

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH: CHENNAI**

श्री रमित कोचर, लेखा सदस्य एवं  
श्री धुव्वुरु आर.एल. रेड्डी, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER AND  
SHRI DUVVURU R.L.REDDY, JUDICIAL MEMBER**

HEARD THROUGH VIDEO CONFERENCING

**ITA No.3395/Chny/2019**  
निर्धारण वर्ष / **Assessment Year: 2016-17**

St. Francis Educational Trust,  
No.79, Anna Main Road,  
Kolapakkam, Chennai-600 122.

v. The Income Tax Officer,  
Exemption Ward-2,  
Aayakar Bhawan- Annexe  
Building, No.121,  
Mahatma Gandhi Road,  
Nungambakkam,  
Chennai-600 034.

**[PAN: AAGTS 7818 E]**

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Mr.L.Shibi, C.S.

प्रत्यर्थी की ओर से /Respondent by

: Mr.AR.V.Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing

: 20.07.2020

घोषणा की तारीख /Date of Pronouncement

: 24.08.2020

**आदेश / O R D E R**

**PER RAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal filed by assessee is directed against appellate order dated 01.04.2019 passed by learned Commissioner of Income Tax (Appeals)-17, Chennai (hereinafter called "the CIT(A)"), in ITA No.275/CIT(A)-17/2018-19 for assessment Year (ay) 2016-17, the appellate proceedings before learned CIT(A) had arisen from assessment

order dated 14/12/2018 passed by learned Assessing Officer (hereinafter called "the AO") u/s.143(3) of the Income-tax Act, 1961 (hereinafter called "the Act"). The appellate proceedings are conducted by Income-Tax Appellate Tribunal, Chennai Bench 'A', Chennai through Virtual Court via videoconferencing using webex platform.

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") read as under:-

*"1. The Learned Commissioner of Income Tax (Appeals) has failed to consider that the property which was acquired by utilising the loan availed from the bank by the Appellant being Trust Property, is the property of the Appellant Trust and hence the question of any benefit arising to Trustee by virtue of Section 13(1)(c) and the consequent rejection of exemption under Section 11 does not arise.*

*2. The Learned Commissioner of Income Tax (Appeals) has failed to consider the factual submission made by the Appellant that "the land having been acquired totally out of funds of the trust, it is trust property only although registered in the name of the trustee". While the Learned CIT has considered the acquisition of land out of the trust funds, but has omitted to consider the submission made that the Property continues to be Trust Property.*

*3. The Learned Commissioner of Income Tax (Appeals) having failed to note that the declaration of Trust by the registered owner of the Property results in the property becoming a Trust Property and no further action is needed as the Trust is an obligation attached to the ownership of the Property and in this case the land acquired is obliged to be used for charitable purposes and that in fact, it has been used for the said purpose and this failure has led to a wrong conclusion that the land belongs to the Managing Trustee in her individual capacity and this wrong conclusion has led to the passing of the impugned order, which therefore deserved to be set aside.*

*4. The Learned Commissioner of Income Tax (Appeals) has erred in disallowing the interest paid to the financial institution for the loan availed to purchase the property for the Appellant by invoking Section 13(2), without considering the fact and circumstances under which the property of the Appellant was registered in the name of the Trustee, which resulted in double taxation.*

*5. The Learned Commissioner of Income Tax (Appeals) has erred in disallowing the depreciation which was never claimed by the Appellant.*

*6. The Learned Commissioner of Income Tax (Appeals) by its impugned order denying the exemption under Section 11 has resulted in denial of allowance available to Charitable Trusts for application towards the objects of the Trust resulting in miscarriage of justice.*

*7. The Learned Commissioner of Income Tax (Appeals) has erred in holding that Scholarship to Students and Flood Relief work were not incurred for earning the income without giving an opportunity to the Appellant which is against the Principle of natural justice.*

*8. The Appellant craves leave to file additional ground at the time of hearing."*

3. The brief facts of the case are that the assessee is a Public Charitable Trust registered under Indian Trust Act, 1882 established on 25<sup>th</sup> June 2007 with one of its object to provide education. The assessee-trust was registered u/s.12AA of the Income Tax Act, 1961. It filed its return of income for ay: 2016-17 on 31.03.2017 admitting total income of Rs. NIL. The said return of income was revised on 30.03.2018. During the course of assessment proceedings conducted by AO u/s.143(3) r.w.s. 143(2) of the 1961 Act, the AO observed that the assessee-trust has claimed an interest of Rs.24,95,992/- paid on building loan. The AO observed that under the 'Liability Side' of the Balance Sheet under the heading Secured Loan , an amount of Rs. 4 Crores was shown as 'Bank Loan – UBI' and on the asset side an amount of Rs. 4 Crores was shown as 'Leasehold Land'. The assessee submitted before the AO during the course of assessment proceedings that the assessee-trust availed a loan of Rs. 4 Crores from Union Bank of India, SME Branch, Guindy, Chennai and given the said amount towards 'Leasehold of the Land'. The AO observed from the documents furnished during the course of assessment proceedings that the assessee has obtained loan of Rs. 4 Crores from Union Bank of India in September, 2015 which was transferred to Smt. Mercy Latha, Managing Trustee of the assessee in the first week of October, 2015. The AO observed that Lease Deed was executed by Mrs. Mercy Latha, Managing Trustee in favour of the assessee on 22.12.2015 wherein the land situated at 52, Thaiyur A Village (Thaiyur B Village), Chenglepattu Taluk was given on lease for a period of three years to assessee-trust, free of

rent. The AO observed that Smt. Mercy Latha, Managing Trustee, purchased the said property utilizing the funds transferred by assessee-trust. The AO observed that as on the date of transfer of funds by assessee-trust to Mrs. Mercy Latha, Managing Trustee, the Mrs. Mercy Latha was not having possession of the said immovable property . The AO observed that said immovable property was acquired by Mrs. Mercy Latha, Managing Trustee in the last week of October, 2015 and leased out to assessee-trust in the month of December, 2015, which as per AO clearly evidences that the said leased our immovable property was purchased by Mrs. Mercy Latha, Managing Trustee using the funds transferred by assessee-trust. A Flow chart of payment chart has been reproduced as under:

29-09-2015	Loan amount Credited into the Trust Account maintained with Union Bank of India	4,00,00,000
29-09-2015	Loan amount transferred to another account of the Trust Account maintained with Union Bank of India	4,00,00,000
05-10-2015	Amount transferred from Union Bank of India Account ( Assessee trust) to the Corporation Bank A/c., maintained by Assessee Trust (006316)	1,00,00,000
07-10-2015	Amount transferred from Union Bank of India to Corporation Bank Account (000479) maintained by assessee trust.	75,00,000
08-10-2015	Amount has been transferred from Corporation Bank A/c., (0006316) of the assessee trust to KVB Account maintained by Smt. Mercy Latha - Managing Trustee	85,00,000
08-10-2015	Amount has been transferred from KVB A/c., (000476) of the assessee trust to KVB Account of Smt. Mercy Latha	75,00,000
20-10-2015	Amount Transferred from KVB Account of the Assessee Trust to KVB Account of Smt. Mercy Latha - Managing Trustee	1,65,00,000

3.2 The Mrs. Mercy Latha, Managing Trustee after purchasing aforesaid immovable property in October, 2015 , leased the same to assessee-trust for a period of three years vide lease deed dated 22.12.2015, free of rent.

The AO observed that entry made in the Balance Sheet of assessee-trust that an amount of Rs. 4 Crores was given towards 'Leasehold of Land' is not correct and not acceptable as the immovable property was registered in the name of Managing Trustee, Mrs Mercy Latha and not registered in the name the assessee-trust. The AO further observed that the assessee is paying interest and principal loan account to the Bank. Thus, the AO observed that it is mis-utilization of the trust funds by the Trustee for purchase of immovable property in her name. Since, the funds of the assessee-trust were diverted to Managing Trustee for purchase of immovable property in the name of Managing Trustee, the AO invoked provisions of Sec.13(1)(c) r.w.s.13(2) of the 1961 Act and held that the funds of Trust has been diverted and utilized by Smt. Mercy Latha, Managing Trustee for purchase of immovable property in her name, and hence it is clear infringement of Section 13(1)(c) read with Section 13(2) of the 1961 Act, thus the AO observed that the assessee has become ineligible for claiming exemption under Section 11 & 12 of the 1961 Act. The assessee on its part submitted before the AO that no benefit/advantage was derived by Managing Trustee from the said land as it did not yielded any income nor said immovable property is capable of yielding any income. The assessee in its reply submitted before the AO as under:

*".....the land having been acquired totally out of the funds of the trust, it is trust property only although registered in the name of the trustee, It was formally leased out vide lease deed dated 22nd December, 2015 by the trustee to the trust free of any rent. You would find that this is more in the nature of a formality to process the Building Plan approval and reclassification of the land.*

*".....in this connection, we wish to submit that the Trust Deed empowers the Trustees to purchase the land vide Clause 13 of the Trust Deed which is extracted herein below for the sake of reference.*

*13(1): The trustees shall have power to acquire lands, buildings or other movable or immovable properties by purchase, lease, gift, settlement etc. for trust. With the powers vested by the Trust Deed, the Managing Trustee has purchased the property and is holding it for and on behalf of the Trust only. In fact, in the aforesaid clause 13, it has been specifically stated....,*

*"All property of the Trust, movable or immovable or any other kind shall vest in Trust. The trustee shall manage the whole property....."*

*Merely because the property has been acquired in the name of the Managing Trustee, you could not conclude that there is diversion of the funds of the trust to the Managing Trustee...."*

3.3 The AO rejected contention of the assessee as Managing Trustee of the assessee-trust has purchased the said land in her name, out of the funds of assessee-trust. The AO observed that clause 13 of the Trust Deed empowers the Trustees to acquire land , borrow funds etc. , only in the name of the Trust or on behalf of the Trust, but not either in the name of the Trustee or to avail the benefit of the same by the Trustees. Thus, the contention of the assessee that even though Managing Trustee has purchased property out of the funds of the trust, it should not be concluded that there is a diversion of funds of the trust by the trustee which does not violate provisions of Section 13(1)(c) of the 1961 Act, was not accepted by the AO. Further, the contention of the assessee before the AO that the said property is duly reflected in the Balance Sheet of the Trust as on 31.03.2016 onwards was also rejected by AO as the said property is incorporated in the books of accounts of the assessee-trust as 'Leasehold Land' and not as an immovable property by way of additions to Fixed Assets. The AO observed that assessee has not incorporated the said land in its books of accounts as fixed assets and assessee cannot

claim ownership of the said property. Thus, the AO rejected contentions of the assessee. The AO relied upon decision of co-ordinate Bench of this Tribunal in the case of DDIT (E)-III, Chennai v. Paramasiva Naidu Muthuvel Raj Educational Trust , wherein tribunal upheld order passed by AO denying assessee exemption u/s 11 owing to violation of Section 13(1)(c) and 13(1)(d) of the 1961 Act. The AO also relied upon decision of Hon'ble Supreme Court in the case of CIT v. Dawoodi Bohra Jamat reported in 364 ITR 31(SC) wherein exemption u/s 11 and 12 of the 1961 Act was denied to the assessee due to violation of Section 13(1)(c) of the Act. The assessee was assessed to tax by AO with status of AOP and assessee's income was brought to tax at Maximum Marginal Rate as per proviso to Sec.164(2) of the 1961 Act, vide assessment order dated 14.12.2018 passed by AO u/s 143(3) of the 1961 Act.

4. The assessee being aggrieved by an assessment order dated 14.12.2018 passed by AO u/s 143(3) of the 1961 Act filed first appeal before learned CIT(A) and made detailed contentions which are reproduced by Ld.CIT(A) in its appellate order 01<sup>st</sup> April 2019. The Ld.CIT(A) rejected contentions of the assessee , vide appellate order dated 01<sup>st</sup> April 2019, by holding as under:

*"5. I heard contentions of the AR of the Appellant and perused the grounds of appeal, assessment order, AR's submission and material available on record. My observations in respect of the grounds raised by the appellant are as follows:*

*6. Disallowance of exemption u/s 11 for violation u/s 13(l)(c):*

6.1 The Assessee claimed Rs.24,95,992/- towards interest paid on building loan. In the balance sheet the assessee had shown bank loan of Rs.4,00,00,000/- as liability and on the asset side assessee had shown Rs.4,00,00,000/- as "Leasehold land".

On verification the Assessing Officer noticed that - (i) the assessee trust received bank loan of Rs 4,00,00,000/- on 29/9/2015 (ii) the trust transferred Rs 4,00,00,000/- to Smt Mercy Latha the Managing Trustee in the last week of October 2015. (iii) Smt Mercy Latha purchased the land (situated at 52, Thaiyur A Village and/or Thaiyur B Village, Chengleput District) on 28/10/2015 after receiving Rs 4,00,00,000/- from trust for a sale consideration of Rs.3,50,00,000/- vide Sale Deed Document No.13536/2015 and (iv) leased out the said property to the Trust for 3 years commencing from 22/12/2015 vide lease deed dt 22/12/2015.

Based on the above facts the Assessing Officer concluded that the Managing Trustee of the Trust had utilized the funds of the Trust for purchase of the immovable property in her name out of the loan amount of Rs.4.00 Crores availed by the Trust from the Union Bank of India and hence concluded that section 13(1)(c) was attracted and disallowed exemption claimed u/s 11.

6.2 In the grounds of appeal, the appellant contested as under:

"2.1 The Learned AO ought to have appreciated the entire factual scenario considering the future expansion plans of the trust.

2.2 The learned AO has grossly erred on the facts and circumstances of the case in treating the purchase of land in the name of the managing trustee as misappropriation of funds and disallowed the exemption claimed under section 11 of the Act.

2.3 The Learned AO has erred in invoking the provisions of Section 13(1)(c) of the Act without a holistic understanding of the facts of the case".

6.3 In the written submission, the appellant contested that the trust had obtained term loan based on the collateral security and the personal guarantee provided by the Managing Trustee in her personal capacity and hence the source of funds transferred to the Managing Trustee was neither the income of the Trust nor utilising the property of the Trust and hence section 13(1)(c) is not applicable.

6.4 As per Circular No, 100 dated 24th January, 1973 of CBDT - repayment of the loan originally taken to fulfill one of the objects of the trust will amount to an application of the income for charitable and religious purposes.

During the year, assessee repaid part of the loan and in fact claimed Rs.24,95,992/- towards interest paid on the loan.

Hence the argument of the assessee that giving loan funds to the Managing Trustee does not attract section 13(1)(c) is dismissed.

6.5.1 The Assessee did not dispute the following facts:

(i) the assessee trust received bank loan of Rs.4,00,00,000/- on 29/9/2015 (ii) the trust transferred Rs 4,00,00,000/- to Smt Mercy Latha the Managing Trustee in the last week of October 2015. (iii) Smt Mercy Latha purchased the land (situated at 52, Thaiyur A Village and/or Thaiyur B Village, Chengleput District) on 28/10/2015 after receiving Rs.4,00,00,000/- from trust for a sale consideration of Rs.3,50,00,000/- vide Sale Deed Document No. 13536/2015 and (iv) leased out the said property to the Trust for 3 years commencing from 22/12/2015 vide lease deed dt 22/12/2015.

6.5.2 During the course of the hearing of the appeal, the appellant contested that Managing Trustee gave personal guarantee for the loan taken by the Trust. But the fact remains that loan was sanctioned in the name of the assessee trust and the loan was repaid by the Trust and not by the managing Trustee.

The Appellant further contested that the managing Trustee leased out the land purchased to the Trust free of rent for 3 years.

But the fact remains that the Managing Trustee purchased the property in her name with the funds of the trust and the Managing Trustee did not repay Rs.4,00,00,000/- to the trust and did not pay any interest on the same to the trust. But the trust repaid the loan taken to the bank along with interest.

Hence section 13(l)(c) read with section 13(2)(a) is attracted.

6.6.1 In [2011] 15 taxmann.com 235 (Allahabad) Commissioner of Income-tax-II, Lucknow vs Audh Educational Society - The assessee, a society registered under section 12A, was running an educational institution. During the assessment year under consideration, the Assessing Officer noticed that no interest had been charged on a loan outstanding against the name of the treasurer of the society, nor any provision for accrued interest was made. He concluded that the funds of society were diverted for personal benefits of the treasurer. Consequently, he denied exemption claimed under section 11 to the assessee-society in view of provisions contained in section 13(1)(c) and 13(2)(a).

The Hon'ble High Court of Allahabad held - The Assessing Officer has rightly concluded that the appellant has given interest free loan to 'V' in violation of the provisions of section 13(1)(c) and without any adequate surety in violation of section 13(2)(a). The Assessing Officer has rightly denied the exemption to the assessee under section 11.

6.6.2 In [2008] 171 Taxman 134 (Delhi) Kanahya Lal Punj Charitable Trust vs Director of Income-tax (Exemption) - Assessee-trust had advanced huge amounts to a company 'P', which had substantial interest in trust, without any security and adequate interest.

The Hon'ble High Court of Delhi held - "Act is intended to eliminate any possibility of trust's funds being used for benefit of any interested party and since in instant case, a benefit had directly or indirectly reached interested person namely, 'P', there was a clear violation of sections 13(1)(c) and 13(2)(a).

Therefore, provisions of sections 11 and 12 would not operate so as to exclude income of trust from total income of previous year and, consequently, all receipts of trust either by voluntary contribution or from income derived from its property would be an income of trust, chargeable to tax".

6.6.3 In [2016] 69 taxmann.com 71 (Chennai - Trib.) Deputy Director of Income-tax (Exemptions)-III vs Mahalakshmi Kunjitha Patham Educational & Charitable Trust, the Hon'ble ITAT Chennai Bench 'A' held - Where funds of assessee-trust were transferred to trustee for his benefit, exemption under section 11 was rightly disallowed.

6.7 Respectfully following the above stated case-laws, the disallowance of exemption claimed under section 11 in view of section 13(1)(c) read with section 13(2)(a), is upheld.

#### 6.8 Alternate plea:

In the written submission, the appellant made alternate plea that the exemption under section 11 could be denied only to the extent of conditions violated as per Section 13(1)(c) of the Act and relied on the decision of the Hon'ble High Court of Madras in [2015] 53 taxmann.com 85 (Madras) Commissioner of Income-tax vs Working Women's Forum.

6.8.1 In [2015] 53 taxmann.com 85 (Madras) Commissioner of Income-tax Working Women's Forum, the Hon'ble High Court of Madras held -In case of a trust registered under section 12AA, only such part of income which is violative of section 13(1)(d) can be brought to tax at maximum marginal rate and entirety of income cannot be denied exemption under section 11.

Thus the case-law relied on by the assessee is in connection with the violation u/s 13(1)(d) and the same cannot be applied to assessee's case which is violation u/s.13(1)(c). Moreover, the case laws stated above at Para No.6.6.1, 6.6.2 and 6.6.3 clearly state that exemption u/s.11 will not be available if section 13(1)(c) is violated. Hence the alternate

*plea of the assessee to restrict the disallowance to extent of the income that violated section 13(1)(c) is dismissed.*

*7. Disallowance of interest on bank loan:*

*7.1 In the grounds of appeal, the appellant contested as under:*

*"3.1 The learned AO has grossly erred on the facts and circumstances of the case in disallowing the interest paid on loan with the net receipts of the trust by invoking the provisions of the section 13(3) and section 13(1)(c) of the Act."*

*7.2 As stated above, the assessee trust transferred the loan taken from the bank to the Managing Trustee who utilized the said amount to purchase the in her name.*

*Thus the trust did not utilize the bank loan for the purposes of the Trust. Thus the interest on the bank loan was not utilized wholly and exclusively for the purpose of earning the income of the trust.*

*Hence the disallowance of interest on bank loan is upheld."*

4.2 Since the assessee was assessed as AOP, the AO allowed depreciation on the capital assets which were purchased during the year as in earlier years as per AO, the assessee had already claimed entire amount of capital expenditure as deduction while computing income of the assessee. The assessee being aggrieved submitted before Ld.CIT(A) that assessee has not claimed any depreciation on capital assets during the year under consideration. The Ld.CIT(A) rejected contention of the assessee and upheld assessment order passed by the AO and allowed depreciation on the capital asset acquired during previous year relevant to ay: 2016-17. Further, assessee was aggrieved by bringing into tax , expenses which were held to be not connected to earning of an income and since exemption u/s 11 was denied, the following expenses stood disallowed by both AO as well learned CIT(A) who upheld assessment order passed by AO. The expenses which stood disallowed by both AO as well learned CIT(A), are as under:

<b>Particulars</b>	<b>Amount in INR</b>
Scholarship to students	9,99,050
Flood Relief work	57,319
Salary Payable	8,65,937
P.F. Payable	75,277
Rent payable	3,00,000
<b>Total</b>	<b>22,97,583</b>

5. Aggrieved by an appellate order passed by learned CIT(A), the assessee has filed an appeal before tribunal. The appeal was heard through Video Conferencing. It is a stay granted matter wherein tribunal vide its order dated 13.03.2020 in SP No. 112/Chny/2020 was pleased to grant monthly installment scheme of Rs. 2,00,000/- per month. On being asked by the Bench, the Ld.Counsel for the assessee made statement before the Bench that the assessee-trust is regularly depositing monthly installment of Rs. 2,00,000/- as directed by Hon'ble Tribunal, vide order in SP No.112/Chny/2020 dated 13/03/2020. It was stated before the Bench by learned counsel for the assessee that all monthly installments falling due upto-date till the month of June 2020 had been duly deposited to the Credit of Central Government and the assessee undertakes to produce necessary paid challans before the Department. The Ld.DR submitted that instructions will be issued to AO to collect all paid challans towards payment of monthly installments paid by assessee from March 2020 to June 2020 so that same can be brought on record. On Merits, the Ld.Counsel for the assessee submitted that the assessee is a Public Charitable Trust running schools. The assessee is registered u/s 12AA of the 1961 Act and was eligible for deduction u/s 11 and 12 of the 1961 Act. The assessee-trust obtained loan of Rs. 4,00,00,000/- from Union Bank of

India in September 2015 which was further advanced/transferred to Mrs. Mercy Latha, Managing Trustee of the assessee for purchasing of land in her name. It was submitted that the said land was registered in the name of Mrs. Mercy Latha in the month of October 2015 and the said land was given on lease to assessee-trust for a period of 3 years in December 2015, free of rent. It was further submitted that after expiry of aforesaid lease, a fresh lease deed was executed and registered by Mrs. Mercy Latha , Managing Trustee in March 2020 in favour of the assessee-trust for a period of 33 years on a nominal rent of Rs. 1500 per month, effective from 27<sup>th</sup> January 2020. Thus, it was submitted that Mrs. Mercy Latha, Managing Trustee did not obtain or derived any benefit from the said land. The learned counsel for the assessee submitted that bankers were insisting as a condition for grant of loan that the said land be acquired and registered in the name of Mrs. Mercy Latha, Managing Trustee and not in the name of the trust as it is difficult to create encumbrance of the trust property and property registered in the name of the trust is difficult to be enforced in the event of loan default. It was submitted that Mrs. Mercy Latha, Managing Trustee of the assessee-trust is a high net worth individual and had stood as guarantor for the said loan . It was submitted by learned counsel for the assessee that she had given personal guarantees for loan granted by UBI in favour of the assessee-trust. It was submitted by learned counsel for the assessee that Mrs. Mercy Latha, Managing Trustee held the said property in fiduciary capacity for the benefit of the trust and she has not derived any benefit from said

property. It was submitted by learned counsel for the assessee that as per Section 31 of Tamil Nadu Recognition of Private Schools Regulation Act, 1973, it is very difficult and cumbersome procedure to get property registered in the name of Trust as permissions are required from competent authorities which are very difficult to obtain . It was submitted that the said property was duly incorporated in the asset side of Balance Sheet of the assessee-trust as 'Leasehold Land' -Rs. 4,00,00,000/- . Our attention was drawn to appellate order passed by Ld.CIT(A) , para 4, placed at Page No.61 of the Paper Book and it was submitted that Mrs. Mercy Latha, Managing Trustee stood personal guarantor for loan been granted by UBI in favour of the assessee-trust. It was also submitted that collateral securities were offered by Mrs. Mercy Latha by way of her personal properties in favour of UBI to secure the loan granted by UBI in favour of assessee-trust. Our attention was also drawn to Page No.70 of the Paper Book, para No.6.1 of learned CIT(A) appellate order to submit that the aforesaid asset being land was duly disclosed in the Balance Sheet as 'Leasehold Land'-Rs. 4,00,00,000/-. Our attention was also drawn to para 6.3 of learned CIT(A) order to submit that Mrs. Mercy Latha, Managing Trustee offered her personal properties as collateral securities and also stood personal guarantee for the loan been granted to the assessee-trust by UBI. It was also submitted by learned counsel for the assessee that fresh lease deed was registered in the month of March 2020 for a period of 33 years on a nominal rent of Rs. 1500 per month by Mrs. Mercy Latha, Managing Trustee in favour of the assessee-trust for

leasing the aforesaid property, after expiry of first lease entered into in the month of December 2015 for a period of three years, free of rent. The assessee also drew our attention to Minutes dated 03/09/2015 of the meeting held by assessee-trust of the Board of Trustees , wherein it was decided in the meeting to acquire the property admeasuring to the extent of 2 acres situated at 52, Thayiur Vilalge for the exclusive use of the School and for purposes of construction of School Building. It was further decided in the said meeting that the property shall be registered in the name of Mrs. Mercy Latha, Managing Trustee as required by UBI. It was also submitted that it was decided in the meeting that property of the trust shall not be transferred by the Managing Trustee in the any manner whatsoever. The copy of Minutes dated 03.09.2015 and fresh Lease Deed of March 2020 are additional evidences produced by assessee for the first time before the Tribunal. The said documents are placed in the file. The Ld.DR submitted that these two documents were never produced before learned AO/CIT(A) and since they are produced for the first time before tribunal , hence these are additional evidences which requires verification by AO. The learned DR submitted that if these documents are to be admitted and considered while adjudicating this appeal , then the matter may be restored to the file of AO for fresh adjudication. The Ld.Counsel for assessee submitted that Managing Trustee has not drawn any benefit from said property and the said parcel of land so acquired was simply transferred to assessee Trust on lease basis, firstly for a period of three years and then for a period of 33 years. It was also submitted that no

benefit whatsoever was derived by Managing Trustee and she was holding the property in fiduciary capacity for benefit of assessee-trust. It was submitted that there is no finding by learned AO/CIT(A) that Mrs. Mercy Latha, Managing Trustee has drawn any benefit out of the Trust-Property and hence it was prayed that there is no violation of Sec.13(1)(c), Sec.13(1)(d) & Sec.13(2) of the 1961 Act and Department erred in assessing the assessee-trust as AOP and in denying benefit of exemption under Section 11 & 12 of the 1961 Act. The learned counsel for assessee relied upon decision of Jaipur Bench of ITAT in the case of Kendriya Academy Vidhyalaya Shiksha Samiti v. ACIT, Circle-1, Kota , reported in (2016) 73 taxmann.com 391(Jp.Trib.) and prayers were made by learned counsel for the assessee for setting aside matter to the file of AO for fresh adjudication and it was submitted that there was a fiduciary capacity in which Managing Trustee of the assessee-trust namely Mrs. Mercy Latha was holding the aforesaid property. Further, learned counsel for the assessee relied upon decision of Bangalore Bench of ITAT in the case of BTM Education Trust v. ACIT reported in (2006) 6 SOT 716 (Bang.-trib.) and it was submitted that no benefit was obtained by the Trustee in the instant case and hence benefit of Section 11 and 12 of the 1961 Act cannot be denied to the assessee. The Ld. DR. on the other hand, drew our attention to Page No.73 of the Paper Book, Para 6.6.1 of appellate order of Ld.CIT(A) and drew our attention to judgment of Hon'ble Allahabad High Court , wherein Hon'ble High Court has held that provisions of Section 13(1)(c) and 13(2)(a) of the 1961 Act stood violated

if interest free loans are given to trustees without any security and hence Section 11 exemption cannot be allowed. The Ld.Counsel for the assessee submitted that the assessee-trust is not paying any lease rent during the year under consideration. It was reiterated by learned counsel for the assessee that lease deed was renewed in the month of March 2020 effective from 27<sup>th</sup> January 2020 vide registered deed , for a period of 33 years with lease rent of Rs. 1500 per month, after expiry of first lease deed dated 22<sup>nd</sup> December 2015 which was for a period of 3 years. It was reiterated that the said property was held by Mrs. Mercy Latha, Managing Trustee in fiduciary capacity for benefit of trust. The Ld.Counsel for the assessee prayed that the matter be set-aside to the file of AO for fresh consideration. The Ld.DR also submitted that keeping in view that additional evidences are filed by assessee for the first time before the tribunal which required verification by the AO, the matter needs to be restored to the file of the AO for fresh examination.

6. We have heard both the parties through video conferencing and perused the material available on record. We have observed that the assessee is a Public Charitable Trust registered under Indian Trust Act, 1882 , with an object of providing education as its one of the main objects. The assessee was holding registration u/s 12AA of the 1961 Act. The assessee trust availed bank loan of Rs. 4,00,00,000/- from Union Bank of India, Guindy Branch, Chennai in the month of September 2015. The said amount of loan amount to the tune of Rs. 4,00,00,000/- which was credited by Union Bank of India(UBI) to

assessee's bank account was transferred by assessee-trust to the bank accounts of Mrs. Mercy Latha, Managing Trustee of the assessee-trust in the first week of October 2015, aggregating to Rs. 4,00,00,000/- . Mrs. Mercy Latha , Managing Trustee of the assessee-trust acquired and got registered a land admeasuring 2 acres situated at 52, Thaiyur A Village (Thaiyur B Village), Chenglepattu Taluk , Kancheepuram District, Tamil Nadu in her name for Rs. 3,50,00,000/- , as per registered sale deed dated 28<sup>th</sup> October 2015 . Thus, the aforesaid land was registered in the name of Mrs. Mercy Latha who is described as an absolute owner of the said land as per aforesaid sale deed dated 28.10.2015 for an aggregate consideration of Rs. 3,50,00,000/- , and registration of said land was not done in favour of assessee-trust . Thus, the land was acquired out of the funds transferred by assessee-trust, except an amount of Rs. 30 lacs which was paid by Mrs. Mercy Latha to seller of the land on 28.11.2014(almost one year back), as per details recorded in the sale deed. The agreement to sell entered into by Mrs. Mercy Latha with sellers of land while advancing Rs. 30 lacs in November 2014 is not brought on record. The said land as per sale deed dated 28.10.2015 is described as an agricultural land. The said sale deed dated 28.10.2015 is placed in paper book filed by assessee with the tribunal at page 10-23. Mrs. Mercy Latha, Managing Trustee executed lease deed with respect to said land in favour of the assessee trust for a period of three years on 22<sup>nd</sup> December 2015, free of rent. The said lease deed is placed in paper book filed by

assessee with tribunal at page 24-28. The assessee has now placed before the tribunal for the first time, Minutes of the Meeting of the Board of Trustees dated 03.09.2005 which stipulates that authorization/approval was granted by Board of Trustees to Mrs. Mercy Latha, Managing Trustee to acquire aforesaid property exclusively for the use of School and for purposes of construction of school building. As per Minutes dated 03.09.2015 of Trustees ( placed in file), It was further decided in the said meeting that the property shall be registered in the name of Mrs. Mercy Latha, Managing Trustee as required by UBI. It is also stipulated in the said minutes dated 03.09.2015 that property of the trust shall not be transferred by the Managing Trustee in the any manner whatsoever. The copy of Minutes dated 03.09.2015 are placed in file . These Minutes dated 03.09.2015 are produced for the first time before the Bench during the hearing on 20.07.2020 and are in the nature of additional evidences which were never produced before learned AO/CIT(A), and hence these additional evidences had not stood the scrutiny/verification by lower authorities. It is also not explained whether these minutes were registered by assessee-trust with competent authorities as required under Indian Trust Act, 1882. The assessee has also produced Lease Deed of March 2020 wherein Mrs. Mercy Latha has executed and registered lease deed with respect to said property in favour of assessee trust for a period of thirty three months, effective from 27.01.2020 . The first lease was executed on 22.12.2015 by Mrs. Mercy Latha with respect to said property for a period of three years , free of rent. In this fresh lease deed of March

2020 effective from 27.01.2020, it is stipulated that she is holding the said property in her name for the sole benefit of the assessee-trust and consequently holding the said property in fiduciary to assessee-trust. She has however charged and collected advance rent of Rs.5,94,000/- for a period of thirty three years from assessee with respect to said property. The fresh lease deed of March 2020 is also placed in file . This is again an additional evidence filed by assessee for the first time before tribunal and it has not stood the test of verification/scrutiny by lower authorities. It is the claim of the assessee-trust that although the property was technically registered in the name of Managing Trustee, Mrs. Mercy Latha but it was always held by her in fiduciary capacity for assessee-trust. It is also claim of the assessee that no benefit whatsoever was obtained by Mrs. Mercy Latha from the said property and immediately after acquisition , the said property was handed over to assessee-trust for construction of School for which three years lease was initially entered into , free of rent and later fresh long term registered lease was entered into for a period of 33 years in favour of assessee on a nominal rent of Rs. 1500 per month. Thus, claim is made that no benefit whatsoever is derived by Mrs. Mercy Latha out of said property which technically was registered in the name of Mrs. Mercy Latha although it was funded by assessee out of loan borrowed from UBI. It is also to be seen whether this rent albeit nominal has breached the conditions as are stipulated u/s 13(1)(c) and 13(1)(d) of the 1961 Act and will it tantamount to Managing Trustee deriving benefit from the said property which was funded by assessee and more so ownership of

the property technically stood in favour of Mrs. Mercy Latha. It is also claimed that an asset in the form of Leasehold Land to the tune of Rs. 4,00,00,000/- is shown in the Balance Sheet of the assessee-trust. Thus, it is claimed that since asset was held in fiduciary capacity by Mrs. Mercy Latha , Managing Trustee for benefit of assessee-trust, it could not be said that she has derived any benefit from the said property. The explanation made before the Bench is that the bankers insisted for acquiring the property in her personal name instead of in the name of assessee-trust as it is difficult to create encumbrance on trust property and difficult to enforce security. On Being asked by the Bench, it was submitted that no such condition was however placed by bankers in the sanction letter issued by UBI sanctioning loan of Rs. 4,00,00,000/- but it was an oral understanding with the Banker. It is also explained that as per provisions of Section 17 of Tamil Nadu Recognition of Private Schools Regulation Act, 1973,it is very difficult to register the property in the name of trust, which compelled assessee to get the property registered in the name of Mrs. Mercy Latha. Thus, it is made out that no infringement of Section 13(1)(c) , 13(1)(d) and Section 13(2) of the 1961 Act has taken place and assessee is entitled for deduction u/s 11 and 12 of the 1961 Act. It is also the say of learned counsel for the assessee that now school is being constructed on the said land by assessee-trust after obtaining requisite approvals from competent authorities and substantial amount is already spent by assessee on building school on the said land. It is explained that all permissions from competent authorities were obtained in the name of

assessee-trust for constructing School Building on said land. These facts requires verification by the AO. The assessee has also placed certain additional evidences which goes to root of the matter and in our considered view, the matter needs to be restored to the file of the AO who shall enquire into entire factual matrix surrounding the acquisition of the property by Mrs. Mercy Latha in her personal name , despite funds been provided by assessee-trust for acquisition of said property out of borrowings by assessee made from UBI . The assessee is paying interest on said loans and also repaying principal amount out of its own funds. The factum of Mrs. Mercy Latha standing personal guarantor to the said loan as well offering of personal properties as collateral securities to secure said loan shall also be considered by AO in denovo assessment to arrive at decision whether the assessee has infringed provisions of Section 13(1)(c), 13(1)(d) and 13(2) of the 1961 Act. The post acquisition activities such as long term lease granted, utilization of said land, approvals obtained from competent authorities in the name of assessee-trust as well status of construction of School Building and amount spent by assessee for construction of School Building shall also be considered by AO in denovo assessment, before coming to conclusion whether any benefit was derived by Managing Trustee out of said land. We have also observed that the said land is incorporated in the Balance Sheet on asset side as 'Leasehold Land'-Rs. 4,00,00,000/- and an amount of Rs. 4,00,00,000/- was borrowed by assessee from UBI in September, 2015, which was later transferred to bank account of Mrs. Mercy Latha in the first week of

October 2015. However, as per Sale deed dated 28.10.2015, the land was acquired for Rs. 3,50,00,000/- by Mrs. Mercy Latha , while Mrs. Mercy Latha has got transferred Rs. 4,00,00,000/- from assessee-trust and the said land is capitalized at Rs. 4,00,00,000/- in the books of accounts of assessee-trust. The differential of Rs. 50,00,000/- retained by Mrs. Mercy Latha was not explained by the assessee-trust neither the same was enquired by authorities below in first round of litigation and whether the said differential leads to benefit of Rs. 50 lacs derived by Mrs. Mercy Latha as the said amount was not refunded by Mrs. Mercy Latha to the assessee-trust, as is emerging from records. This aspect also need to be carefully enquired by the AO and assessee is directed to place on record before the AO, complete explanation of differential amount of Rs. 50 lacs retained by Mrs. Mercy Latha . If no proper explanation is forthcoming, then Mrs. Mercy Latha has obtained a benefit of Rs. 50 lacs infringing Section 13(1)(c) and 13(1)(d) of the 1961 Act and consequences will follow. The assessee is directed to explain this differential of Rs. 50 lacs before the AO in set aside denovo assessment proceedings. It is also made out that the bankers were insisting on the registration of property in the name of Mrs. Mercy Latha and hence land was registered in her name , but perusal of sale deed shows that Mrs. Mercy Latha made first payment for acquiring the aforesaid land way back in 28.11.2014 when two cheques, firstly of Rs. 25 lacs and secondly of Rs. 5 lacs was given to the seller of land by Mrs. Mercy Latha. The agreement to sale entered into at the time of advancing of Rs. 30 lacs is not brought on record. The

assessee is directed to provide explanation to that effect before the AO in set aside proceedings. This aspect is also to be looked into by AO before framing denovo assessment. The learned counsel for the assessee has referred to provisions of Section 31 of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and stated that the procedure for getting permission for purchase of property is very cumbersome . In our considered view, difficulty in complying with procedure is no excuse unless assessee is able to demonstrate impossibility of performing an act and that too under these circumstances also, execution in deviation with provisions of statute has to be within the realm of legality as illegality cannot be perpetuated. The assessee is directed to submit detailed explanation to that effect before the AO in denovo assessment proceedings. Thus keeping in the totality of facts and circumstances of the case and also in view of additional evidences filed by assessee for the first time before the tribunal, we are inclined to restore the matter back to the file of AO for framing denovo assessment. We clarify that the AO is free to make such enquiries as may deem fit to decide the issue denovo in set aside proceedings. The AO will allow assessee to file necessary evidences in its defense in support of its contentions. Needless to say that proper and adequate opportunity of being heard shall be granted by AO in denovo assessment proceedings. The other two issues concerning disallowance of depreciation and expenses are consequential in nature to decision arrived at of the first issue by the AO in set aside denovo assessment proceedings , and we are inclined to restore these two issues

also to the file of the AO for denovo determination of these two issues also in set aside proceedings. The appeal of the assessee is allowed for statistical purposes. We order accordingly.

7.In the result, the appeal filed by assessee in ITA No.3395/Chny/2019 for ay: 2016-17 is allowed for statistical purposes.

Order pronounced on this 24<sup>th</sup> day of August, 2020 in Chennai.

**Sd/-**

(धुव्वुरु आर.एल. रेड्डी)

**(DUVVURU R.L.REDDY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(रमित कोचर)

**(RAMIT KOCHAR)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 24<sup>th</sup> August, 2020.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF