IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI

BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A .No. 3923/DEL/2017 (A.Y 2009-10)

G D Educational Society C/o. RRA Tax India, D-28, South Extension, Part-1 New Delhi **(APPELLANT)**	Vs	JCIT Range-1 Noida Uttar Pradesh **(RESPONDENT)**

ITA .No. 3924/DEL/2017 (A.Y 2010-11)

G D Educational Society A-73, Sector-34 Noida **(APPELLANT)**	Vs	JCIT Range-1 Noida Uttar Pradesh **(RESPONDENT)**

ITA .No. 3925/DEL/2017 (A.Y 2013-14)

G D Educational Society C/o. RRA Tax India, D-28, South Extension, Part-1 New Delhi **(APPELLANT)**	Vs	JCIT Range-1 Noida Uttar Pradesh **(RESPONDENT)**

Appellant by	**Sh. Rakesh Gupta, Adv**
Respondent by	**Sh. Arun Kumar Yadav, Sr. DR**

Date of Hearing	**19.07.2018**
Date of Pronouncement	**30.07.2018**

ORDER

PER SUCHITRA KAMBLE, JM

These appeals are filed by the assessee against the order dated 30/03/2017 passed by CIT(A)-1, Noida.

2. The grounds of appeal are as under:-

I.T.A .No. 3923/DEL/2017

1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in holding that the appellant is not entitled to benefit of section 11(1)(a) & 1 l(l)(d) and u/s 12 and that too without observing the principles of natural justice and without giving show cause.*
2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in holding the income of the appellant chargeable to tax under the head 'income from other sources' and has further erred in bringing to tax a sum of Rs. 1,59,84,559/- and that too without giving any deduction with regard to expenses.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in holding that there was violations of section 13(l)(d) r.w.s. 11(5).*
4. *That in any case and in any view of the matter, action of Ld. CIT(A) in enhancing the assessment and bringing to tax the gross receipts as taxable income of the appellant and that too without giving any deduction and denying the benefit of section 11 & 12 is bad in law and against the facts and circumstances of the case.*
5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in computing the income of assessee in the status of 'AOP' instead of 'charitable society' as claimed by the appellant and further erred in applying the maximum marginal rate of tax.*
6. *That in any case and in any view of the matter, action of Ld. CIT(A) in not reversing the action of Ld. AO in computing the income of assessee in the status of AOP is bad law and against the facts and circumstances of the case.*
7. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred law and on facts in not reversing the action of Ld. AO in making addition Rs.2,00,215/- on account of interest paid on unsecured loans relating to building under construction and that too by recording incorrect facts and findings and without observing the principle of natural justice.*
8. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred law and on facts in not reversing the action of Ld. AO in making addition of Rs.64,000/- on account of interest earned on advances and that too by recording incorrect facts and findings and without observing the principle of natural justice.*
9. *That having regard to the facts and circumstances of the case, Ld. CIT(A)*

has erred in law and on facts in passing the impugned order and that too without giving opportunity of hearing and by recording incorrect facts and findings.
10. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 2344 234B and 234C of Income Tax Act, 1961.
1 l. That the appellant craves the leave to add, modify, amend or delete any of the ground of appeal at the time of hearing and all the above grounds are without prejudice to each other.

ITA .No. 3924/DEL/2017

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in holding that the appellant is not entitled to benefit of section 11(1)(a) & 1 l(l)(d) and u/s 12 and that too without observing the principles of natural justice and without giving show cause.
2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in holding the income of the appellant chargeable to tax under the head 'income from other sources' and has further erred in bringing to tax a sum of Rs. 2,37,66,767/- and that too without giving any deduction with regard to expenses.
3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in holding that there was violations of section 13(l)(d) r.w.s. 11(5).
4. That in any case and in any view of the matter, action of Ld. CIT(A) in enhancing the assessment and bringing to tax the gross receipts as taxable income of the appellant and that too without giving any deduction and denying the benefit of section 11 & 12 is bad in law and against the facts and circumstances of the case.
5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in computing the income of assessee in the status of 'AOP' instead of 'charitable society' as claimed by the appellant and further erred in applying the maximum marginal rate of tax.
6. That in any case and in any view of the matter, action of Ld. CIT(A) in not reversing the action of Ld. AO in computing the income of assessee in the status of AOP is bad law and against the facts and circumstances of the case.
7. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred law and on facts in not reversing the action of Ld. AO in making addition Rs.9,54,275/- on account of interest paid on unsecured loans

relating to building under construction and that too by recording incorrect facts and findings and without observing the principle of natural justice.
8. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred law and on facts in not reversing the action of Ld. AO in making addition Rs.64,000/- on account of interest earned on advances and that too by recording incorrect facts and findings and without observing the principle of natural justice.
9. That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in not reversing the action of Ld. A.O in allowing the depreciation amounting to Rs.20,34,822/- as application.
10. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in passing the impugned order and that too without giving opportunity of hearing and by recording incorrect facts and findings.
11. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 2344 234B and 234C of Income Tax Act, 1961.
12. That the appellant craves the leave to add, modify, amend or delete any of the ground of appeal at the time of hearing and all the above grounds are without prejudice to each other."

ITA .No. 3925/DEL/2017

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in holding that the appellant is not entitled to benefit of section 11(1)(a) & 1 l(l)(d) and u/s 12 and that too without observing the principles of natural justice and without giving show cause.
2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in holding the income of the appellant chargeable to tax under the head 'income from other sources' and has further erred in bringing to tax a sum of Rs. 3,39,78,053/- and that too without giving any deduction with regard to expenses.
3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in holding that there was violations of section 13(l)(d) r.w.s. 11(5).
4. That in any case and in any view of the matter, action of Ld. CIT(A) in enhancing the assessment and bringing to tax the gross receipts as taxable income of the appellant and that too without giving any deduction and denying the benefit of section 11 & 12 is bad in law and against the facts and circumstances of the case.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in computing the income of assessee in the status of 'AOP' instead of 'charitable society' as claimed by the appellant and further erred in applying the maximum marginal rate of tax.

6. That in any case and in any view of the matter, action of Ld. CIT(A) in not reversing the action of Ld. AO in computing the income of assessee in the status of AOP is bad law and against the facts and circumstances of the case.

7. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred law and on facts in not reversing the action of Ld. AO in making addition Rs.56,68,000/- on account of interest paid on unsecured loans relating to building under construction and that too by recording incorrect facts and findings and without observing the principle of natural justice.

8. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred law and on facts in passing the impugned order and that too without giving opportunity of hearing and by recording incorrect facts and findings.

9. That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in not reversing the action of Ld. A.O in charging interest u/s 234A, 234B and 234C of Income Tax Act, 1961."

3. Facts of the A.Y. 2009-10 is taken as it is the lead case. Return declaring income of Rs. Nil after claiming exemption u/s 11 of the Income Tax Act, 1961 was filed on 30/09/2009 in status of AOP (T) which was processed u/s 143 (1) of the Income Tax Act, 1961. Subsequently, case was selected for scrutiny. Accordingly notice u/s 143(2) dated 27/9/2010 was issued and served upon the assessee fixing the date of hearing on 11/10/2010. Thereafter, notice u/s 142(1) dated 27/6/2011 along with questionnaire was issued and served upon the assessee fixing the date of hearing on 7/7/2011. Another notice u/s 142(1) dated 25/10/2011 was issued and served upon the assessee fixing the date of hearing on 11/11/2011 was issued and served upon the assessee. In response to all the statutory notices, Chartered Accountant and Authorized Representative appeared for and on behalf of the assessee from time to time and furnished details and documents as called for by the Assessing Officer. Books of accounts were produced which were examined by the Assessing

Officer. The Assessee is running two schools namely Kangaroo Kids (For Classes up to K.G) & Billabong High (for classes above K.G) in the name "The School". The Society was granted Registration u/s 12A of the Income Tax Act, 1961 on 6/2/1989 by CIT Meerut. The Assessing Officer observed that the assessee has entered into a Franchise Agreement for royalty on 3/11/2004 with Kangaroo Kids Education for being appointed for conducting the Franchisee Business of importing high quality pre-school education and training and other related activities. According to prescribed syllabus and method of training devise and develop as a franchisor under the mark for Noida/Ghaziabad Territory or any other location as may be agreed by the franchiser. The Assessing Officer observed that from the perusal of the Franchise Agreement that the assessee is pursuing object of imparting and spreading of education with profit motive and not as object of charity. Therefore, the Assessing Officer made an addition of Rs. 2,00,215/- being interest claimed on unsecured loans at 12% on amount of Rs.26,30,111/-. The Assessing Officer held that in the schedule of fixed assets the assessee has shown building under construction at Rs.33,36,914/- and no amount of interest was capitalized. Considering the above facts interest at 12% per annum on average cost of construction of Rs.16,68,457/- which works out to Rs.2,00,215/-was disallowed by the Assessing Officer. The Assessing Officer further disallowed amount of Rs.64,000/- in respect of Rs. 16 lacs which was advanced to M/s Progressive Tools and Components Pvt. Ltd. for a period of four months by observing that as per income and expenditure account no interest income was credited.

4. Being aggrieved by the Assessment Order the assessee filed appeal before the CIT(A). The CIT(A) not only dismissed the appeal of the assessee but enhance the income . The CIT(A) held as under:

> *86. In view of that it is clear that running of the educational institutions by the appellant is an activity aimed at actualizations of the objects of the appellant society of doing charity & is not the property which is a precondition*

for claiming & availing the benefit of exemption on incidence of tax u/s 11 of I.T. Act, 1961.

87. As the income of the appellant which is the subject of the impugned assessment & the present adjudication before this office is not the income derived from the property in the first place, the appellant cannot claim the benefit of exemption from the incidence of tax u/s 11 of I.T. Act, 1961 qua its such income as the conditions laid down by the Legislature under the provisions of section ll(l)(a) of I.T. Act, 1961 are not satisfied by the appellant and which is the condition requisite for availing that benefit.

88. Regarding the donation received by appellant & claimed to be exempt from tax; the conditions of section 11 (1)(d) of I.T. Act, 1961 are to be satisfied. Perusal of the final accounts of the appellant reveals that the appellant neither has any corpus nor there were any directions from the givers of the alleged donation that the donation given by them should form part of the corpus of the appellant society. There is also nothing to meet the requirement of law that the said donation if that can be called donation was given voluntarily or were voluntary contributions.

89. The amount of money received by appellant as donation is primarily from the students & their guardians & is in the wake of those students getting the admissions in the schools run by the appellant society & continuation of such admission & therefore, is contractual in nature. Such payments cannot be considered to be the voluntary contribution. These are reciprocal payments made under the expectations of reciprocal benefits & in contribution which is the precondition for availing the benefit of exemption from the incidence of tax u/s ll(l)(d) & 12 of the I.T. Act, 1961.

90. In the light of the above, requirements of law under section ll(l)(d) & also under section 12 of I.T. Act, 1961 is not met either substantially or procedurally as neither the donations are voluntary contributions nor are given with specific directions that that shall form part of the corpus of the appellant society.

91. In view of the above, the appellant society is not eligible for the benefit of exemption from the incidence to tax under the provisions of section ll(l)(d) of I.T. Act, 1961. It is also not eligible for the benefit of exemption from incidence to tax under the provisions of section 12 of I.T. Act, 1961 for the reason that the money collected from students & their guardians, etc., is not the voluntary contribution but the contractual levies & payments.

92. Therefore, the appellant is neither entitled to the benefit of exemption from incidence to tax u/s ll(l)(a) of I.T. Act, 1961 nor u/s ll(l)(d) nor u/s 12 of I.T. Act, 1961 in any manner.

93. The I.T. Act, 1961 conceives u/s 11 of I.T. Act, 1961 another possible situation where a running business is received by the charitable institution by way of the donation or otherwise & has provided that in that case the charitable institution may continue with the business though by following the prescribed manner of accounting of its financial affairs. However, in the present case this is not the case as appellant has not received any existing business as donation or in some other manner & has set up its various schools as almost a business entities run purely on commercial lines. Therefore, appellant is not entitled to the benefit of exemption from the incidence of tax in such a situation as well as the conditions precedent is not satisfied by it.

though with no success that the business of the appellant which though Freudian slip but nonetheless an indication of its true affairs, the business of the appellant be held to be the property of the appellant held under trust wholly for the charitable purposes.

95. *The ld. A.Os. though, not able to enforce the law correctly for once rejected the preposterous proposition of the appellant. The intent of the Legislature qua this issue is very clear. Where a business is received by a charitable institution by way of contribution to its cause and is held as such only in such condition it can be claimed that the claimant of exemption is holding the business as property held under trust wholly for the charitable or religious purposes.*

96. *In the instant case the facts are just opposite. The appellant society has not received any business either as conditional donation as to form part of its corpus or as voluntary contribution and therefore, cannot be held to be the property of the appellant held under trust wholly for charitable purpose or whatever else. The bogus claim of the appellant was correctly rejected by the ld. A.Os.*

97. *Even otherwise also the claim of the appellant being an afterthought in any case is not borned by the records of the appellant itself. The balance sheet of the appellant as on 31/03/2013 has no such asset. It has fixed asset, capita! work in progress being the building, current asset being the security deposits, fees receaivable, advance to supplier, pre-paio insurances, pre-paid expenses and the TDS recoverable, the cash and bank balances and*

cash in hand at its branches. There is no asset in the balance sheet of the appellant as a running business as claimed by the appellant. If, the business of running school was received by the appellant and thereafter held by the appellant as such it has to reflect in the balance sheet of the appellant and there being no such asset in the balance sheet of the appellant the claim of the appellant is nothing but an afterthought to cover up its failure to comply correctly rejected by the Id. A.Os. in the facts and circumstances of the case.

98. *The next question being the natural corollary of the above conclusion is what is the status of the income received by the appellant society in terms of the provisions of section 14 and consequentially what deductions are admissible to the appellant society against its income which has accrued to it in the business of doing charity & imparting education as the charitable activity.*

99. *The income of the appellant from the business of doing charity & imparting education as the charitable activity being the involuntary levies recoveries from the students & their guardians as contractual reciprocities is not to be considered as salary for obvious reasons. It is also not the income from the house property. As the appellant is a charitable institution, it is in normal course not permitted to indulge in any business or professional activity but as an exception to the generality of the rule it is permitted to run & maintain certain activities commercially if, the running and maintenance of such activities is necessary for the actualization of the objects of the appellant society. The provisions of section 11(4) & section 11(4A) of I.T. Act, 1961 provide for such exception in the cases of a charitable institutions or a religious institution if the running of the commercial activity is incidental to the actualization of the objects of the charitable entity & is subject to the conditions imposed therein & thereunder. Whether the appellant comes under the purview of the section 11(4) & the section 11(4A) of I.T. Act, 1961 will be examined separately. The income of the appellant is also not the income from capital gains as there is no incidence of transfer of any property of any kind in the accrual & the receipt of the income to the appellant.*

100. *Therefore, the income of the appellant in the impugned assessments can only be considered either under the heads "Income from the Business or Profession" or the "Income from Other Sources". There can be a third situation where the income of the appellant may not be the income at all in Act, 1961.*

101. *The appellant has registered itself as charitable institution & has claimed its main activity as imparting of quality education not as commercial*

activity but strictly as charitable activity.

102. For imparting education as charitable activity, quality or not, it cannot be the case of anyone that such education or quality education cannot be imparted as charitable activity unless the cost of imparting of education is borne by the recipients of education. Theoretically & mathematically, it is perfectly possible to impart the education in the domain of charitable activity without recovering anything from the recipient/s of the education imparted as charitable activity as is the claim of the appellant. The cost of education in a charitable dispensation has to be met by the person claiming to be being charitable & doing the claimed charity & not from the recipients of the charity. Therefore, it cannot be held under any stretch of imagination that running and maintaining the schools almost on commercial lines is necessary for actualization of the objects of doing charity by the appellant institution in any way.

103. The income of the appellant cannot be considered to be the income from the profit & gains of the business & professions. This is also clear from the blanket ban on profiteering in the field of education by the Hon'ble Supreme Court, though the Hon'ble Supreme Court was considerate to allow reasonable surplus over the cost or imparting the education subject in certain conditions in the field of running the educational institution as occupation and not as charitable institution. It is trite that where an educational institution is being run by a person it has to run as "pure charity" and not as commercial enterprise as the Hon'ble Supreme Court has very categorically prohibited any profiteering in the field of education and there cannot be any occasion to recover the cost of charity from the beneficiaries of the charity as is being claimed by the appellant.

104. Income of the appellant by the appellant & has been offered by the appellant as its income all through its existence since inception & has been claimed exempt from the incidence of tax under the provisions of section 11 of I.T. Act, 1961 as its income and being subject to the provisions of the I.T. Act, 1961. Therefore, there is no dispute on the fact that the income of the appellant is the income of the appellant in terms of section 2(24) of I.T. Act, 1961.

105. Even otherwise, the ingredients of the income as provided u/s 2(24) of I.T. Act, 1961 are inclusive & not the exhaustive. Therefore, the receipts of :ne appellant on revenue account is the income of the appellant and such -'come of the appellant has to be treated as the income & as it does not quality to be

the salaries, the income from house property, profit & gains from business & profession or the capital gains, it has to be considered as income of the appellant from the "other sources" & has to be dealt with under the provisions of the Chapter IVF & u/s 56 of the I.T. Act, 1961.

106. The provisions of section 56(1) of I.T. Act, 1961 provides that income of every kind which is not to be excluded from the total income under the provisions of the I.T. Act, 1961 is to be chargeable to income tax under the head "Income From Other Sources" if it is not chargeable to income tax under any of the heads specified in the section 14, items A to E of I.T. Act, 1961.

107. Admittedly, the income of the appellant society is not chargeable to income tax under any of the heads specified in the section 14, items A to E of the I.T. Act, 1961 & admittedly, the same being the income of the appellant society, the same is to be charged to tax under section 56(1) of I.T. Act, 1961. The provisions of section 56(2) are merely demonstrative and not the exhaustive & certainly not restrictive in any manner & in no way limits or restricts the scope & ambit of the provisions of section 56(1) which is over riding over those provisions.

108. In view of the above facts, it is held that the income of the appellant is chargeable to income tax under the provisions of the section 56(1) of I.T. Act, 1961 as "Income From Other Sources".

109. The income of an assessee chargeable to income tax u/s 56 is subject to deductions u/s 57 & prohibitions under section 58 of I.T. Act, 1961 & the provisions of section 59 as well. It is therefore, necessary to consider what deductions are admissible to appellant under the provisions of section 57 of I.T. Act, 1961.

110. The deductions u/s 57(i) & 57(ia) as also 57(ii) & 57(iia) are specific in nature & does not apply to the facts of the case of the appellant. The deduction u/s 57(iv) is also specific in nature and does not apply to the facts of the case of the appellant.

111. Therefore, the appellant in the present assessments is not entitled to any deduction against its income under the provisions of section 57(i), 57(ia), 57(ii), 57(iia) & 57(iv) of I.T. Act, 1961.

112. The provisions of section 57(iii) provides that any other expenditure not being in the nature of capital expenditure laid out or expended wholly or exclusively for the purposes making or earning such income is to be allowe as

deduction against incoem chargeable to the incoem tax u/s 56 of I.T Act, 1961.

113. The appellant society is a charitable institution set up to do the charity and not to earn income in manner whatsoever from the claimed charitable activities that too commercially. The founding members of the society or the authors & the trustees of the charitable trust or members of the society are responsible & obligated under the idea of charity to arrange the finances for the charity to be done & as claimed to have been done by the claimant provide that in the act of doing charity the person that in the act of doing charity should recover the cost of doing the charity in terms of money that too from the mom the beneficiary of the alleged charity. The idea of charity is different, distinct & almost contradictory to the idea of doing business or earning the income in any manner.

114. The expenses incurred by the appellant society is not the expenses incurred to earn the income but for doing the charity. It is not the cost of the income but the application of income. The expenses incurred by a charitable institution is not the expenditure incurred either wholly or even otherwise for the purpose of making or earning an income as the very concept of charity is completely anathema to the concept of making or earning income. The expenditure incurred by the appellant is for actualization of its charitable purpose and not to make or earn any income. The expenditure is the application of income and not the cost of the revenues as is the case in a normal routine commercial or non commercial activity and which is the intent of the Legislature under the provision of section 57(iii) of I.T. Act, 1961.

115. There is no nexus between the act of doing charity as done by the appellant & the income earned by the appellant. The income earned by the appellant is not because of the expenses incurred but independent of that. Although, superficially, it may appear & appellant would like to claim that as well that the expenses on imparting education are the expenses necessary to earn the income which has been earned by the appellant; considering the issue substantially & conceptually that is not the case as the appellant has to do the charity as application of its income & is not permitted by the very concept of the term charity to recover the cost of the charity done by it from the beneficiary of charity.

116. The appellant is not permitted in law to run any business activity nor run any profession. It has strictly prohibited in law to have any

commercial the provisions of section 11(4) and section 11(4A) of I.T. Act, 1961 are not available to the appellant. As the appellant is totally, completely and strictly prohibited by the law to run any commercial activity it is also prohibited in aw to claim its expenditure as expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income. The argument though not advanced by the appellant but still to be considered by this office that the cost of imparting education has to be provided cannot be entertained for the simple reason that wherever the I.T. Act, 1961 does not provide for any such set off of the cost of income as in the case of the salary the same is not to be provided. The Hon'ble Supreme Court has clearly laid down the basic law in this regard in the case of "Add!. Commissioner of Income Tax Vs. Surat Art & Silk Cloth Manufacturers Association, Surat" (1980) AIR 387 SC that in a taxing Act one has merely to look at what is clearly said by the Legislature. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used in law. That being the law, the appellant cannot be permitted to raise the issue of meeting the cost of its activities from those activities itself for the simple reason that neither the cost of charity can be extracted from the beneficiaries of the charity nor the expenditure on charity can be allowed to construed as the expenditure laid out or expended wholly for the purposes of making or earning an income as earning of income is not the charitable activity though in an exceptional situation it can be an incidental outcome of the same under the provisions of section 11(4) and section 11(4A) of I.T. Act, 1961 which is not the case in the case of the appellant.

117. As there is no possibility of recovering the cost of charity from the recipient of the charity, there can be no nexus between the expenditure incurred by the appellant society and the income earned by the appellant society. The expenditure incurred by the appellant society is for the actualization of objects of appellant & is by way of charity while the income appellant society. There is no linkage much les nexus among the two set or facts. -appellant society. There is no linkage much less nexus among the two set or facts.

118. Therefore, the expenditure incurred by appellant society is not in any manner laid out or expended much less wholly and exclusively for purposes of making or earning the income earned by the appellant society. The appellant society is therefore, not entitled to the benefit of deduction u/s. 57(iii) of I.T. Act, 1961.

119. In view of the above, the entire income of the appellant by way of the fees & other levies recovered from students & their guardians & entire amount of donations as received by appellant society is the income of the appellant society chargeable to tax u/s 56 of the I.T. Act, 1961 without any deduction. The same is ordered accordingly & income of appellant society is enhanced u/s 251(l)(a) of I.T. Act, 1961 r.w. the provisions of the section 251(2) of I.T. Act, 1961 & is determined at Rs. Rs.1,59,84,559/- for the A.Y. 2009-10, Rs. 2,37,66,767/-for the A.Y.2010-11 and Rs.3,96,46,053/-for the A.Y. 2013-14.

120. From the perusal of the balance sheet of the appellant as also the profit and loss accounts of the appellant it is seen that the appellant had received rental income, and interest on saving deposits from the bank. These receipts are certainly from the property held by the appellant under trust for actualizing its objects and in normal course these receipts would nave Deen eligible for benefit of exemption from the incidence or cox unoer the provisions of section ll(l)(a) of I.T. Act, 1961 but in the peculiar facts and circumstances these receipts are also not eligible for the benefit of section 11 or 12 because of the violation of the provisions of section 13(l)(d) r.w. the provisions of section 11(5) of I.T. Act, 1961. Admittedly, the appellant has advanced loans without charging any interest to an entity which is not permitted by the law to receive any investment or deposit from the appellant. Further, the appellant has also violated the conditions of appellant society had been gainfully employed by the appellant society besides the life members of the appellant society have appropriated for themselves to nominate in their place either during their lifetime or after their death either their eldest son or the eldest daughter thus deriving a benefit to themselves which is prohibited in the law.

121. Because of the violations of the overriding conditions of section 13 by the appellant society the appellant is not entitled for the benefit of exemption from the incidence of tax under the provisions of section 11 and 12 of I.T. Act, 1961 on any part of its income including that which is eligible otherwise fro the benefit of exemption from the incidence of tax apart from the fact that the appellant is not entitled for the benefit of exemption from the incidence of tax on its specified income under the provisions of section 11 & 12 of I.T. Act, 1961. Conversely, the entire gross receipts of the appellant in all the three appeals, i.e., the A.Ys. 2009-10, 2011-12 and 2013-14 is the income of the appellant and is liable to be taxed under the provisions of the I.T. Act, 1961.

122. As in the impugned assessment orders for the A.Ys. 2009-10, 2011-12 and 2013-14 the Id. A.Os. have not correctly computed the taxable income of the appellant and have infact incorrectly computed the taxable income of the appellant at far lesser amount, I am assuming jurisdiction under the provisions of section 251(l)(a) r.w. section 251(2) of I.T. Act, 1961 and enhance the assessed income of the appellant for the A.Ys. 2009-10, 2011- 12 and 2013-14 at Rs.1,59,84,559/-, Rs. 2,37,66,767/- & Rs.3,96,46,053/- respectively. The interest as chargeable in law is ordered to be charged by the Id. A.O. as per the provisions of the law.

123. The Id. A.O. is directed to issue the demand notice as per law and enforce the recovery of the tax payable but not paid as per law.
In charge has failed to provide the necessary assistance to the undersigned despite the repeated request made by the office under the specific orders of the undersigned even on the judicial side. Even the assessment records have not been provided by the Id. A.O. and its administrative superiors even after the undersigned brought the matter to the kind notice of the Id. Chief Commissioner of Income Tax (Exemption) at Delhi. This has seriously hampered the correct determination of the taxable income of the appellant in the pending appeals. As the correct income of the appellant has been determined in these appeals without the benefit of the assessment records, in case of any error apparent from record qua the correct taxable income of the appellant the leave and liberty is granted to both the sides to the dispute to seek and avail their remedies in law as may be lawfully available to them."

5. The Ld. AR submitted that the Assessing Officer as well as the CIT(A) ignored the fact that the primary object of the society was to provide education and that object has never been changed. The Ld. AR submitted that the CIT(A) has enhanced the assessed income of the assessee at Rs.1,59,84,559/- for Assessment Year 2009-10, Rs.2,37,66,767/- for Assessment Year 2001-12 and Rs.3,96,46,53/- for Assessment Year 2013-14. The CIT(A) has never given any opportunity to the assessee while enhancing the assessed income. The CIT(A) has totally ignored the benefit of Section 11 & 12 to the assessee which is under operation till date. The CIT(A) erred in not reversing the action of Assessing Officer in computing the income of the assessee in the status of AOP instead of charitable society and further erred in applying the maximum

marginal rate of tax. The Ld. AR relied upon the decision of the Tribunal in case of Rama Devi Memorial Society Vs. JCIT ITA No. 4434/Del/2017 order dated 5/7/2018 wherein it is categorically held that denial of benefit of Section 11 & 12 is not as per the law. Educational activity has been specifically treated as charitable purpose u/s 2(15) and enhancement of income made by the CIT(A) is not just and proper. The Ld. AR also relied upon the decision of the Adarsh Public School wherein the Tribunal held that the assessee's income by way of fees cannot be held to be derived from property held under the trust because students cannot be treated as property.

6. The Ld. DR relied upon the order of the Assessing Officer and order of CIT(A).

7. We have heard both the parties and perused the material available on record. We find that the Assessing Officer made certain addition on ground that the assessee is pursuing its object of imparting and spreading education with profit motive and not that of charity purpose. We find that CIT(A) not only confirmed the Assessment Order but also enhanced the income of the Assessee which is reproduced in the preceding para. It is the submission of the Ld. AR that the case of the assessee is squarely covered by the decision of the Tribunal in case of Adarsh Public School (supra) where in the Tribunal held as under:-

"19. Now coming to the observation that assessee's income by way of fees cannot be held to be derived from property held under the trust, because students cannot be treated as property. If such a proposition or view of ld. CIT (A) is upheld, then probably no education institution in the country would ever be eligible/entitled for exemption u/s.11 and perhaps will defeat the entire purpose of legislature and the definition of 'charitable purpose' of education as defined in Section 2(15). Section 12 of the Act clearly provides that any voluntary contribution received by a trust wholly for charitable or religious purpose, then for the purpose of Section 11 it is deemed to be income derived from the property held under the trust. Such a deeming provision of revenue contribution is held as income derived from the trust which is subject to computation and conditions laid down in Section 11 to 13. If the assessee is

carrying out any obligation for educational activity, then it has to be treated as the 'trust' under the provision of Section 11; and this proposition has been clearly held by the Hon'ble Supreme Court in the case of CIT vs. Gujarat Maritime Board (Supra), that if the assessee is under legal obligation to apply the income then it is entitled to be registered as charitable trust. In the case before the Hon'ble Supreme Court, the authority Gujarat Maritime Board was carrying out the development of minor port which was in the realm of 'carrying out objects of general public utility'. The Hon'ble Apex Court held that such an authority is to be reckoned as charitable trust for the purpose of Section 11. In this case one of the main objection raised on behalf of the department was that said Board was not entitled for the benefit of Section 11 as it was not a trust under the 'Public Trust Act' and therefore, it was not entitled to claim registration u/s. 12A. Since it was not held under the trust therefore, it is not entitled for exemption u/s. 11(1)(a). The relevant contention of the Revenue as well as the finding of the Hon'ble Apex Court reads as under:-

> *12. One of the objections raised on behalf of the Department was that Gujarat Maritime Board is not entitled to the benefit of section 11 of the 1961 Act as the said Board was not a trust under Public Trust Act and, therefore, it was not entitled to claim registration under section 12A of the 1961 Act. The Department's case was that the Maritime Board was a statutory authority. It was not a trust. Its business was not held under a trust. Its property was not held under trust. Therefore, the Board was not entitled to be registered as a Charitable Institution. It was the case of the Department that the Board was performing statutory functions. Development of minor ports in the State of Gujarat cannot be termed as the work undertaking for charitable purposes and in the circumstances the Commissioner rejected the Board's application under section 12A of the 1961 Act in the light of the above case of the Department, we are required to consider the expression 'any other object of general public utility' in section 2*(15) *of the 1961 Act.*
>
> *13. .....*
>
> *14. We have perused number of decisions of this Court which have interpreted the words, in section* 2(15), *namely, 'any other object of generally public utility'. From the said decisions it emerges that the said expression is of the widest connotation. The word 'general' in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a*

charitable purpose—CIT *v. Ahmedabad Rana Caste Association [1983] 140 ITR 1 (SC). The said expression would* prima facie *include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable even if public welfare is intended to be served. If the primary purpose and the predominant object are to promote the welfare of the general public the purpose would be charitable purpose. When an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the said trade or industry—CIT* v. *Andhra Chamber of Commerce [1965] 55 ITR 722 (SC). If the primary or predominant object of an institution is charitable, any other object which might not be charitable but which is ancillary or incidental to the dominant purpose, would not prevent the institution from being a valid charity—Addl. CIT* v. *Surat Art Silk Cloth Mfrs. Association [1980] 121 ITR 1 (SC).*

15. *The present case in our view is squarely covered by the judgment of this Court in the case of CIT* v. *Andhra Pradesh State Road Transport Corpn. [1986] 159 ITR 1 in which it has been held that since the Corporation was established for the purpose of providing efficient transport system, having no profit motive, though it earns income in the process, it is not liable to income-tax.*

16. *Applying the ratio of the said judgment in the case of* Andhra Pradesh State Road Transport Corpn. (supra), *we find that, in the present case, Gujarat Maritime Board is established for the predominant purpose of development of minor ports within the State of Gujarat, the management and control of the Board is essentially with the State Government and there is no profit motive, as indicated by the provisions of sections 73, 74 and 75 of the 1981 Act. The income earned by the Board is deployed for the development of minor ports in India. In the circumstances, in our view the judgment of this Court in Andhra Pradesh State Road Transport Corpn.'s case* (supra) *squarely applies to the facts of the present case.*

17. *Before concluding we may mention that under the scheme of section 11(1) of the 1961 Act, the source of income must be held under trust or under other legal obligation. Applying the said test it is clear, that Gujarat Maritime Board is under legal obligation to apply the income which arises directly and substantially from the business held under trust for the development of minor port in the State of Gujarat. Therefore, they are entitled to be registered as 'Charitable Trust' under section 12A of the*

1961 Act."

20. This principle has been reiterated by the Hon'ble Delhi High Court in the case of Institute of Chartered Accountants of India-v-DGIT, 358 ITR 91 (Del). Thus, the assessee society which has been registered under 'Registration of Societies Act, 1860' with the sole object of providing education and has a legal obligation for applying its income for such charitable purpose, then for the purpose of Section 11 it has to be treated as trust and income derived from carrying out such obligation has to be reckoned as income derived from property under the trust and therefore, on the ground also as raked by the ld. CIT (A), exemption u/s.11 cannot be denied. Accordingly, in view of the finding given above and various legal principle as discussed above, we hold that none of the observations and the finding of the ld. CIT(A) are sustainable and the grounds taken and the reasoning given by him to deny the benefit/exemption u/s.11 to the assessee cannot be upheld either in law or on facts.

21. Accordingly, in view of our finding given above, the entire receipts which has been taxed under the head 'income from other sources' is set aside and we direct the Assessing Officer to grant exemption u/s.11 as per the income and expenditure account submitted by the assessee.

22 . In the result, the appeal of the assessee is allowed."

Since in the instant case the registration granted under Section 12A is still in force and since the object of the assessee society has not under gone any change, therefore, considering the totality of the facts of the case, we deem it proper to restore the issue to the file of the Assessing officer with the direction to adjudicate the issue a fresh in light of the decision of Adarsh Public School cited (supra) and in accordance with law. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. All the three appeals are identical in nature, therefore, all three appeals filed by the assessee are partly allowed for statistical purpose.

8. In result, the appeals of the assessee are partly allowed for statistical purpose.

Order pronounced in the Open Court on 30th July, 2018.

Sd/- Sd/-

(R. K. PANDA) **(SUCHITRA KAMBLE)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**

Dated: 30/07/2018
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	23.07.2018
Date on which the typed draft is placed before the dictating Member	23.07.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	30.07.2018
Date on which the final order is uploaded on the website of ITAT	30.07.2018
Date on which the file goes to the Bench Clerk	30.07.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	