.

7.1 At this stage, it is appropriate to go through the reasons recorded by the Assessing Officer which read as under :

*To,*

*The Navodaya Grama Vikas Charitable Trust,*
*14-7-1005, SCDCC Bank Ltd.*
*HO Bldg., Kodialbai!, Mangalore 575003*

*Sir,*

*Sub: Reopening of Assessment - U/s. 148 - AY 2009-10 - reg.*

*Kindly refer to the above.*

*As requested, the reasons as recorded prior to issue of Notice U/s 148 are as under:*

> *"The assssse filed its Ream of Income on 29-09-2009 showing, total income* as *NIL after claiming application to the extent of Rs11,96,13,620/-. The scrutiny assessment U/s. 143(3] was* completed on 25-11-2011 *after accepting the returned income. The trust was granted registration u/s. 12AA of the Act on 10.01.2005 w.e.f. 08-07-2004. Shri M.N. Rajendra Kumar is one of the trustees. During the course of assessment proceedings of the trust for AY 2012-13, it was observed that the trust has shown an amount of Rs.2,50,00,000 as land advance. It was also observed that in the case of Shri Pushparaj Jain, proprietor of Abish Builders and Developers, assessed by the undersigned as ACIT, Circle-1(1), the amount of Rs.2,50,00,000 received from the trust has been shown as a liability in the Balance Sheet while an identical amount had also been advanced to Shri M. N. Rajendra Kumar. The copy of Bank Statements of Shri Pushparaj Jain is available with the undersigned. The transactions from the*

*account of Shri Pushparaj Jain are enlisted below :*

| S.No. | Date of transaction | Name of party | Nature of transaction (Receipt/Payment) | Amount |
|---|---|---|---|---|
| 1. | 10.06.2008 | Navodaya Grama Vikas Charitable Trust | Receipt | Rs. 1,50,00,000 |
| 2. | 10.06.2008 | M.N. Rajendra Kumar | Payment | Rs.1,00,00,000 |
| 3. | 10.11.2008 | Navodaya Grama Vikas Charitable Trust | Receipt | Rs. 50,00,000 |
| 4. | 10.11.2008 | M.N. Rajendra Kumar | Payment | Rs. 50,00,000 |
| 5. | 24.11.2008 | Navodaya Grama Vikas Charitable Trust | Receipt | Rs. 50,00,000 |
| 6. | 24.11.2008 | M.N. Rajendra Kumar | Payment | Rs. 50,00,000 |
| 7. | 02.01.2009 | M.N. Rajendra Kumar | Payment | Rs. 50,00,000 |

*From the above mentioned transactions, it is clear that Shri Pushpraj Jain is being used as an intermediary by the trust to channel funds to its trustee, Shri M.N. Rajendra Kumar. Therefore, the trust is hit by Section 13(1)(c) r.w.s. 13(2)(g) of the Income Tax Act and it cannot enjoy the benefit of exemption u/s. 11 & 12 for the relevant assessment year. Accordingly, the amount of Rs.2.5 Crores is required to be brought to tax for AY 2009-10.*

*In view of the above, I have reason to believe that income chargeable to tax has escaped assessment for AY 2009-10 within the meaning of Section 147. Accordingly, notice u/s. 148 of the Income Tax Act needs to be issued in this case for AY 2009-10"*

*Yours sincerely,*

*Sd/-*

*(JOSEPH RODRIGUES)*
*ASSISTANT COMMISSIONER OF INCOME-TAX*
*I (EXEMPTIONS), CIRCLE-1, MANGALURU*

8. Being so, in our opinion the reopening of assessment which is already concluded under Section 143(3) of the Act of the assessment cannot be reopened without any allegation by the Assessing Officer that there was non-disclosure of true and correct facts by the assessee while framing the original assessment. Hence,S we are inclined to annul the assessment. Since we have annulled the assessment, we are refrained to go into other grounds of appeal which are of only academic nature. The appeal of the assessee in ITA No.552/Bang/2018 is allowed.

**ITA No.553/Bang/2018.**

9. The assessee has raised the following grounds :

*" 1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

*2. The learned CIT [A] is not justified in upholding the method of computation of the income and application followed by the A.O., excluding the loans recovered by the appellant from Self Help Groups [SHG] that was regarded as income and simultaneously excluding the loans advanced to SHG that was regarded as application by the appellant without appreciating that the appellant was engaged in the activity of financing SHG and therefore, the loans recovered and advanced are to be regarded as income and application under the facts and in the circumstances of the appellant's case.*

*3. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies herself liable to be charged to interest u/s.234-B of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.*

*4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and*

*Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*

10. The learned Authorised Representative submitted that -

1. Briefly, it is submitted that the appellant is a charitable trust registered 1u/s.12AA with F.No.N-24/12A/CIT/MNG/2004-2005 dated 10/01/2005 by the Commissioner of Income-tax, Mangalore. The appellant trust is engaged in the charitable activities of helping the rural poor by forming Self Help Groups [SHG] and providing them with financial and other assistance.

2. For the year under appeal, the appellant had filed its original return of income on 26/09/2014 reporting NIL income after claiming exemption u/s. 11 of the Act. Copy of the original return of income filed on 26/09/2014 along with the financial statements.

2.1 The case of the appellant was selected for scrutiny and statutorily notices issued by the learned A O. In course of the assessment proceedings, the learned A.O. had called for the details of the activities carried on by the appellant and these same were furnished by the appellant.

2.2 Thereafter, the learned A.O. concluded the assessment by the impugned order passed u/s. 143[3] of the Act, dated 28/12/2016 determining the total income of the appellant trust at Rs.88,69,793/- as against the returned income of Rs. Nil that reported by the appellant in the original return of income. This income of Rs. 88,69,793/- was computed by the learned A.O. as excess of income over application u/s. 11 of the Act, by changing the method of computing the income and application excluding the loans advanced by the appellant to SHG regarded as

application of income and recovery of the loans from SHG that was considered as income.

2.3 Being aggrieved by the aforesaid assessment order, the appellant has went in appeal before CIT(A) challenging the re-computation of income u/s. 11 of the Act. The CIT(A) has given a partial relief.

3 It is submitted that the appellant in its original computation of the income applied u/s. 11 had computed the application of income based on the Receipts and Payments Account that was filed along with the return of income. It is submitted that the computation made by the appellant can be summarized as under :

| | | |
|---|---|---|
| Gross Receipts [As per Receipts & Payments A/c] | | Rs. 11,70,95,700 |
| Add : Interest income received | | Rs. 19,03,125 |
| | | -------------------- |
| Total Income | | Rs. 11,89,98,825 |
| Less : Income applied during the year inclusive of capital exp | Rs. 14,06,03,012 | |
| Excess expenditure of earlier years | Rs. 11,31,28,145 | |
| | | Rs. 25,37,31,157 |
| | | ------------------ |
| Excess Expenditure to be carried forward | | Rs. 13,47,32,332 |
| | | =============== |

3.2 In the assessment order, the learned A.O. proceeded to compute the application of income by taking into consideration only certain of the receipts as income based on the Income & Expenditure account filed by the appellant. It is submitted that the learned A.O. has started the computation of the income by taking a sum of Rs.8,06,09,919/- as against the sum of Rs. 11,89,98,824/- adopted by the appellant based on the Receipts and Payments Account resulting in a difference of Rs. 3,83,88,905/- on account of the following items :- **Table 1**

| Sl.No. | Nature of receipt | Amount | Remarks |
|---|---|---|---|
| 1 | Grants and Subsidies | 1,49,56,800/- | Discussed in Para 5 of the assessment |

| | | | |
|---|---|---|---|
| | | | order.<br>Net of expenses adopted by AO and it does not affect the overall computation. |
| 2 | Chaithanya Insurance Fund | 2,35,05,605/- | No Discussion in the assessment order. However, it appears that the AO has followed the same treatment of adopting the net figure instead of Gross |
| 3 | Divident | -73,500/- | Not taken by the appellant since it is exempt but included by AO. No discussion in the assessment order |
| | **TOTAL** | **3,83,88,905/-** | |

3.3 Similarly, the learned A.O. has computed the income applied by the appellant [including capital expenditure] for the year at Rs. 5,96,48,638/- based on certain expenses shown in the Income and Expenditure Account as against the claim of the appellant that the income applied during the year [including capital expenditure] was Rs. 14,06,03,012/- based on the Receipts and Payments account. In other words, the learned A.O. omitted to consider a sum of Rs.8,09,54,374/- [Rs. 14,06,03,012/- less Rs. 5,96,48,638/-], which comprises of the following items that has been ignored by the learned A.O. in computing the extent of application made by the appellant for the year under appeal by following the method of computation based on the Income and Expenditure account:-

3.4 **Table 1**

| Sl.No. | Nature of application | Amount | Remarks |
|---|---|---|---|
| 1 | Loans to SGH Members | 5,32,29,433/- | No discussion in the assessment order on this point. Excluded by the AO perhaps because he took the view that the loans given to SHG was not |

| | | | |
|---|---|---|---|
| | | | application or income respectively |
| 2 | Animator Expenses | 1,49,56,800/- | Net of expenses adopted by AO and it does not affect the overall computation. |
| 3 | Chaitanya Insurance Claim paid | 1,27,68,142/- | -do- |
| | **TOTAL** | **8,09,54,374/-** | |

3.4 In this regard, it is submitted that the major item of difference in the computation made by the appellant and the learned A.O. in the impugned assessment order passed by the learned A.O. relates to the exclusion of loans granted to SHG and others that was regarded as application of income by the appellant.

3.5 It is submitted that the appellant is engaged in the charitable activity of relief to the poor by forming Self Help Groups [SHG] of the rural poor and encouraging them to become financially self sufficient. The modus operandi followed by the appellant is to advance loans to these SHG and encourage them to in turn provide the funds to the members or utilize it for purposes of any activity being carried on by the Self help groups. When these loans are advanced they do not carry any security other than the personal guarantee of the group members who are all poor people. Thus, the appellant has regarded these loans given as application of income and as and when the loans are recovered, the same is treated as income. This is the consistent method being followed by the appellant since inception, which has also been accepted by the learned A.O. in the original assessment proceedings for the assessment year 2009-10 as well. Thus, the different view taken by the learned A.O. in the present assessment order passed is opposed to law and facts of the appellant's case and the same deserves to be vacated. It is prayed accordingly.

3.6 It is further submitted that the aforesaid treatment given by the appellant to the grant of loans and recovery thereof is based on and support by the views expressed in the Circular No. 100 dated 24/01/1973, issued by the Hon'ble CBDT in which it has been mentioned in para [2] as under :-

> *"2. The Board has decided that repayment of the loan originally taken to full1fil one of the objects of the trust will amount to an application of the income for charitable and religious purposes. As regards the loans advanced for higher studies, if the only object of the trust is to give interest bearing loans for higher studies, it will amount to carrying on of money-lending business. If, however, the objects of the trust is advancement of education and granting of scholarship loans as only one of the activities carried on for the fulfillment of the objectives of the trust, granting of loans, even if interest-bearing, will amount to the application for income for charitable purposes. As and when the loan is returned to the trust, it will be treated as income of that year".*

3.7 Although the aforesaid Circular has been issued in the context of Student and Scholarship loans, the rationale behind the said view expressed by the Hon'ble CBDT is equally applicable to the loans granted by the appellant to the SHG's. This is because, one of the activities being carried on by the assessee while engaged in the charitable activity of relief of the poor is the granting of loans to SHG's and therefore, the loan granted would be regarded as application of income in terms of Circular No.100 dated 24/01/1973. Infact, the said Circular has also been considered by the **Hon'ble jurisdictional High Court in the case of CIT V. CUTCHI MEMON UNION reported in 155 ITR 51 [Kar],** wherein the Hon'ble High Court has held that the amounts received out of loans given earlier would have to be included as income. The following observations of the Hon'ble High Court at page [53] are relevant :

> "*We do not think that any such deeming provision is necessary in regard to the money received by the trust from its beneficiaries. Section 11[1] itself contains sufficient indication to treat such moneys as income of the trust. Under the section, only the income spent on*

*charitable or religious purposes is excluded from the total income of the trust. That exemption from taxation is given not because it is expenditure of the trust or any other outgoing. It is exempted as income to the extent applied for charitable or religious purposes. When that amount is returned by the beneficiaries of the trust, the receipts in the hands of the trust can only be its income of the years in which it is received. It cannot have any different character.*
*If the contentions of Mr.Sarangan, is accepted and such receipts are treated as not income of the trust, then it might as well defeat the very purpose of the trust. The trust, in that event, is not under any obligation to apply the money for the objects of the trust since by implication it ceases to the income of the trust. On the other hand, if the income is re-cycled by the trust for charitable or religious purpose, it is again and again entitled to the benefit s.11. This is also the tenor of the circular dated January 24, 1973, issued by the Central Board of Direct Taxes. The Tribunal, in our opinion, was not justified in ignoring the contention of the Department based on the said circular".*

3.8 Thus, it cannot be said that the loans advanced by the assessee to the Self Help Groups cannot be regarded as application of income. The view taken by the A.O. in the impugned order is in total disregard to the views expressed in the Board Circular, which is binding on the Department and therefore, the computation of the income applied by excluding the loans granted is liable to be vacated. It is prayed accordingly.

.

11. On the other hand, the learned Departmental Representative submitted that the Circular is related to providing of higher education and is not relevant for the formation of SHGs as claimed by the assessee. Moreover, the funds received from the bank cannot be treated as an application of income. The assessee is taking money from SCDCC Bank and giving the same as loan to SHGs. This is in the

nature of business activity and not an activity of the trust. The claim of the assessee that extending loan to SHGs is an application of income is devoid of merit. The DR submitted that the grant for the training and expenses of the animators the amount received by the assessee is under specific direction of the bank and hence cannot be treated as its income. The A.O. has treated the net expenditure as its revenue expenditure.

12. We have heard both the parties and perused the material on record. The learned Authorised Representative relied on the CBDT Circular No.100 Dt.24.01.1973 which read as follows :

> **" 162. Repayment of debt incurred for purposes of trust/loans advanced by educational trusts to students for higher studies - Whether amounts to application of income**
>
> **1**. Section 11 requires 100 per cent of the income of a charitable and religious trust to be applied for religious and charitable purposes to be entitled to the exemption under the said section. Two questions have been considered regarding the application of income :
>
> *1*. Where a trust incurs a debt for the purposes of the trust, whether the repayment of the debt would amount to an application of the income for the purposes of the trust ; and
>
> *2*. Whether loans advanced by an educational trust to students for higher studies would be treated as application of income for charitable purposes.
>
> **2.** *The Board has decided that repayment of the loan originally taken to fulfil one of the objects of the trust will amount to an application of the income for charitable and religious purposes. As regards the loans advanced for higher studies, if the only object of the trust is to give interest-bearing loans for higher studies, it will amount to carrying on of money-lending business.* If, however, the object of the trust is advancement of education and granting of scholarship loans as only one of the activities carried on for the fulfilment of the objectives of the trust, granting of loans, even if interest-bearing, will amount to the application of income for charitable purposes. As and when the loan is returned to the trust, it will be treated as income of that year."

Further as seen from the objects of the assessee trust deed, the assessee is engaged in fulfilling the objects of the Trust Deed read as under :

4. Main objects of the Trust:

1. To bring out people's awareness regarding financial, Social and Cultural Developments in rural areas and assist them to become good citizens.

2. To foster among rural women an awareness of their situation and promote their organization for their own betterment to promote self employment activities through trained people, to educate them in children care responsible parenthood, home science and happy family life.

3. To conduct and run nursery and kindergarten or Primary, Higher Primary, Secondary Schools and Colleges for facilitate children's full growth and to work for their healthy care and to assist poor school going children to have better education and health.

4. To provide guidance regarding wild life, perform inter nation wild life programme with principal ideas and make awareness of the same with the people of rural areas and also to conduct run and assist veterinary hospitals etc.

5. To provide proper knowledge about agriculture, run farm, animal centers etc. and provide profitable employment to the people of rural areas.

6. To make awareness of human rights and other new things in rural areas by providing good leadership, make arrangements for implementation of good ideas for them and to make awareness of strong will power, love, service and patriotism etc.

7. Offering the opportunity to develop personality and avenues for their intelligent participation in Nation building.

8. To guide them to equip themselves for the struggle for life in changing Society.

9. To open Schools, College and Technical Institutions in District, State and inter State level for providing proper training for rural people regaring co-operative Associates, Co-operative Bank etc. and regarding self employment, self unity and help etc.

10. To provide library, T.V., Data etc. to unemployed educated people in rural areas with a view to assist them to take self employment.

11. To strengthen rural youth clubs by giving proper guidance. In this connection, to work hand in hand with State and Central Government Departments.

12. To provide information about the plans of State and Central Government to the concerned persons of the Public.

13. To create training facilities in rural areas for development of Industry and self employment.

14. To enable the awakened and affected youth to come together to bring about development and new environments.

15. To provide security to the assets of Association, Co-operative concerns of rural and urban areas and to open training centers to such security. This family will be provided to urban and rural areas if necessary.

16. To guide self helping clubs in developing financial, social and cultural activities in rural areas. To provide trained persons in that regard.

17. To assist for development and research of forest protection and herbal cultivation.

18. To gather information regarding public health and to assist in providing herbal and Ayurvedic treatments.

19. To assist for providing sports, games, yoga etc. and to arrange all round development.
20. To provide help to self helping institution by providing insurance or otherwise.

13. Being so, the assessee’s case on hand is squarely covered by the above Circular of CBDT (supra). Accordingly, the assessee's claim that extending loan to Self Help Groups (SHGs) is in application of income and direct the Assessing

Officer to grant the benefit as claimed by the assessee in this ground. The assessee's appeal in ITA No.553/Bang/2018 is allowed.

14. In the result, both the appeals of the assessee are allowed.

Pronounced in the open court on the date mentioned on the caption page.

| Sd/- | Sd/- |
| --- | --- |
| **(SMT. BEENA PILLAI)** | **(CHANDRA POOJARI)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Dated: 16 .10.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

**By order**

**Assistant Registrar**
**Income-tax Appellate Tribunal**
**Bangalore**