

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH 'A', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

**ITA No. 1229 /Chd/2016**

**And**

**ITA No. 1314/Chd/2017**

(Assessment Years: 2013-14 & 2014-15)

DCIT, Circle – I, (Exemptions)  
Chandigarh

Vs.

M/s Shiva Educational Trust,  
Fauji Market Moga.

PAN: AAETS7524B

**ITA No. 1228/Chd/2016**

**And**

**ITA No. 1311/Chd/2017**

(Assessment Years: 2013-14 & 2014-15)

DCIT, Circle – I, (Exemptions)  
Chandigarh

Vs.

M/s ACE Educational &  
Charitable Society, H.No. 482,  
New Town, Moga.

PAN: AABAA4439R

**ITA No. 1230/Chd/2016**

(Assessment Year: 2013-14)

DCIT, Circle – I, (Exemptions)  
Chandigarh

Vs.

Sh. Guru Gobind Singh  
Foundation, 601/11, Tanki Wali  
Wali Gali No. 2, Dashmesh  
Nagar, Moga.

PAN: AAATL4452F

(Appellant)

(Respondent)

Appellant by : S/Shri Jagjeevan Kumar Garg, CIT DR  
& Gulshan Raj, CIT DR

Department by : Shri P.N. Arora, Adv.

Date of hearing : 22.05.2018

Date of Pronouncement: 26.07.2018

**ORDER**

**PER ANNAPURNA GUPTA, AM:**

The captioned appeals relate to different assesseees and has been filed by the revenue against separate orders passed by the Commissioner of Income Tax (Appeals)-4, Ludhiana. Since the

issue involved in the appeals was common, they were all heard together and are being disposed off by way of this common consolidated order for the sake of convenience.

2. The sole issue involved in all the appeals relates to denial of exemption under section 11 of the Income Tax Act, 1961, (hereinafter referred to as 'ACT') on account of violation by the assessee of the provisions of section 13 of the Act, which order of the AO was set aside by the CIT (A) in all the above cases. It was common ground between both the parties that the facts involved in all the above appeals was identical.

3. Drawing our attention to the order of the assessing officer in the said cases, it was pointed out that the assessees were societies registered under the Societies Registration Act, 1860, and had been registered as charitable trusts under the provisions of section 12A of the Income Tax Act, 1961. The assessees had claimed exemption of its income under section 11 of the Act, which was denied by the AO on the ground that the assessees had given interest-free loan to one M/s Baba Amarnath Educational Society and or other societies/trusts, which act attracted the provisions of section 13 of the Act, resulting in denial of exemption under section 11 of the Act to the assessee for the following reasons:

a) That the society to whom loan was advanced was a sister concern of the assessee society and, therefore, the said transaction tantamounted to extending benefit to a person specified under section 13( 3) of the Act which was prohibited by section 13 (1) (c) of the Act for claiming exemption under section 11 of the act.

b) That the said transaction tantamounted to making investments of monies in forms and modes other than those specified under section 11 (5) of the Act, which was prohibited by section 13 (1) (d) of the Act for claiming exemption u/s 11 of the Act.

4. The AO also held that the main object of the assessee was not advancing education but making loans and advances. He therefore held that the assessee was not entitled to claim exemption of its income under section 11 of the Act.

5. The matter was carried in appeal before the Ld. CIT (A), who allowed the assessee's appeal holding that the assessee had neither violated the provisions of section 13 nor could it be stated that the main object of the assessee was making loans and advances to others at para 5.2 of his order in the case of M/s Shiva Educational Trust, the appellant in ITA No.1229/Chd/16, and which it was common ground was identical in the other appeals also as under:

*"5.2 I have considered the observations of the Assessing Officer as made by him in the assessment order while denying impugned exemption/deduction. I have also considered the written submissions filed by the ape society through its Ld.AR vide letter dated 23.06.2016 on the issue under reference. I have further considered various judicial pronouncements relied upon by the appellant society as well as other material placed on record. On careful consideration of the assessment order, it has been noticed that the Assessing Officer has denied exemption to the appellant society claimed by it under section 11 of the Act on excess of income over expenditure declared b| the appellant society in income and expenditure account as in his opinion the appellant society has given loan to a group society without any consideration or adequate security as the group society is a specified person under the provisions of section 13(3) of the Act in which some of the members of the appellant society are also members and as such the provisions of sections 13(l)(c) and 13(l)(d) read with*

sections 13(3) and 11(5) of the Act are attracted in the case of the appellant society, While denying impugned exemption, the Assessing Officer has also observed that the fund transferred by the appellant society to its group concern by way of loan is in fact an investment made by the appellant society in another group society as the fund given in the form of loan has been utilized by the other group society in fixed assets. The Assessing Officer also relied upon decision of Honorable Madras High Court in the case of CIT Vs V.G.P. Foundation reported at (2003) 183 CTR (Mad) 330/262 ITR 187 (Mad) to support its contention. On the other hand, the appellant society through its Ld. AR has submitted that the society to whom the loan has been given is not a specified person under the provisions of section 13(3) of the Act rather it is a charitable institution registered under section 12AA of the Act which is also engaged in similar activities as that of the appellant society as the group society to whom loan has been given also runs charitable institution(s) just like the appellant society. It has also been submitted that the loan given by the appellant society to another group society engaged in similar activities is in accordance with its objects and cannot be termed as investment or deposit in violation of the provisions of section 11(5) of the Act but the loan should be treated as an application of funds as the appellant society has advanced the loan for the fulfillment of its objects. It has further been submitted that none of the members of the appellant society has drawn any undue benefit directly or indirectly from the transactions of loan under consideration. It has again been submitted that loan has been advanced in earlier years and no disallowance has been made in that year although the assessment in that particular year was also completed under section 143(3) of the Act. To support its contention, the appellant society has placed on record copies of assessment orders in earlier years including the year in which loan has been given. In nutshell, the appellant society through its Ld. AR has submitted that the provisions of sections 13(l)(c) and 13(l)(d) read with sections 13(3) and 11(5) of the Act are not attracted in its case as the appellant society has not violated the provisions of section 11/12 of the Act. In support of its arguments/submissions, the appellant society through its Ld, AR has also relied on various judicial pronouncements which find mention in the written submissions reproduced above. On careful consideration of the rival contentions and more particularly keeping in view the ratios of various judicial pronouncements relied upon by the appellant society, I am of the opinion that there is a lot of force in the arguments of the appellant society. I am also of the opinion that the group society to whom loan has been given is not covered under the provisions of section 13(3) of the Act and as such provisions of sections 13(l)(c) and 13(l)(d) read with sections 13(3) and 11(5) of the Act are not attracted in the case of the appellant society. It has also been noticed that under identical circumstances no such disallowance was made in earlier years although the assessments in earlier years were also completed under section 143(3) of the Act. Under such circumstances, the action of the Assessing Officer in denying exemption of Rs.1,97,39,9527- in this case claimed by the appellant society under section 11(1) of the Act cannot be said to be justified, The judicial pronouncements relied upon by the appellant society also support its case whereas the facts of the judicial pronouncement relied upon by the Assessing Officer are

*distinguishable as the loan in that case was given to a company and not to a charitable institution”.*

6. Aggrieved by the same the revenue has come up in appeal before us challenging the aforesaid order of the CIT(appeal) and raising the following common grounds in all the appeals as under:

*“ I That the order of Ld. CIT(A) is defective both in law and facts of the case.*

*II That the order of Ld. CIT(A)-4, Ludhiana has erred in law while allowing the benefit under section 11 of the Act without appreciating that there was a clear violation of Section 13 of the Income-Tax Act, 1961.*

*III That the order of Ld. CIT(A)-4, Ludhiana has erred in law while not considering Section 13(l)(c) of the I.T. Act, 1961, according to which, any income of the trust directly or indirectly applied for the benefit of any person referred to in Section 13(3) of the Act shall not be excluded from the total income and provisions of Section 11 shall not apply to the same.*

*IV That the order of Ld. CIT(A)-4, Ludhiana has erred in law as the findings recorded are perverse and contrary to the evidence/material available on record & facts of the case and duly considered by the Assessing Officer.*

*V The Appellant craves leave to add or amend the grounds of appeal on or before is heard and disposed off.”*

7. At the outset Ld. Counsel for the assessee pointed out that identical issue had been dealt with by the ITAT in the case of the DCIT vs Amritsar International Foundation (Trust) in its order in ITA No. 310/CHD/2017 dated 08. 12. 2017, deciding the issue in favour of the assessee. Copy of the said order was placed before us. Drawing attention to the facts of the case in the appeal before the ITAT, it was pointed out that the issue involved was identical being denial of exemption under section 10 (23C) of the Act, which was granted to institutions established only for the purpose of education, for the reason that the assessee had advanced interest-free loan to M/s Baba Amarnath Educational Society thus attracting the provisions of section 13 of the Income Tax Act,

1961. Our attention was drawn to para 2 of the order stating the aforesaid facts as under:

*"The only issue in the present appeal relates to exemption claimed by the assessee as an institution established wholly for the purpose of education u/s 10(23C)(vi) of the Income Tax Act, 1961 (in short 'the Act'), which was denied by the Assessing Officer since he found that the assessee had advanced interest free loan of Rs.30 lacs to one M/s Baba Amarnath Educational Society, which as per the Assessing Officer, was a specified person u/s 13(3) of the Act with whom such transactions were prohibited by section 13(1)(c) of the Act, for the purpose of claiming exemption, The AO also denied the exemption since he found that the said advance was in violation of the prescribed modes of investments of funds of trusts claiming exemption u/s 10(230) of the Act, as prescribed u/s 13(1)(d) rws 11(5) of the Act. The Assessing Officer also held that the assessee was ineligible for exemption since he found that the main object of the assessee was not education but giving loan and advance and building capital. The surplus earned by the assessee amounting to Rs.3,64,60,383/- therefore was subjected to tax."*

8. Thereafter it was pointed out that in the said case also the CIT( appeal) had decided the issue in favour of the assessee and the ITAT had upheld the order of the CIT( appeal).Ld. counsel for the assessee drew our attention to the relevant findings of the ITAT at para 16 to 24 of the order which stated as under:

*"16. We have heard both the parties gone through the orders of the authority below and also the documents referred to before us. We find no infirmity in the order of the Ld.CIT(Appeals). Clearly the only reason for finding the assessee ineligible for exemption u/s 10(23C)(vi) is on account of the interest free loan given by it to M/s Baba Amarnath charitable trust. The fact that the impugned loan/advance pertained to A.Y 2011-12 and not to the year in appeal before us has remained uncontroverted, so in any case, there cannot be said to be any violation in the impugned year by the assessee either of the provisions of section 13(1)(c) read with section 13(3) or even section 13(1)(d) rws 11(5) of the Act at all."*

17. Further, we find that the assessee had demonstrated by way of a detailed chart listing all relationships covered u/s 13(3), that M/s Baba Amarnath Educational Society is not a specified person as per the provisions of section 13(3) of the Act and the Revenue has not controverted the same. Ld. DR has merely reiterated the general and casual remarks of the Assessing Officer of establishing nexus between the assessee and M/s Baba Amarnath Educational Society by way of having one common member only or on account of indulging in transaction of giving loan to one another. Ld. DR has not pointed out as to how the above situations are covered u/s 13(3) to establish M/s Baba Amarnath Educational Society as a specified person, which is an exhaustive list, listing only the following as "specified persons":

- a) author of the trust or founder of the institution
- b) persons who have made substantial contribution to the trust or institution i.e exceeding Rs.50,000/-
- c) where the author, founder or person is a HUP, member of the HUF
- d) trustee of the trust or manager of the institution
- e) any relative of the aforesaid persons
- f) any concern in which aforesaid persons have substantial interest.

18. Clearly having a common member or indulging in a number of transactions of loan and advances is not envisaged as establishing a specified person u/s 13(3) of the Act. Having said so, no question arises of the assessee indulging in transactions prohibited by section 13(1)(c) of the Act, which lists transactions with persons specified u/s 13(3) of the Act. Therefore, we concur with the Ld.CIT(Appeals) that the provisions of section 13(1)(c) read with section 13(3) are not applicable in the present case.

19. We also find that the assessee had stated on record that M/s Baba Amarnath Educational Society was also a charitable society registered u/s 12A of the Act, for the purpose of imparting education and loan was advanced to it

to assist in carrying out its objectives which was identical to that for which the assessee society was also set up.

These facts have not been controverted by the Revenue. The said loan/advance therefore qualified as application of Income by the assessee and was not an investment or deposit covered u/s 11(5) of the Act. The assessee, we hold therefore cannot be said to have violated the provisions of section 13(l)(d) r.w.s 11(5) of the Act. The reliance placed by Ld. counsel for the assessee on the decision of the Hon'ble Delhi High Court in the case of Director of Income Tax (Exemption) vs ACME Educational Society 326 ITR 146 is apt, wherein after discussing the issue at length it was held that interest free loan given by one charitable society to another charitable society having similar objects was neither a deposit or investment in violation of section 13(l)(d) r.w.s. 11(5) of the Act. The relevant findings of the Hon'ble High Court at para 15 of its order are as under:

**"15.** Keeping in view the aforesaid exposition of law, we are of the opinion that interest-free loan of Rs. 90,50,000 given by the assessee-society to Nav Bharti Educational Society does not violate s. 13(l)(d) r/w s. 11(5) of Act, 1961 as the said loan was neither an "investment" nor a "deposit". This is more so as both the societies had similar objects and were registered under s. 12A of Act, 1961 and had approvals under s. 80G of the Act, 1961. The fact that the loan was interest-free and had been subsequently returned is also significant. In view of the order passed by the CIT(A) in the case of Nav Bharati Educational Society, Ms. Bansal's allegation with regard to "entry scam" also does not survive. Consequently, there is no substantial question of law involved in the present appeal and accordingly, appeal is dismissed but with no order as to costs."

20. The said proposition has been reiterated by the Hon'ble Delhi High Court in the case of CIT vs Indian National Theatre Trust (2008)305 ITR 149. Ld.Counsel for the assessee has also drawn our attention to a number of other decisions wherein it has been held that giving loans to other charitable institutions registered u/s 12A having to similar objects are not in violation of the provisions of section 13(l)(d) read with section 11(5) of the Act. Ld. DR has not distinguished the case laws relied upon by the assessee. On the contrary, the reliance placed by the Ld. DR on the decision of the Hon'ble Madras High in the case of CIT vs V.G.P. Foundation, we find is based on different set of facts, since in that case the advance was given to sister concern with no finding that it was also a charitable society registered with the same objects as the donor, while in the present

case the loan has been given by one society to another having similar objects and both societies are registered u/s 12A. Therefore, we agree with the Ld.CIT(Appeals) that the impugned advance did not violate the provisions of section 13(l)(d) r.w.s. 11(5) of the Act also.

21. In view of the above, we concur with the Ld. CIT(Appeals)) that the assessee by giving advance of Rs.30 lacs to M/s Baba Amarnath Educational Society had not violated the provisions of section 13(l)(c) read with section 13(3) or section 13(l)(d) r.w.s, 11(5) of the Act and, therefore, there was no reason to deny exemption claimed by the assessee u/s 10(23C)(vi) of the Act.

22. We are also in agreement with the Ld. Counsel of the assessee that nothing has been brought on record by the Revenue to prove that the main object of the assessee actually was giving loans and not providing education. Except for the fact of giving loan of Rs. 30 lacs to Baba Amarnath Educational Trust no other loan given by the assessee has been shown to us. The said loan has already been held by us as application of its income for the purpose of advancing its object of providing education, above. therefore, there is no merit in the contention of the Ld. DR vis-à-vis the entire group we find remains unproved since the table relied upon by the Ld. DR in support of its contention reflects only the loan given by the assessee and two other trusts of the group to M/s Baba Amarnath Trust. The same has already been explained by the Ld. Counsel for the assessee having given to lend financial support to the said Trust in the initial years of its setting up, which fact has not been controverted by the Revenue. Even otherwise it fails to bring to light how the entire group was involved in creating capital only. Even the reference to the transaction between Shiva Educational Trust and Sachdev Building Contractors Pvt. Ltd. has no relevance to the issue, since as rightly pointed out by the Ld. Counsel for the assessee no disallowance/addition has been made on account of the same. The contention of the Ld. DR, we hold, therefore, has no legs to stand on and is thus dismissed.

In view of the above, we hold that there was no basis at all for denying exemption to the assessee society u/s 10(23C)(vi) of the Act. We therefore uphold the order of the Ld. CIT(A) deleting the addition of Rs. 3,64,60,383/-. All the grounds raised by the revenue are dismissed.

24. *In the result, the appeal of the Revenue is dismissed."*

9. Ld. counsel for the assessee pointed out therefrom that the ITAT had held the denial of exemption incorrect for the reason that the loan had not been advanced in the impugned year but infact had been advanced in the earlier year and therefore it was held that the exemption in any case could not be denied in the impugned year. Ld. counsel for the assessee further stated that the ITAT had categorically upheld the findings of the CIT(appeal) that the Revenue having not established as to how M/s Baba Amarnath Educational Society was a specified person as per the provisions of section 13 (3) of the Act, the transaction of advancing loan to it could not be said to be attracting the provisions of section 13 (1) (c) of the act. Ld. counsel for the assessee also stated that it was held by the ITAT that the said loan or advance could not be treated as an investment or deposit for the purpose of holding that the transaction tantamounted to making investment or deposit in violation of the provisions of section 11 (5) of the Act and thus not attracting the provisions of section 13 (1) (d) of the Act. Ld. counsel further stated that the ITAT had also categorically held that in the facts and circumstances of the case the assessee could not be said to be indulging only in the activity of making loans and advances and not imparting education.

10. Ld. counsel for the assessee thereafter stated that the facts in all the captioned appeals before us was identical to that in the case of Amritsar International (supra). Ld. counsel stated that the loans given free of interest to M/s Baba Amarnath Educational

Society and/other societies other had been advanced in earlier years and not in the impugned years, which was borne out from the facts as recorded in the orders. A chart showing details of loans given by the different assessees was produced before us in tabular form as under:

**CHART SHOWING DETAILS OF APPEALS FIXED FOR HEARING BEFORE ITAT. CHANDIGARH BENCH. CHANDIGARH ON 05/02/2018**

Sl. No.	Name of Assessee/ Respondent	ITA No.	Details of interest free loans given to other Educational Societies	Details of A.Y. in which the amount was given as Interest free loan
1.	Shiva Educational Trust	1229/Chd/16	35,00,000/- (Baba Amarnath Educational Society)	2011-12
2.	Shiva Educational Trust	1314/Chd/17	35,00,000/- (Baba Amarnath Educational Society)	2011-12
3.	ACE Educational & Charitable Society	1228/Chd/16	90,00,000/- (Davinder Kumar Educational Society)	2012-13
4.	ACE Educational & Charitable Society	1311/Chd/17	90,00,000/- (Davinder Kumar Educational Society)	2012-13
5.	Guru Gobind Singh Foundation	1230/Chd/16	5,20,46,263/- (As per Chart below)	As per details given below

**M/s Guru Gobind Singh Foundation. Assessment Year 2013-14. Details of Interest Free Loans given to other Educational Societies:-**

Sl. No.	Name	2007-08	2007-08	2010-11	2011-12	2012-13
1	ACE Educational & Charitable Society	--	--	16600000	25600000	28350000
2	Davinder Kumar Educational Society	--	--	12600000	14075000	14575000
3	Malwa Educational Society	--	--	2250000	2250000	2250000
4	Bharti Educational Society	--	--	--	--	21000
5	Global Educational Society	--	--	--	--	2000000

6	<i>Sachdeva Educational Society</i>	6159932	4932932	99737	1600263	4850263
	<b>Total</b>	<b>6159932</b>	<b>4932932</b>	<b>31549737</b>	<b>43525263</b>	<b>52046263</b>

11. Ld. Counsel for the assessee further stated that as in the case of Amritsar International(supra) in the impugned case also it has not been pointed out by the assessing officer as to how M/s Baba Amarnath Educational Trust and or other societies were persons specified as per the provisions of section 13 (3) of the Act. Ld. counsel for the assessee stated therefore that the provisions of section 13 (1) (c) of the Act cannot be said to apply in the present case. Ld. counsel for the assessee further pointed out that both the assessee and M/s Baba Amarnath Educational and or other societies /Trust were registered under section 12A of the Act and the said loan or advance could not be said to be an investment or deposit made by the assessee and was therefore not in violation of the provisions of section 11 (5) of the Act so as to attract the provisions of section 13 (1) (d) of the Act. Ld. Counsel for the assessee stated that other than the impugned interest-free advance given by the assessee no other transactions were brought to light of similar nature by the assessee so as to hold that the assessee was indulging in transactions of giving only loans and advances and not in the activity of imparting education. Ld counsel for the assessee therefore stated that the finding of the ITAT in the case of Amritsar International(supra) that the assessee in such facts and circumstances could not be said to be indulging in the activities of giving loans and advances, squarely applies to the facts of the present case also. Ld. counsel for the assessee thereafter stated that since the facts in the present cases are identical to that in

the case of Amritsar International (supra) the decision rendered by the ITAT in the said case would squarely apply to the present cases also.

12. Learned DR fairly admitted that the facts in the present appeals was identical to that in the case of Amritsar International (supra). Ld. DR, however relied upon the order of the AO.

13. We have heard the contentions of both the parties and have gone through the orders of the authorities below and also the order of the ITAT in the case of Amritsar International (supra). Admittedly the facts in the present cases are identical to that in the case of Amritsar International (supra). No distinguishing facts were brought to our notice by the Ld. DR. The decision rendered in the case of We therefore see no reason to interfere in the order of Amritsar International (supra) would therefore squarely apply in the present appeals also. Following the same we hold that the Ld. CIT(A) has rightly held that the provisions of section 13(1)(c) are not attracted since the AO has failed to point out how persons specified as per section 13(3) of the Act. We also agree with the Ld. CIT(A) that the loan given to the respective Educational Society do not qualify as a deposit/investment for the purposes of section 11(5) of the Act, and therefore the assessee cannot be said to have violated the provisions of section 11(5) so as to be denied exemption u/s 11, as per section 13(1)(d) of the Act. Moreover since the impugned loans/advances were made in earlier years, the provisions of section 13(1)(c)/(d) could in any case not have been invoked in the impugned year. We therefore uphold the order of the Ld. CIT(appeals) and dismiss the appeal filed by the Revenue.

14. In the result all the above appeals filed by the Revenue stand dismissed.

Order pronounced in the open court.

Sd/-  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**

Sd/-  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Dated : 26<sup>th</sup> July, 2018

\*Rati\*

Copy to:

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

Assistant Registrar,  
ITAT, Chandigarh