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

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA No.1342/Bang/2018
Assessment year : 2014-15

The Income Tax Officer (Exemptions), Ward – 1, Mangaluru.	Vs.	M/s. Syndicate Rural Development Trust, 4th Floor, Syndicate Bank, Corporate Office, Gandhinagara, Bengaluru – 560 009. **PAN : AACTS 6237 P**
APPELLANT		RESPONDENT

Revenue by	:	Dr. Manoj Kumar G, Addl. CIT
Assessee by	:	Shri. S. Ananthan, CA

Date of hearing	:	05.06.2018
Date of Pronouncement	:	15.06.2018

O R D E R

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the Revenue against the order of the CIT(A), *interalia*, on following grounds:

1. The order of the Ld. CIT (A) is opposed to Law and facts of the case.

2.Disallowance of Corpus donation u/s 11(1)(d):

2.1 Whether on the facts and in the circumstances of the case and in law, the CIT(A) is right in allowing exemptions u/s 11(1)(d) which was not claimed in the return of income.

2.2 CIT(A) ought to have noted that no claim for exemption u/s 11(1)(d) was made in the Return of Income and subsequent claim by the assessee cannot be allowed)?

2.3 The decision and the facts of the cases relied by the CIT(A) is different from the assesses case.

3. Addition of interest received on building fund

CIT(A) ought have noted that the interest received on building fund deposit which is kept in the bank as deposit amounting to Rs.10,03,658/- is revenue in nature and not corpus.

3.1 The decision and the facts of the cases relied by the CIT(A) is different from the assesses case.

4. For these and such other grounds it is urged that the order of the Ld. CIT(A), on the above points may be set aside and the order of the Assessing Officer be restored.

5. The appellant craves leave to add, alter or amend all or any of the grounds of appeal before or at the time of the hearing of the appeal.

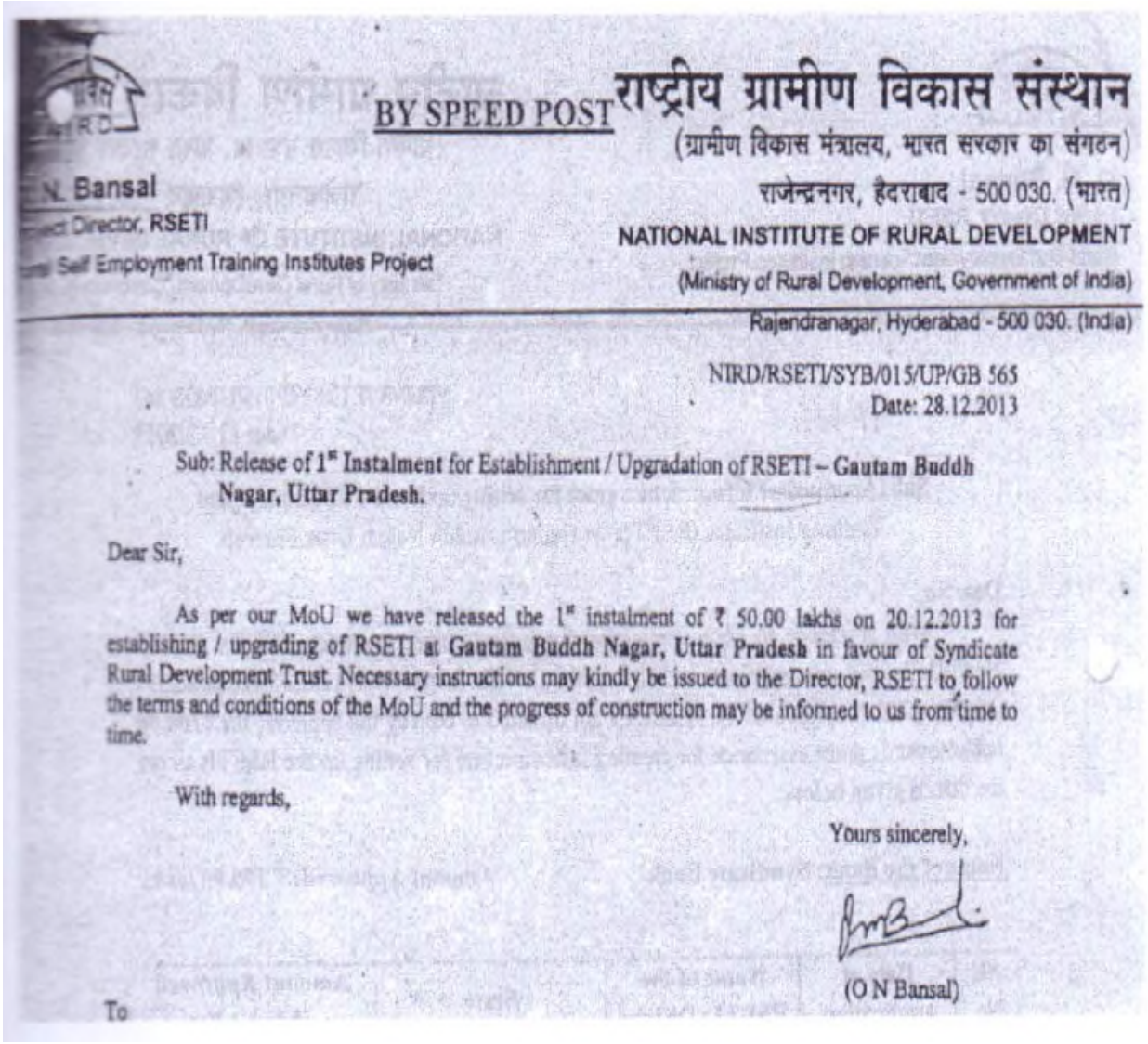
2. During the course of hearing, the learned Counsel for the assessee invited our attention that the appellant is a trust registered under section 12AA and filed its return of income on 29.09.2014 declaring a Nil income. During the year, appellant received Rs.50.00 lakh from National Institute of Rural Development, Government of India, as a part of grant of Rs.100 lakh for creating infrastructure for setting up of RSETI (Rural Self Employment Training Institute). The AO has made an addition of Rs.50.00 lakh to the return of income on the ground that the appellant did not claim the same as corpus fund under section 11(1)(d) of the Act. The AO also added the interest on the building fund of Rs.10,03,658/- which was reflected as receipt in receipts and payments account, but not included in the income and expenditure account. The assessee preferred an appeal before the CIT(A) and filed relevant evidence to demonstrate that the first instalment was given for creating infrastructure for setting up of RSETI at Gautam Buddh Nagar, Uttar Pradesh. He has also scanned the letter and the approval issued in this regard in its order and having examined the claim under section 11(1)(d) of the Act, the CIT(A) has deleted the additions relying upon the judgment of the jurisdictional High Court.

3. Aggrieved, the Revenue preferred an appeal before the Tribunal with the submission that the CIT(A) cannot entertain the new claim which has not been raised in the return of income. The learned Counsel for the assessee further contended that CIT(A) has examined the issue after making detailed investigation in the light of the relevant provisions of the Act. Therefore, no interference is called for.

4. Having carefully examined the order of the CIT(A), we find that in the appeal, the claim was not raised in the return of income but before the CIT(A) examined the claim of the assessee in the light of detailed evidences and the judgment of the jurisdictional High Court in the case of Sri Ramkrishna Seva Ashrama [2012] 18 taxmann.co 37 (Karnataka). For the sake of reference, we extract the observation of the CIT(A) as under:

"5.1 During the year, the appellant received Rs.50,00,000/- from National Institute of Rural Development, NIRD, Ministry of Rural Development, Govt. of India as part of the grant of Rs.100 Iakh for creating infrastructure for setting up RSETI (Rural Self Employment Training institute). The AO in the order u/s.143(3) added Rs.50,00,000/- to the returned income on the ground that the appellant did not claim the same as corpus fund u/s.11(1)(d). The issue involved in this appeal is related to the claim of 11(1)(d) which was not made at the time of filing the return. The AO also added the interest on building fund of Rs.10,03,658/- which was reflected as receipt in receipts and payments account, but not included in the Income & expenditure account.

5.2 The appellant submitted copy of letter dated 28.12.2013 issued by Director, N1RD. Hyderabad regarding release of 1st installment of Rs.50 lakhs in favour of ne appellant for creating infrastructure for setting up RSETI (Rural Self Employment Training institute) at Gautam Budha Nagar, Uttar Pradesh. The same is scanned and extracted below:



BY SPEED POST

राष्ट्रीय ग्रामीण विकास संस्थान
(ग्रामीण विकास मंत्रालय, भारत सरकार का संगठन)
राजेन्द्रनगर, हैदराबाद - 500 030. (भारत)
NATIONAL INSTITUTE OF RURAL DEVELOPMENT
(Ministry of Rural Development, Government of India)
Rajendranagar, Hyderabad - 500 030. (India)

N. Bansal
Director, RSETI
Self Employment Training Institutes Project

NIRD/RSETI/SYB/015/UP/GB 565
Date: 28.12.2013

Sub: Release of 1st Instalment for Establishment / Upgradation of RSETI – **Gautam Buddh Nagar, Uttar Pradesh.**

Dear Sir,

As per our MoU we have released the 1st instalment of ₹ 50.00 lakhs on 20.12.2013 for establishing / upgrading of RSETI at **Gautam Buddh Nagar, Uttar Pradesh** in favour of Syndicate Rural Development Trust. Necessary instructions may kindly be issued to the Director, RSETI to follow the terms and conditions of the MoU and the progress of construction may be informed to us from time to time.

With regards,

Yours sincerely,

(O N Bansal)

To

O. N. Bansal
Project Director, RSETI
Rural Self Employment Training Institutes Project

राष्ट्रीय ग्रामीण विकास संस्थान
(ग्रामीण विकास मंत्रालय, भारत सरकार का संगठन)
[illegible]
NATIONAL INSTITUTE OF RURAL DEVELOPMENT
(Ministry of Rural Development, Government of India)
Rajendranagar, Hyderabad - 500 030 (India)

[illegible]
Date: 11.12.2013

Sub: Approval of Infrastructure grant for setting up Rural Self Employment Training Institutes (RSETIs) at Gautam Buddh Nagar, Uttar Pradesh.

Dear Sir,

With reference to your application for infrastructure grant for RSETIs, MoRD New Delhi has communicated their approval vide Letter No.J-[illegible]-SGSY-(RSETI) (FTS [illegible]), dated 11.11.2013, I am directed to convey the approval for ₹100.00 lakhs towards grant assistance for creating infrastructure for setting up the RSETIs as per the details given below:

Name of the Bank: Syndicate Bank — Amount Approved: ₹ 100.00 lakhs

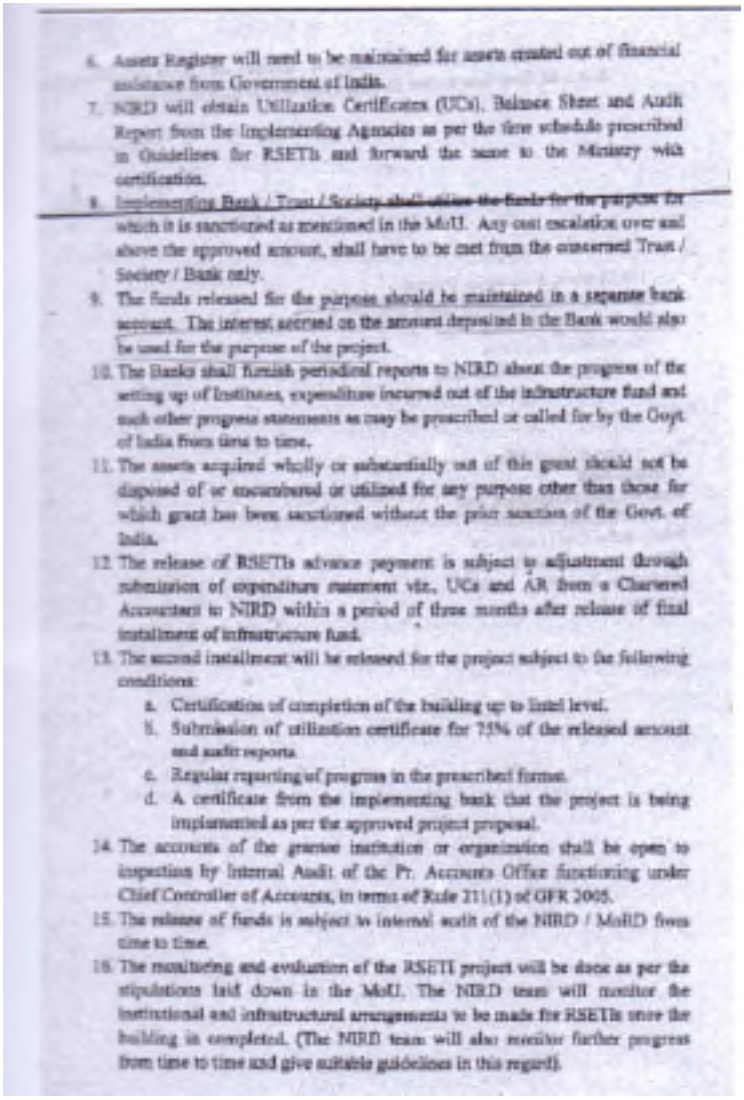
Sl. No.	Date of application	Name of the RSETI / District	State	Amount Approved (₹ in lakhs)
1.	08.02.2013	Gautam Buddh Nagar	Uttar Pradesh	100.00

The NIRD, Hyderabad will release the funds to the Bank / Trust / Society subject to following terms and conditions:

1. The total amount released to the Trust / Society / Bank should be distributed to the concerned RSETIs in the identified district as per the amounts indicated in the approval order.
2. The funding bank should have land allotment / possession given by the State Government.
3. Funds will be released to the Implementing Bank / Trust / Society only after signing of the Memorandum of Understanding (MoU) with them. The release will be in two installments depending upon the progress of work.
4. The implementing Bank / Trust / Society should strictly follow and adhere to the RSETI guidelines provided to them along with the terms and conditions that have been provided in the MoU.
5. The sanction & release of funds will be subject to the conditions laid down in the MoU.

[illegible]
Phone: [illegible], Fax: [illegible], E-mail: [illegible], Website: www.nird.org.in

We care for the environment



6. Assets Register will need to be maintained for assets created out of financial assistance from Government of India.
7. NIRD will obtain Utilization Certificates (UCs), Balance Sheet and Audit Report from the Implementing Agencies as per the time schedule prescribed in Guidelines for RSETIs and forward the same to the Ministry with certification.
8. Implementing Bank / Trust / Society shall utilize the funds for the purpose for which it is sanctioned as mentioned in the MoU. Any cost escalation over and above the approved amount, shall have to be met from the concerned Trust / Society / Bank only.
9. The funds released for the purpose should be maintained in a separate bank account. The interest accrued on the amount deposited in the Bank would also be used for the purpose of the project.
10. The Banks shall furnish periodical reports to NIRD about the progress of the setting up of Institutes, expenditure incurred out of the infrastructure fund and such other progress statements as may be prescribed or called for by the Govt. of India from time to time.
11. The assets acquired wholly or substantially out of this grant should not be disposed of or encumbered or utilized for any purpose other than those for which grant has been sanctioned without the prior sanction of the Govt. of India.
12. The release of RSETIs advance payment is subject to adjustment through submission of expenditure statement viz., UCs and AR from a Chartered Accountant to NIRD within a period of three months after release of final installment of infrastructure fund.
13. The second installment will be released for the project subject to the following conditions:
    a. Certification of completion of the building up to lintel level.
    b. Submission of utilization certificate for 75% of the released amount and audit reports.
    c. Regular reporting of progress in the prescribed format.
    d. A certificate from the implementing bank that the project is being implemented as per the approved project proposal.
14. The accounts of the grantee institution or organization shall be open to inspection by Internal Audit of the Pr. Accounts Office functioning under Chief Controller of Accounts, in terms of Rule 211(1) of GFR 2005.
15. The release of funds is subject to internal audit of the NIRD / MoRD from time to time.
16. The monitoring and evaluation of the RSETI project will be done as per the stipulations laid down in the MoU. The NIRD team will monitor the institutional and infrastructural arrangements to be made for RSETIs once the building is completed. (The NIRD team will also monitor further progress from time to time and give suitable guidelines in this regard).

5.3 It is undisputed that the appellant is registered u/s.12A and in the return did not claim the said amount as corpus fund u/s.11(1)(d). The AR filed copy of the balance sheet, receipts and payment account, Income and expenditure account and computation of income. I verified them. In the receipts and payment account, receipt of Rs.50 lakhs was shown as NIRD building fund received. The interest on building fund of Rs.10,03,658/- was also reflected as receipt in receipts and payments account. In the balance sheet, the grants from NIRD of Rs.50 lakhs was shown under building fund along with interest of Rs.28,93,516/- received on budding fund deposit. The only mistake made by the appellant was the same were not claimed as corpus fund or specific fund in the return of income and computation of income.

5.4 The Hon'ble HIGH COURT OF KARNATAKA in the case of Sri Ramakrishna Seva Ashrama[2012] 18 taxmann.com 37 (Karnataka) held as

> *17.Insofar as the argument that the persons who made these contributions does not specifically direct that they shall form part of the corpus of the trust is concerned, it has no substance. In view of the language employed in Clause (b) of sub-section (a) of Section 11, the requirement is that the voluntary contributions have to be made with a specific direction. The law does not require that the said direction should be in writing. In the absence of the direction in writing, the only way that one can find out whether there was a specific direction and to find out how the money so paid it is utilized. if the money so received by way of voluntary contributions, it is meant to use for the Leprosy patients and is credited to a particular account and from the income from the said capital, the said activity is carried on the requirement of Clause (b) of sub-section (1) of Section 11 is complied with. In the instant case, on record, we see that those people who have paid amounts by way of donation that includes the cheque with a letter with a specific direction, which is in compliance with Section (1) (b) of the Act. But, in case if the contributions are made without cheques i.e., by cash, and oral direction has been issued to the trust to utilise the said fund for the purpose of treating the leprosy patients and if such amounts arc credited to the account meant for it, even then the requirement of clause (b) of subsection (1) of Section 11 is complied with. Therefore, we do not see any substance in the said contention.*
>
> *18.In fact, the assessee has filed returns. In the returns, he has specifically mentioned that these contributions are received for the aforesaid purpose and claimed exemptions. Assessing Authority being satisfied with the requirements of Section 11(1)(b) is being fully complied with, has accepted the same and granted exemption under the aforesaid provision. It is too late in the day for the Commissioner for Directorate of Income Tax (exemptions) to ignore all these undisputed facts which are available in the record and to refuse to renew the registration, if is unfortunate that the higher authority has not applied its mind in proper perspective to these provisions. The parliament intended to pass on the benefit of exemption of payment of income tax to the charitable and religious institutions. We are really surprised at the attitudes of these authorities who are over-technical in denying the benefit to the deserving institutions, which are rendering laudable services to the rural masses. By not granting tax exemptions, which they deserve, the authorities have hampered the said social activities of the trust and they are made to waste their precious time, energy and money in fighting this litigation. We do not appreciate this attitude on the part of the authorities in denying the benefit which the parliament has given to such persons. Therefore, the Tribunal was fully justified in interfering with such an illegal order and granted the relief to the assessee for which it is entitled to. Unfortunately, the persons who took a decision to file an appeal, before this Court are wasting the precious time of the trust which could have been used in the social service. Public money and the time of this Court is also wasted. This attitude on the part of the department cannot be countenanced Therefore, we feel it appropriate to impose cost incurred by the assessee for fighting litigation so that the department would be more careful in future in taking decision to file appeal in such frivolous cases by ignoring the policy of the Government, viz., National Litigation Policy, 2011. Hence, we pass the following order:*

5.5 The Hon'ble ITAT, Bangalore , in the case of M/s. Vokkaligara Sangha in ITA Nos.281 to 285/Bang/2014 dated 14.8.2015 held that voluntary contributions received for a specific purpose cannot be regarded as income under Section 2(24)(iia) of the Act since they are

capital receipts and tied up grants for specific purpose. The relevant portion of the order is as under:

> *5.3.5 Following the above decisions of the Tribunal (supra), relied upon by the assessee, we hold that voluntary contributions received for a specific purpose cannot be regarded as income under Section 2(24)(iia) of the Act since they are capital receipts and tied up grants for specific purpose.*

5.6 The Hon'ble HIGH COURT OF KARNATAKA in Karnataka Municipal Data Society v. Income-tax Officer, Ward-9(2), Bangalore [2016] 76 taxmann. .7.crn 167 (Karnataka) held as under:

> *As such, when the assessee is to act as a custodian of the money and the utilization thereof is fully controlled by the Government, money remains as given for specified purpose and the interest earned is also to be utilized for specified purpose, but under the control of the Government as per the conditions of the grant. There is no liberty available to the assessee to utilize the amount of interest as per its desire. [Para 5]*
> *When the assessee is to act as a custodian of the Government money released to the assessee by way of a grant and the interest thereon is also to be utilized as per the terms and conditions of the grant, the view taken by the Tribunal cannot be sustained for two reasons. <u>One is that such cannot be termed as 'income' of the assessee</u> and another is that even if the addendum is issued by the Government for controlling the utilization of the amount of interest on the deposit at the later date the character of the money would remain the same and addendum can be termed as only by way of clarification. It was not a matter where the question was to be considered with the retrospectivity as observed by the Tribunal. When the assessee is held as a custodian and the full command for utilization of the money including interest earned thereon remains with the Government, same cannot be termed as income of the assessee. [Para 7]*

5.7 Similar views were expressed by the HIGH COURT OF RAJASTHAN in Sukhdeo Charity v Commissioner of Income-tax(1984) 19 Taxman 222 (Raj.)

> *50. Applying the principles of the aforesaid decisions to the facts and circumstances of the present case, the only conclusion that can be drawn would be that it was for the specific purpose of the implementation of the water supply scheme that the demand was raised by **the** assessee-trust and it was in response to that demand that the Calcutta trust made a voluntary contribution with a specific intention and implied instructions that the amount was meant for the water supply scheme. It was with this object and intention that the assessee-trust received the amount and credited in the separate accounts maintained for the purpose. The amount, therefore, by no stretch of imagination be said to be income, as envisaged by section 12(1), so as to attract the provisions of sub-section (2) of that section.*

5.8 Similar views were expressed by the ITAT, Hyderabad in the case of Society for Integrated Development in Urban and Rural Areas (SIDUR) v. Deputy Commissioner of Income-tax(2004) 90 ITD 493 (Hyderabad) (2004) which is reproduced below :

"The grants received from foreign donor were for specific purposes. The grants which were for specific purposes did not belong to the assessee-society; such grants did not form corpus of the assessee or its income. Those grants were not donations to the assessee so as to bring them under the purview of section 12. Voluntary contributions covered by section 12 are those contributions freely available to the assessee without any stipulation, which the assessee can utilise towards its objectives according to its own discretion and judgment. Tied-up grants for a specified purpose would only mean that the assessee which was a voluntary organisation, had agreed to act as a trustee of a special fund granted by donor with the result that it need not be pooled or integrated with the assessee's normal income or corpus. In the instant case, the assessee was acting as an independent trustee for that grant, just as same trustee could act as a trustee of more than one trust. Tied-up amounts need not, therefore, be treated as amounts which were required to be considered for assessment for ascertaining the amount expended or the amount to be accumulated"

5.9 Similar views were expressed by Hon'ble HIGH COURT OF DELHI in the use of Director of Income-tax v. Society for Development Alternative [2012] 18 taxmann.com 364 (Delhi).

The findings recorded by the Tribunal are that the assessee had received grants for specific purposes from the Government, non-Government, foreign institutions, etc. These grants were to be spent as per the terms and conditions of the grants. The amount, which remained unspent at the end of the year, got spilled over to the next year and was treated as unspent grant. The Tribunal, therefore, held that the assessee was not free to use the grants voluntarily as per its sweet will and, thus, these grants were not voluntary contribution as per section 12. [Para 7]

5.10 The submissions of the appellant and assessment order were carefully considered. It is undisputed that the appellant in the return made an error in not claiming the grant and the interest on it as corpus fund u/s.11(1)(d) or specific fund. But the intention of the appellant is reflected in its actions. The appellant received Rs.50 lakhs as grant from NIRD, Ministry of Rural Development for building fund as mentioned in the sanction letter and treated it as a separate fund in its books.

5.11 The Hon'ble Gujarat High Court in the case of Mitesh Impex[2014] 46 taxmann.com 30 (Gujarat) held that Income-tax proceedings are not strictly speaking adversarial in nature and the intention of the Revenue would be to tax real income. This is primarily on the premise that <u>if a claim though available in law is not made either inadvertently or on account of erroneous belief of complex legal position, such claim cannot be shut out for all times to come, merely because it is raised for the first time before the appellate authority without resorting to revising the return before the assessing officer.</u>

5.12 In this case, the claim was made before the AO, but he rejected it merely on the ground that the claim was not made in the return. The sanction letter of the has laid down norms for spending out of the grants and interest received on grants also to be used for the purpose of the project only. Taking into consideration the above discussion and the decisions cited above, I am of the view the grant of Rs.50 lakhs (towards building fund) and the interest on building fund of Rs.10,03,658/- is required to be treated as specific fund u/s. 11(1)(d). The AO is directed to delete the addition of Rs.50,00,000/- and Rs.10,03,658/-. ***The ground on the issue is allowed.****"*

5. Since the CIT(A) has adjudicated the issue in the light of evidence filed before it and the judgments of the jurisdictional High Court and no specific defect is found in the order, we find no infirmity in the order of the CIT(A). Accordingly, we confirm the order of the CIT(A).

6. In the result, appeal of the Revenue stands dismissed.

Pronounced in the open court on 15th June, 2018.

Sd/-	Sd/-
(INTURI RAMA RAO)	**(SUNIL KUMAR YADAV)**
Accountant Member	**Judicial Member**

Bangalore.
Dated: 15th June, 2018.
/NS/*

Copy to :

1	Appellant	2	Respondent
3	CIT(A)-II Bangalore	4	CIT
5	DR, ITAT, Bangalore.	6	Guard file

By order

Sr. Private Secretary,
ITAT, Bangalore.