IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

ITAs No.333 & 334/Del/2021
Assessment Years : 2010-11 & 2011-12

M/s FIITJEE Limited, 29A, Kalu Sarai, Sarvapriya Vihar, Delhi – 110 057.	Vs.	ACIT, Central Circle-06, Delhi.

PAN: AAACF2659M

Assessee by	:	Shri C.S. Agarwal, Sr. Advocate; & Shri Ravi Pratap Mall, Shri Uma Shankar &Shri Anil Bajaj, Advocates
Revenue by	:	Ms Monika Singh, CIT-DR
Date of Hearing	:	18.08.2025
Date of Pronouncement	:	29.10.2025

ORDER

PER ANUBHAV SHARMA, JM:

These are appeals preferred by the Assessees against the orders dated 31.01.2020 of the Ld. Commissioner of Income-tax (Appeals)-25 (hereinafter referred to as the First Appellate Authority or 'the ld. FAA' for short) in appeals 25/10121/16-17 and 25/10123/16-17, respectively, filed before him against the orders dated 31.03.2015 passed u/s 153A r.w.s. 143(3) of the Income-tax Act, 1961 (hereafter referred to as 'the Act') by the ACIT,

Central Circle-06, New Delhi (hereinafter referred to as the Ld. AO, for short).

2. The appellant is engaged in the business of providing training and coaching classes to the students preparing for engineering entrance examination since the year 1997. On hearing both the sides we find that the captioned appeals are for the AY 2010-11 and 2011-12 involving consideration of identical issues therefore are adjudicated together and wherever relevant facts or impugned orders of AY 2010-11 (ITA No. 333/Del/2021) shall be referred to. Though seven grounds of appeal have been raised, yet the disputed issues raised vide such grounds of appeal are only two namely:

(a) a disallowance of Rs. 4,08,586/- by invoking Rule 8D(2)(ii) and 8D(2)(iii) of the Income Tax Rules; and

(b) a disallowance of Rs. 27,11,047/- out of the foreign traveling expenses.

2.1 In respect of the aforesaid two appeals i.e. for the AYs 2010-11 and 2011-12, the appellant has also raised an additional ground of appeal for each of the two assessment years which is stated as under:

<u>For the AY 2010-11</u>

"The sums received by the appellant from M/s Sad Bhawna Trust of Rs.8,00,00,000/- and from CMV Education Society of Rs. 4,80,66,000/-, which sums had erroneously been included in the total income by the appellant, since did not represent an 'income' chargeable to tax, be

excluded from the assessed total income, as the same had been included in the total income under misconception of law."

For the AY 2011-12

"The sums received by the appellant from M/s Sad Bhawna Trust of Rs. 25,03,30,904/- and from CMV Education Society of Rs. 13,25,76,203/-, which sums had erroneously been included in the total income by the appellant, since did not represent an 'income' be excluded from the assessed total income, as the same had been included in the total income under misconception of law."

3. In respect of first issue, a disallowance of Rs. 4,08,586/- by invoking Rule 8D(2)(ii) and 8D(2)(iii) of the Income Tax Rules, the appellant had submitted that it had incurred no expenditure which has any relation with the earning of any exempt income i.e. dividend income, hence no imaginary or notional expenses can be disallowed under section 14A read with Rule 8D(2) of the Act. The assessee being aggrieved from the aforesaid findings of the learned AO had filed an appeal before the learned CIT(A) who deleted the disallowance made of Rs. 61,614/- as the same was found to have been made without any basis or material. In other words, he held that the assessee has incurred no expenditure by way of interest which is directly attributable to any particular income. However, in respect of the amount disallowed of Rs. 4,08,586/- under Rule 8D(2)(iii) he had sustained the disallowance despite the assessee's submissions that the investment made have not been made for the purpose of earning any exempt income but are 'strategic investments' and

as such no disallowance could be made by invoking Rule 8D(2)(iii) of the Income Tax Rules.

4. Ld. Sr. Counsel appearing for assessee has demonstrated by referring to Page 5 of the Paper Book i.e. details of investment which reflect that under the head 'investment other than strategic investment, there was an opening balance of investment of Rs. 14,18,507/- on income on which no dividend had ever been earned. Apparently learned AO while making the aforesaid disallowance of Rs. 4,08,586/- of expenses by invoking section 14A read with rule 8D(2)(iii) had applied 0.5 per cent of total average investments instead of average investments which had yielded dividend income and hence computation of disallowance was entirely misconceived in law. Reliance can be placed on ACB India Ltd. vs. ACIT, (2015) 62 taxmann.com 71. Thus learned AO has erred while making disallowance when had proceeded to adopt the figure of average investment by adopting opening investment at Rs. 7,19,34,283/- and closing investment at Rs. 9,15,00,213/-; whereas the assessee had not made any such investments for earning dividend income. Thus all investments had been made in respect of advances made to its associate companies and were in the course of carrying on the business and not for the purpose of earning any dividend, other than an investment of Rs. 14,18,507/- on which never any dividend had been earned. Infact, no dividend had ever been earned on such investment right from the inception till date. Thus assessee succeeds on this issue.

5. In respect of second issue, a disallowance of Rs. 27,11,047/- out of the foreign traveling expenses, it is submitted by ld. Sr. Counsel that the learned AO had made an 'arbitrary disallowance', despite the fact that the assessee had furnished the complete details of expenditure incurred by the directors on traveling to UK. As disallowance as has been made of 20%, itself shows that the learned AO has not disputed the expenditure had been incurred for the purpose of business. Appellant has incurred the expenses on foreign travel in the preceding assessment year also details of which is appearing at pages 45 of PB and in none of the preceding assessment year, such expenses had been disallowed. Thus we assume expenditure was incurred during the course of business and for the purpose of business and the travel had been undertaken to explore and open new centers in U.K. to expand its existing activities in the field of education. The finding of the learned AO that the assessee had failed to furnish any documentary evidence in support of the expenses seems to be erroneous and is contrary to evidence on record, as is evident from the copy of ledger account as had also been furnished before the learned CIT(A) and same shows that all the expenses are not only vouched but were duly incurred through cheques. Even otherwise in the absence of any basis of estimate of 20%, the estimate made of disallowance is entirely arbitrary. Thus on this count too assessee succeeds.

6. Now coming to the additional grounds, at the outset we take up the plea of admission of these grounds. Ld. DR has vehemently opposed their

admission at this stage. To decide the admissibility we consider to understand the background of these additional grounds. The appellant is engaged in the business of providing training and coaching classes to the students preparing for engineering entrance examination since the year 1997. The case of assessee now canvased is that appellant in the process of providing scholarships to its students had entered into a memorandum of understanding with Sad-Bhawna Trust and Commitment Morality Vision Education Society (CMV) each dated 16.02.2009, wherein under the Deed of Revalidation dated 05.04.2013 it had been agreed as under:

> *"That Sad-Bhawna Trust shall give conditional grants amounting to Rs.33,03,30,904/- to the assessee company as per MOU dated 16.02.2009 read with Deed of Revalidation dated 05.04.2013.*
>
> *That CMV shall give conditional grants amounting to Rs.18,06,42,203/- to the assessee company as per MOU dated 16.02.2009 read with Deed of Revalidation dated 05.04.2013.*"

7. Ld. Sr. Counsel has submitted that in pursuance to the aforesaid MOUs, the appellant was under an obligation to utilize conditional grants towards providing scholarships in the programme fee, to only the financially week and meritorious students, without any discrimination on the basis of religion, cast or gender and thus the receipt of the same was inchoate was not an income. The appellant during the aforesaid two assessment years had received the aforesaid conditional grants aggregating to Rs. 51,09,73,107/- (including service tax). The amount towards such service taxes which aggregated to Rs. 4,77,15,530/- was duly deposited by it to the credit of

Central Government under the provisions of Service Tax Act. It had received said sum in the AY 2010-11 and 2011-12, though was in the nature of donation/contribution had offered the said sum as its income, under a misconception of law that said sums received represented an income chargeable to tax, despite the fact the said sums received were not in the nature of income chargeable to tax.

7.1 Ld. Sr. Counsel has submitted that since the grant received by it from the aforesaid two trust/society were conditional with respect to the utilization thereof and due to non-fulfillment of the conditions attached to the utilization of funds, aforesaid trust/society sought refund of funds of the amount advanced to the assessee, the assessee had no option but to refund the entire sum which aggregated to Rs. 51,09,73,107/- in the FY 2011-12 i.e. AY 2012-13.

7.2 Thus while computing the total income for the aforesaid assessment year 2012-13, the assessee had claimed deduction of said sum as business loss/business expenses allowable to it u/s 28(1)/37(1) of the Act. The claim so made had been disallowed on the ground that the refund made is neither a business loss nor is a business expenditure and as such the claim of deduction had been disallowed. The said claim of deduction is under challenge and is one of the ground of appeal in ITA No. 335/Del/2021 for the AY 2012-13.

7.3 Thus it is contended by ld. Sr. Counsel that in view of the aforesaid facts and circumstances, in the additional grounds of appeal, the sums offered 'erroneously' as income, since did not represent an income chargeable to tax, is being claimed to be reduced from the total income included by the learned AO for the AYs. 2010-11 and 2011-12.

7.4 Further ld. Sr. Counsel has pointed out that in fact the Tribunal in the case of ***M/s Commitment Morality Vision Educational Society vs. ACIT, in ITA Nos. 3980 & 398l/Del/2017***, has held as under:

> *"Before us, the learned counsel has failed to explain as how the funds have been utilized for chartable purpose. In the instant case by way of collusion between the FIITJEE Group and the assessee, the funds have been given the group entities in the name of disbursement of scholarship etc. This collusion is evident from the statement of Shri Aseem Gupta as how the cheque books of the assessee society were controlled by the authorities of the FIITJEE group. By way of providing scholarship to the meritorious students, the FIITJEE group has served its business purpose of attracting the student to various courses run by them. Thus in our opinion, the fund of the assessee society have not been utilized for the charitable purposes. We, accordingly, uphold the finding of the lower authorities in denying the exemption under section 11 and 12 of the Act. The ground No. 4 of the appeal is accordingly dismissed."*

7.5 Thus according to ld. Sr. Counsel, it has thus been held that the donations made by the donors have not been utilized for charitable purposes and had been given in the name of disbursement of scholarship etc.. Thus it is submitted that it is evident that the amount received did not represent its income and had erroneously under misconception of law been offered to tax as such for the AYs 2010-11 and 2011-12.

7.6 The ld. Sr. Counsel further submits that it is well settled rule of law that, all receipts are not income chargeable to tax and reliance for this proposition was placed on the following judgments:

(i) Parimisetti Seetharamamma vs. CIT, 57 ITR 532 (SC)

(ii) CIT vs. P.V. G. Raju, 101 ITR 465 (SC)

7.7 The ld. Sr. Counsel submits that under misconception of law, it had offered such receipts as income, is making a prayer by this application that, it be permitted to urge such a ground of appeal, which has been resulted on account of subsequent development in the case of ***M/s Commitment Morality Vision Education Society in ITA No. 3980 & 3981/Del/2017*** as extracted above, where it has been held by the Tribunal that it was by way of collusion between M/s Commitment Morality Vision Education Society and assessee, the funds had been given to the group entities in the name of disbursement of scholarship etc. It is thus submitted that since the aforesaid amount had been advanced were without an eye on any material return, the said receipt is not an income chargeable to tax, as has been held by the Apex court in the case of ***Commissioner of Expenditure Tax vs. P.V. G. Raju reported in 101 ITR 465***.

7.8 We are of considered view that as there is no estoppels against a statute, assessee has right to claim for correction of inadvertent errors in reporting and offering particular receipt for levy of tax under relevant

provisions of the Act, at subsequent stage where authorities under the Act or this Tribunal can examine and verify the facts. Thus we admit the grounds in both the years.

7.9 After giving thoughtful consideration to the material on record and the submissions, what is material before us is the fact that admittedly, in the case of one of the payees, ***M/s Commitment Mortality Vision Education Society, vide ITA No.3980 & 3981/Del/2017, for AY 2007-08 and 2011-12, Order dated 29.06.2018***, the coordinate Bench has examined certain aspects with regard to the challenge of M/s M/s Commitment Mortality Vision Education Society (CMV Education Society) to the orders of the ld. tax authorities wherein it was concluded that the donations which were received for charitable purposes were not utilized for charitable activities. Instead, were passed on to FIITJEE group which resulted in direct benefit to that company. The AO concluded that the assessee society trust M/s Commitment Mortality Vision Education Society has not shown any evidence that FIITJEE group carried out charitable activities during the year under consideration and, hence, the society was held to have contravened the provisions relating to application of income for charitable purposes and, accordingly, the benefit u/ss 11 and 12 of the Act was denied to the said society and the said assessee society was assessed as Association of Persons as provided u/s 167 of the Act. In this context, in paras 9.3 and 9.4, the coordinate Bench in the order dated 29.06.2018 (supra), has made the following observations:-

"9.3 We have heard the rival submission and perused the relevant material on record. The Assessing Officer has examined the claim of application of income by the assessee as under:

> *"5. The assessee has obtained registration u/s 12A of the I.T. Act, 1961. However, for this the assessee has to conform to the conditions prescribed there for. The Assessing Officer is required to examine the claim of exemption/s 11 and 12 of the Act for any contravention of the relevant provisions. The assessee is required to satisfy that about the genuineness of the activities promised or claimed to be carried out in each financial year to claim the exemption. Nowhere in its replies has the assessee Society shown evidence that the said company carried out any charitable activities during the year under consideration. Hence the assessee Society is held to have contravened the provisions relating to application of income by charitable societies and therefore the benefit of sec. 11 and 12 is denied to the assessee. The amount paid to FIITJEE Ltd is treated as its income being not utilized for the charitable purposes. Accordingly, the Society is assessed as an AOP and taxed as provided u/s provisions of sec 167B of the IT Act 1961.*
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> *6. As per Income & Expenditure statement filed along with Original Return of Income, contribution received have been shown at Rs. 23,59,65,731/-. Donations paid have been shown at Rs. 23,59,65,731/-. No other expenses have been debited on account of Charitable activities?"*

9.4 Before us, the Ld. counsel has failed to explain as how the funds have been utilized for charitable purpose. In the instant case by way of collusion between the FIITJEE Group and the assessee, the funds have been given the roup entities in the name of disbursement of scholarship etc. This collusion is evident from the statement of Sh. Aseem Gupta as how the cheque books of the assessee society were controlled by the authorities of the FIITJEE group. By way of providing scholarship to the meritorious students, the FIITJEE group has served its business purposes of attracting the students to various courses run by them. Thus in our opinion, the funds of the assessee society have not been utilised for the charitable purposes. We, accordingly, uphold the finding of the lower authorities in denying the exemption under section 11 and 12 of the Act. The ground No. 4 of the appeal is accordingly dismissed."

7.10 As the aforesaid observations of the coordinate Bench are taken into consideration, it establishes that it is not out of any misconception of law that the impugned sums received were offered as income, but, it is more out of the subsequent events wherein the amounts received on account of providing scholarships were found to be received in violation of the mandate of law requiring establishment of charitable activity of CMV Education Society in giving funds to the assessee before us. As the coordinate Bench has sustained and concluded that the ld. tax authorities were right in their decision to hold CMV Education Society to be in default of giving funds for non-charitable activity that issue finding would operate as issue *res judicata* against the present assessee because the assessee herein claims to have received money from M/s Sad Bhawna Trust and M/s CMV Education Society under an obligation for providing scholarships in the programme fee to financially weak and meritorious students. Now, admittedly, no such scholarships are provided by the present assessee. This only indicates that the receipts though alleged to be conditional or inchoate receipts were, in fact, received during the respective years as income but subject to an outstanding obligation. Thus, the claim that the sum was erroneously included in the total income is not sustainable.

7.11 Even otherwise, on the basis of the decisions relied by the ld. Sr. Counsel, we are not impressed to accept that the amounts received were

inchoate receipts as the same depended on its obligation to utilize the same in accordance with the terms of the MOU and as same were not used for the purpose, thus, do not constitute income for the relevant year. The Memorandum of Understanding between the two trusts or societies expressly provide the obligations to be fulfilled. Failure of the assessee to fulfill the obligations would result in breach of obligation and if the amount is returned in subsequent years, then, it will not be a case that erroneously the receipts not representing income chargeable to tax were included in the total income. The obligation here was not utilization of any amount received as gift so to have become an endowment with the assessee to be used for fulfilling the obligation. But, the amounts received were to be utilized by the assessee at its discretion with no control of the two payers. As the complete discretion to use the funds vested with the assessee, the mere fact that the assessee was supposed to use the funds as per the MOU does not make the receipts fall in the category of inchoate receipts. The consideration in any contract may not be in cash, but, any obligation which is enforceable under law falls in the definition of consideration. The obligation here in the hands of the assessee was to use the funds for giving scholarships as per the MOU. This was an enforceable obligation. Had the occasion arisen, the payers had remedy under law to enforce the obligation or to recover the money back. Clear case of *quid pro quo* is involved. Thus not making out a case of inchoate receipts.

7.12 The decision which the ld. Sr. Counsel has relied in the case of ***Parimisetti Seetharamamma vs. CIT, 57 ITR 532 (SC)*** when considered would show that that was a case where an assessee was contesting the taxability of certain jewellery and amounts received as gifts. In the case of ***Commissioner of Expenditure Tax vs. PVG Raju, 101 ITR 465 (SC),*** the issue involved was the expenditure which was incurred by the assessee for the election of candidates set up by him as Chairman of his party and, in those circumstances, the Hon'ble Supreme Court held that when a person gives money to another without any material return, he donates that sum. The stress of the ld. counsel on the fact that there was 'no material return' accrued from the side of the present assessee make such receipts inchoate receipts is not acceptable as the MOU created a contractual obligation which was enforceable under the law. In the case of ***CIT vs. Hindustan Housing and Land Development Trust Ltd., 161 ITR 524 (SC)***, the issue involved with regard to right to receive a compensation were considered to be inchoate and contingent as the same would not create debt.

7.13 Certainly, the burden lies upon the Department to prove that a receipt is to be taxed as income. However, when the assessee has claimed a receipt to be income and then wants to change the stand claiming that the same was done erroneously, the assessee has to also prove that the error was out of any misinterpretation of law or factual error. But, here when the assessee claims

that the receipts came along with an obligation and as the obligation was not fulfilled, therefore, the receipts had to be returned, then, that cannot be considered to be a case of any factual error or erroneously out of misinterpretation of law, including the receipts in total income.

7.14 It is an admitted case of the assessee that in the subsequent year when the amounts were returned, they have been disallowed as not falling u/s 37 of the Act and the consequential appeals of the same are pending before the Tribunal which are yet to be decided. Thus, also the assessee cannot claim of any finality being arrived with regard to the assertion that the receipts were inchoate receipts. Thus, in the given facts and circumstances as discussed above, we are not inclined to accept the plea of the assessee raised by way of additional grounds and **the additional grounds are decided against** the assessee.

8. At time of summing up contentions, the Ld. Sr. Counsel has also raised an additional ground orally about the approval u/s 153D of the Act being not in accordance of law.

8.1 However, the said additional ground is not mere legal but quite factual too thus in the absence of any material on record about the content of approval to establish how inference can be drawn that there was no application of mind by competent authority while granting approval and ld.

DR having no opportunity to rebut on basis of facts, we are not inclined to admit said ground.

9. As a consequence of the aforesaid determination of the grounds as above, the appeals are allowed partly.

Order pronounced in the open court on 29.10.2025.

Sd/-	Sd/-
(KRINWANT SAHAY) ACCOUNTANT MEMBER	(ANUBHAV SHARMA) JUDICIAL MEMBER

Dated: 29th October, 2025.

dk

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi