आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य, एवं श्री अनिल चतुर्वेदी, लेखा सदस्य, के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM
AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA Nos. 2075 to 2077 & 2110/PUN/2014

निर्धारण वर्ष / Assessment Years: 2007-08 to 2009-10

Sinhgad Technical Education Society,
S. No. 44/1, Vadgaon (Budruk),
Off. Sinhagad Road,
Pune-411 041.
PAN : AABTS9900Q. ....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Central Circle-2(2),
Pune. ......प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos. 15 to 17/PUN/2015

निर्धारण वर्ष / Assessment Years: 2007-08 to 2009-10

The Assistant Commissioner of Income Tax,
Central Circle-2(2),
Pune. ....अपीलार्थी / Appellant

बनाम / V/s.

Sinhgad Technical Education Society,
S. No. 44/1, Vadgaon (Budruk),
Off. Sinhagad Road,
Pune-411 041.
PAN : AABTS9900Q. ....प्रत्यर्थी / Respondent

Assessee by : Shri S. N. Doshi
Revenue by : Shri Rajeev Kumar.

सुनवाई की तारीख /		घोषणा की तारीख /
Date of Hearing : 23.07.2018		**Date of Pronouncement : 17.10.2018**

आदेश / ORDER

PER ANIL CHATURVEDI, AM

1. ITA No.2075/PUN/2014 filed by the assessee and ITA No. 15/PUN/2015 filed by the Revenue are cross appeals and are emanating out of the order of Commissioner of Income Tax (Appeals), Central, Pune dated 31.10.2014 for A.Y. 2007-08. Similarly, ITA No. 2110/PUN/2014 filed by the assessee and ITA No.16/PUN/2015 filed by the Revenue are cross appeals and are emanating out of the order of Commissioner of Income Tax (Appeals) – III, Pune, dated 29.10.2014 for A.Y.2009-10. ITA No.2076 & 2077/PUN/2014 filed by the assessee and ITA No. 17/PUN/2015 filed by the Revenue are cross appeals and are emanating out of the order of Commissioner of Income Tax (Appeals), Central, Pune dated 14.10.2014 for A.Y. 2008-09 & 2009-10 respectively. Since all the appeals are interconnected, all these appeals are heard together. We first take up the appeal for A.Y.2007-08.

2. The facts as culled out from the material on record for AY 2007-08 are as under.

Assessee is a trust whose aims and objects are stated to include imparting education, running educational institutions. Assessee filed its return of income for A.Y. 2007-08 on 31.10.2007 showing Nil taxable income. The case was selected for scrutiny and thereafter the assessment was framed under section 143(3) of the Act vide order dated 31.12.2009 and the total income was determined at Rs 31,06,59,700/-. Aggrieved by the order of Assessing Officer (AO), Assessee carried the matter before

CIT(A), who vide order dated 31.10.2014 (in appeal No. PN/CIT(A)-CENTRAL/DCIT Cen. Cir. 2(2)/1188/2009-10) granted partial relief to the Assessee. Aggrieved by the order of Ld CIT(A), Assessee and Revenue are now in appeal before us. The grounds raised by the Assessee in appeal No 2075/PUN/2015 reads as under.

> "1. *On the facts and in the circumstances of the case the CIT(A) has erred in not appreciating that the order passed u/s 143(3) is void-ab-intio and bad in law as the appellant being a connected person the assessment should had made u/s.153C of the Income Tax Act 1961.*
>
> *2. On the facts and in the circumstances of the case and without prejudice to the above ground the CIT (A) has erred in –*
>
> *a) Holding that The appellant has paid excessive and unreasonable rent for the property owned by Shri M.N Navale relying on the decision of Allahabad High Court in case of Radhabai Dalmiya 125 ITR 134 thereby appellant has contravened the provisions of section I3(1)(c).*
>
> *b) Rejecting the valid contention made alternatively that to the extent of alleged excess amount of rent that only shall disqualify the exemption and that there cannot be wholesale denial of exemption.*
>
> *3. On the facts and in the circumstances of the case the CIT (A) has erred in holding that shares acquired in Public Ltd Company are in the nature of investment contravening the provisions of section 13(1)(d) overlooking the fact that the said expenditure of Rs.1,50,000/- incurred on acquiring those shares constitute the capital expenditure incurred for furtherance of objects of trust and therefore it amounts to application of income.*
>
> *4. On the facts and in the circumstances of the case the CIT (A) has erred in sustaining the disallowance of Rs 70,50,000/- on the ground that it is a prior period expenditure.*
>
> *5. On the facts and in the circumstances of the case the CIT(A) has erred in sustaining the addition of Rs.20,40,000/-, the amount which represents the donation received towards corpus overlooking the fact that it is the capital receipt and cannot be taxed regardless of denial exemption u/s. 11.*

3. On the other hand, the grounds raised by the Revenue in appeal No.15/PUN/2015 (which have been subsequently revised) and the revised grounds reads as under:

"1. *On facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the disallowance made u/s 40A (2)(b) on account of payment of rent in excess made to M. N. Navale (Bigger HUF), a related party.*

2. On facts and in the circumstances of the case, the Ld.CIT(A) has erred in holding that the provision of section 13(1)(c) r.w.s.13(3) of the Income Tax Act, 1961 are not attracted.

3. On facts and in the circumstances of the case, the Ld.CIT(A) has erred in deciding the issue of excess payment of rent considering only one limb of the Hon'ble ITAT's order no.149/PN/2010 dtd.31/03/2012 regarding the existence of M. N. Navale (bigger HUF), however has entirely overlooked the other limb of the said order wherein the Hon'ble ITAT had directed the AO to examine the veracity of source of investment in the properties by the Bigger HUF which were let out on rent to the assessee.

4. On the facts and in the circumstances of the case, the Ld. CIT (A) was not justified in deleting the addition made by the AO on account of Investment in shares of Co-operative bank and Public Limited Companies by not. appreciating the Facts that the assessee had contravened the provisions of Section 13(1)(d) for the reason of investment in shares of co-operative bank and Public Limited Companies as these are not specified in section 11 (5) of the Act. The Ld. CIT (A) has also not appreciated the fact that similar addition made in A.Y. 2006-07 with respect to investment in shares of Co-operative Banks which has been confirmed by Ld. CIT (A). Further, the Ld. CIT (A) has not considered the amended provisions of section 13(1)(d)(iii) of the Act with respect to investment in shares of Public Limited Companies.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that Shri M. N. Navale (Bigger HUF) does not stand in a relationship specified under section 13(3) of the Act, without appreciating that Bigger HUF was a concern in which trustees of the trust had a substantial interest therefore, M. N. Navale (Bigger HUF) IS a person specified in section 13(3) of the Act.

6. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing the amounts paid to the various trusts amounting to Rs. 2,04,00,000/-, wherein the trustee of the assessee trust are also the trustees and hence the assessee has contravened the provisions of section 13(1)(c). The Ld. CIT(A) has wrongly relied upon the decision of Ld. CIT(A) in assessee's own case for A.Y.2003-04 by not appreciating the fact that the addition made by the assessing Officer is on a different footing.

7. The order of Ld. CIT(A) may be vacated and that of the Assessing Officer be restored."

4. Since the grounds raised by Assessee and Revenue are inter-connected, all the grounds are considered together.

5. Before us, at the outset, the Ld AR submitted that Assessee does not wish to press ground Nos.1 & 5. In view of the Ld AR's submission, **the ground Nos.1 & 5 are dismissed as not pressed.**

6. Ground No. 2 of Assessee's appeal and Revenue's ground No.1 to 3 & 5 are with regard to disallowance of rent paid.

6.1. Assessing Officer noticed that Assessee had taken on rent various properties (the list of properties being listed on page 4 of the Assessment order) belonging to Shri M.N.Navale on rent. He noticed that in earlier years in Assessee's own case, the rent paid for various properties were held to be excessive. He also noticed that Assessee had also taken a farm house owned by Shri M.N.Navale on rent & that the amount of rent paid was unheard of and according to him the farm house does not serve any purpose relating to the objects of the trust and had got nothing to do with the running of the educational institutions. He therefore held that the rent paid by the Assessee to Mr. Navale for the properties taken on rent was unreasonable. He also held that the payment of rent to Mr. Navale attracted the provisions of section 13(1)(c) of the Act as the benefits was derived by persons referred to in section 13(3) of the Act. He, therefore, held that the Assessee is to be assessed like any other assessee and no benefit u/s. 11 & 12 were available to Assessee and accordingly treated the Assessee to be as "Association of Persons (AOP)". Aggrieved by the order of Assessing Officer, Assessee carried the matter before CIT(A) who granted partial relief to the Assessee by following his own order in Assessee's own case for AY 2008-09. The relevant observations of the Ld. CIT(A) are as under:

> "*6. Grounds NO.1 (a) and 2(c): Under these grounds of appeal it is contended that the AO erred in holding that the appellant had contravened the provisions of section 13(1)(c) by reason of payment of excess rent to Shri M. N. Navale and that no disallowance under section 40A(2)(b) was called for on account of the rents paid to Shri M.N.Navale. This ground is identical to Ground No.1 (a) and 2(b) of appeal for AY. 2008-09. Hence, the ratio of decision for AY 2008-09 applies equally to this AY too.*
>
> *6.1 In view of the detailed discussions in my order in the appellant's own case for A.Y 2008-09, the additional made by the Ld. AO vis-a-vis the properties at Flats No.7, 8 & 9, Geeta Building, Sion, Mumbai and Farm House at NDA Road, Warje, Pune are hereby deleted and the additions in respect of the remaining properties are confirmed. For the same reasons, the applicability of S.13(1)(c) in the appellant's case is hereby upheld since a part of the income of the institution was used during the PY for the benefit of a person referred to under section 13(1)(c). Accordingly, these grounds may be treated as* ***partly allowed.***"

7. The Ld. CIT(A) had followed his own order for A.Y 2008-09 while deciding the appeal of the Assessee in A.Y 2007-08. The order of CIT(A) for AY 2008-09 that was followed by CIT(A) while deciding the appeal in AY 2007-08 reads as under:

> "*6.7 I have given careful consideration to the facts before me and to the voluminous submissions made on behalf of the appellant from time to time. The issues raised by the appellant are discussed seriatim in the succeeding paragraphs.*
>
> *6.8 The first contention of the appellant is that the farm house at Warje and the flats at Sion, Mumbai, which are among the properties in respect of which excess rent is stated to have been paid to the Managing Trustee, Shri M. N.Navale in fact belonged not to M.N.Navale (Individual) but to the M.N.Navale (Bigger HUF) Which Was not one of the persons specified in S 13(3). The appellant's contention in this regard is that the AO had rejected the appellant's contention regarding the existence of the M.N. Navale (Bigger HUF). In this regard it is pointed out that ITAT Pune in its order dated 30/03/2012 has since upheld the existence of the Bigger HUF and therefore, the very basis of the AO's reasoning in invoking the provisions of S. 13(1)(c) does not survive vis-a-vis these .properties, namely, Flats No. 7,8 & 9,. Geeta Building, Sion, Mumbai and the property at Warje (NDA Road). I have given careful consideration to this contention of the appellant The underlying facts have been discussed at great length in my order in the case of M.N. Navale (Individual) for AY 2008-09. As mentioned therein, the issue of existence of the M.N. Navale (Bigger HUF) as well as ownership of assets by the HUF had travelled to the ITAT (Pune Bench) in ITA No. 149/PN/2010. In their order dated 30/03/2012. in that case, the jurisdictional bench of Hon ITAT upheld the existence of the M.N. Navale (Bigger HUF) in the eyes of law, but left the issue of*

quantification of the income generated by the HUF out of its agricultural holdings to the Ld. AO That exercise for quantification by the AO of income potentially earned by the HUF and the assets acquired by the HUF out of the same, is still underway. From the point of view of the issue at hand, however, the significant fact to be noted is that ITAT categorically held that the Compromise Decree passed by the Civil Court, Pandhapur is sacrosanct and binding upon the department " so far as the quantity allocated by the Hon'ble Court, Pandharpur are concerned.". Having perused a copy of the said Compromise Decree, I find that the properties under contention namely Flat No. 7,8 & 9, Geeta Building, Sion, Mumbai and the property at Warje (NDA Road) are listed as properties of the M.N Navale (Bigger HUF) which have been partitioned among the smaller HUFs. Such being the facts, respectfully following the decision of jurisdictional bench of ITAT which still holds the field notwithstanding the department's appeal before the Hon'ble High Court. I hereby uphold the appellant's contention and delete the addition worked out by the Ld. AO on account of excess rent paid to the bigger HUF. It is also correct that the said Bigger HUF does not stand in a relationship specified under section 13(3) of the Act. Therefore, the provisions of section 13(1)(c) will not attracted vis-à-vis these properties.

6.9. The next contention of the appellant is that even if excess rent was paid to the trustee, the only effect of this would be that the trust would be denied the benefit of Section 11. But no addition can be made to the total income of the trust on this ground. The decision of ITAT Chennai in 54 ITD 201 is cited by the appellant in support of the contention. I have given careful consideration to the facts before me and perused the decision of ITAT Chennai cited in Para-6.9 above. The issue raised by the appellant holds little merit. Once the benefit of S.11 is denied to the appellant, the consequence would be that the appellant would have to be assessed as an AOP other than a charitable trust under the appropriate head of income. The provisions of S.29 to 44 will then come into play in the case of the appellant and therefore, S. 40A(2) (b) will be applicable. In this case law cited by the appellant, the appellant was not engaged in any activity assessable under the head 'profit of Gains of Business or Profession" and therefore, the Chennai Bench of the Tribunal understandably observed that no addition could be made since S. 13 does not call for any addition to income but merely denial of exemption for violation of its provisions.

6.10 The next contention of the appellant is that the AO's reliance on the judgment of the Hon'ble Allahabad High Court in 125 ITR 134 while estimating the fair rent of the properties was totally misplaced as the said judgement was in the context of estimation of annual value of the House Property for the purposes of S.22 and that too in the case of a property that was not actually let out. It is also pointed out that the said judgement was based on the provisions of the erstwhile S.23 which has since been substituted. Fair rent on the other hand depends on considerations of locality availability, convenience, area and utility to the tenant etc. and these considerations have to be viewed from the point of view of the appellant and it is not appropriate for the AO to step into the appellant's shoes, In this regard. Also the AO did not bring on record any evidence of similar properties or comparable instances of rent paid for similar properties. I have given careful consideration to the appellant's submissions on this issue. There is little doubt that the rental value of any property would depend on a number of factors

including some of the factors listed by the appellant At the same time, however, where the owner and the tenant were closely related and there is a strong reason to believe that the transaction was not at arm's length, there is little option with the AO but to estimate the fair rent In this context I do not find any fundamental infirmity in the AO's reliance upon the judgment of the Allahabad High Court. I also find that my predecessor while deciding the appeal in the appellant's case for A Y 2006-07 had held as follows:

> *"10.11 With regard to the Assessing officer questing the hiring of the Farm House at Village Warje, NDA Road, Pune which was approximately at 10 Kms distance from the campus of the institutions run by the appellant has justified its earlier stand and contented that it was not for the Assessing Officer to suggest that the appellant should have hired halls for meeting and sports complexes for sports meets etc, since commercial expediency is within the purview of a businessman, and similar was the case of the appellant institution. So far as the claim of eligibility for Rs. 1 crore salary for the services of Shri M.N. Navale is concerned, against the appellant has reiterated the submissions made earlier and there is nothing new in the counter comment dated 16.7.2009. The Assessing Officer also pointed out that Shri M.N. Navale was already getting full salary from one of the management institutions belonging to the appellant society as a full time director there.*
>
> *10.12 So far as the Allahabad High court (supra) judgment regarding 7% rate of return being reasonable is concerned, it is noticed that in two decisions , the Gujrat High Court has also rendered somewhat similar decisions. In the decision of Sakarlal Balabhai Vs. ITO, 1975, 100 ITR 97 (Guj.), it was mentioned that the capital value of the property has a relevance and bearing on the question of letting value of a property. In the absence of any better way of estimating rent rate of interest on the cost of the building and land may provide a reasonable basis for determining the annual letting value of the property. In the decision of the Gujrat High Court reported in the case of Shri Bipinbhai Vadilal Family Trust Vs. CIT (1994) 208 ITR 105 (Guj.), it was observed that there are various factors which affected the rental value of the premises, and the criterion of the reasonable return to the landlord from the property would be a fair criterion, and the percentage of the return on the value of the property adopted by the tribunal at 8.4% p.a. was held to be valid. Therefore, the decisions of the Allahabad and Gujarat High Court have upheld the principal of reasonable rate of return in the investment in the property akin to rate of interest. The Assessing Officer has stated in the remand report that a rate of 7% return without any risk is considered reasonable even today. In fact it is noticed that the rate of return provided by the provident fund for the last so many years including the assessment year involved here has been around 8%, whereas the maximum rate on the bank fixed deposit, of one year and beyond, considered to be safe has been varying from around 7% to 10% during the last 4-5 years; but mostly it has been in the vicinity of 7 to 8% only for fixed deposit of at least one year. It is a common experience that investment in properties for its rental return have not been found to be a worthwhile proposition and*

> *experience and it has been experienced that bank fixed deposit have been providing better rates of returns with lesser hassels.*
>
> *10.13 It is therefore a fact that there are decisions of two different High Courts, in which 7 to 8.4% of the rate of return with reference to the cost of investment in property have been held to be reasonable. It is also noticed that the appellant has not been able to give any contrary decisions of any court of tribunal."*

6.11 In view of the my observations as above as well as considering the reasons provided by the CIT(A)-II, Pune in his order extracted above with which I am in full agreement, this argument of the appellant is also hereby rejected.

6.12 The next contention of the appellant is that Shri M.N.Navale was making immense contribution to the management of the affairs of the appellant trust including day to day administration, coordination and liaison, obtaining necessary clearances from government authorities, entering into agreements, pursuing legal matters, managing the financial affairs, acquiring properties, arranging finance, standing guarantee for loans etc. As such he was shouldering tremendous responsibilities the value of which would not be less than Rs. 4,00,000/- per month and these had to be considered even by very conservative standards. Considering these facts, the benefit accruing to him by way of rent was very meager. The decision of the Hon'ble Madras High Court In CIT vs. Society of Immaculate Conception 241 ITR 193, is relied upon. This issue too was considered by CIT(A)-II, Pune while deciding the appellant's case for AY 2006-07. Having considered the argument, the Ld. CIT(A) observed as follows:

> *"The Assessing Officer has also questioned the justification given by the appellant that Shri M.N. Navale due to his yeomen service rendered to the society, was entitled to a salary of more than Rs.1 crore and , therefore, even if this rent was excessive, it was compensated by the fact that he has foregone salary from the society. The Assessing Officer has rightly pointed out that if such was the case, the appellant has to first admit that the rent paid was excessive and then argue that the excess rent paid was in lieu of salary. It is thus indirectly admitted in this submission that the properties also belonged to Shri M.N. Navale himself, as a compensation for the services rendered by him, in lieu of the salary would obviously not be paid to the Bigger HUF; in respect of which the claim of ownership has been made from time to time. The Assessing Officer has also pointed out that the justification of remuneration of more than Rs.1 Core is also not acceptable and Shri M. N. Navale was already paid salary by the management institute which was run by the appellant society which was a full time job done by him. It is further stated that in respect of society it is not explained as to what full time services were being rendered by him apart from making some general statements. The institute and the societies were having other full time employees, and the Boards of trustees were having 7 members including Shri M.N. Navale. On this count, also the Assessing officer countered arguments of the appellant and also stated that the decision of the Madras High*

Court reported in 241 ITR 193 cited by the appellant was not applicable."

6.13 Having considered the above observations of the Ld. CIT(A)-II, Pune while disposing of the appellant's case for A.Y 2006-07, I find myself in full agreement with him. It is a self defeating argument to say that since the managing trustee was making a valuable contribution, the trust found a way to compensate him by paying excess rent for the properties owned by him and hired by the trust. It is also true that the case law relied upon by the appellant in his support does not come to his rescue by any stretch of imagination. In that case the issue arose vis-à-vis the amount spent by a missionary on maintenance of nuns who had taken vows of poverty, were not supposed to own any worldly wealth, and were not getting any salary. Having considered these facts, the Hon'ble High Court of Madras held that the provisions of S. 13(1)(c) could not be invoked in relation to the amount spent on their maintenance. There are absolutely no parallels between the facts of the case and the present one. Most significantly, amounts spent on subsistence of an individual cannot be equated with rent paid for hiring of properties. As such this argument off the appellant is hereby rejected.

6.14 The next contention of the appellant is that the appellant's contention that the rents were reasonable is backed by valuation reports obtained from Registered Valuer. I have given careful consideration to this contention of the appellant The appellant has not submitted copies of the valuation report under reference. The possibility of the appellant having obtained a tailor-made report to justify the rent paid cannot be ruled out. Moreover, I find that there is no legal sanctity under the Act for referring the fair rent in respect of properties to an approved valuer. In view of these facts, this contention of the appellant is also hereby rejected.

6.15 The next contention of the appellant is that even if excess rent was paid, at the most the said amount could be considered as not having been applied for charitable purpose but cannot lead to wholesale denial of exemption. In this regard, decision of the Hon'ble Delhi High Court in NASSCOM is relied upon, as also decision of the Hon'ble Madras High Court 110 ITR 364 and that of ITAT Mumbai in 136 ITR 355. I do not find any merit in these contentions of the appellant find that the 'decision of the Hon Delhi High Court in the case of NASSCOM has 'no bearing on the issue at hand. The decisions in the other cases cited by the appellant also turned entirely on their own facts On the other hand, in Agappa Child Centre v. CIT [1997] 92 Taxman 327/2261TR 211 (Ker.), where the assessee trust purchased' a refrigerator even before the trust buildings were completed and kept it at the disposal of the managing trustee and it was found that the assessee never Charged adequate rent or other compensation from the trustee, the Hon. High.Court held that the case would be hit by the prohibition contained in section 13(1)(c), and the assessee-trust would not be entitled to exemption under section 11. It has been held in a large number of other cases that even if a small portion of the income of the charitable trust ensures or is used or applied for the benefit of a person specified under section 13(3), the entire income of the trust is denied exemption. Considering the legal position emerging from the clear language of the statute as well as the case laws referred to, this contention of the appellant is also hereby rejected.

6.16 The next contention of the appellant is that the provisions of S.40A(ii) have been wrongly invoked and applied by the AO without bringing on record any comparable data regarding reasonableness of rent. In doing so he has also ignored CBDT Circular NO.6-P of 1968 dated 06/07/1968 which mandates that fair market value of the goods, legitimate needs of the business and benefit derived etc. I have given careful consideration to this submission of the appellant. In the said circular, the Board had conveyed that while invoking the provisions of the section the Assessing Officer is expected to exercise his judgment in a reasonable and fair manner and that it should be borne in mind that the section is meant to check evasion of tax through excessive or unreasonable payments to relatives and associate concerns and should not be applied in the manner which will cause hardship in bonafide cases. As discussed in the foregoing paragraphs, the facts of the present case do not speak of a situation where the AO has acted in the manner in which CBDT has spoken of in its circular. For the reasons discussed in detail in the said paragraphs, the applicability of S. 13(1)(c) in the appellant's case is hereby upheld. Accordingly, the appellant cannot draw any support from the said circular.

6.17. In view of the detailed discussions above, the addition made by the Ld. AO vis-à-vis the properties at Flats No. 7, 8 & 9, Geeta Building, Sion, Mumbai and Firm House at NDA Road, Warje, Pune are hereby deleted and the additions in respect of the remaining properties are confirmed. For the same reasons, the applicability of S.13(1)(c) in the appellant's case is hereby upheld since a part of the income of the institution was used during P.Y for the benefit of a person referred to under section 13(1)(c). Accordingly, these grounds may be treated as partly allowed."

8. Aggrieved by the order of CIT(A) on this issue, Assessee and Revenue are now before us. Assessee's ground No. 2 and Revenue's ground No. 1 to 3 & 5 are on the same issue and are therefore considered together.

9. Before us, Ld AR reiterated the submissions made before AO and CIT(A). He further submitted that identical issue with respect to the same properties arose in Assessee's case in AY 2006-07 before the Hon'ble Tribunal and the Hon'ble tribunal has decided the issue in its favour. He pointed to para 87, 87.1 of Tribunal's order. He further submitted that as far as the issue of excess rent paid to Mr. M.N. Navale on account of violation of provisions of Sec.13(1)(c) is concerned, in AY 2006-07, the

matter was sent back to CIT(A). He therefore submitted that following the order of Tribunal for AY 2006-07, the issue be decided. Ld DR on the other hand supported the order of AO.

10. We have heard the rival submissions and perused the material on record. The issue in the present grounds is with respect to payment of rent to Shri M.N.Navale, the trustee of the Assessee and invoking of provisions of Section 13(1) of the Act. We find that identical issue arose in Assessee's case in AY 2006-07 before the Co-ordinate Bench of the Tribunal. The Co-ordinate Bench vide order dated 14.12.2016 decided the issue by observing as under:

> *82. We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the body of the assessment order has held that the assessee trust has given excess rent to Shri M.N. Navale on account of the 3 properties taken on rent. According to the Assessing Officer the assessee trust has taken on rent flat/office at Govind Chambers, Karve Road, Pune on a monthly rent of Rs.75,000/-, the farm house at Warje, NDA Road, Pune on a monthly rent of Rs.1,25,000/- and Flat Nos. 7,8, & 9 in Geeta Building, Sion, Mumbai on a monthly rent of Rs.1,56,000/-. According to the Assessing Officer the fair rent should be equal to 7% per annum of the cost of the property in view of the decision of Hon'ble Allahabad High Court in the case of Radha Devi Dalmia reported in 125 ITR 134. We find the Ld.CIT(A) enhanced such fair rent to 9% of the cost of property. It is the submission of the Ld. Counsel for the assessee that the rent paid to M.N. Navale (Bigger HUF) in respect of the first two properties are outside the purview of section 13(1)(c). It is also his submission that the CIT(A) in assessee's own case for A.Y. 2007-08 and 2008-09 has held that there is no violation of provision of section 13(1)(c) on account of rent paid to M.N. Navale (Bigger HUF) in respect of the properties being Flat No.7, 8 and 9 at Geeta Building, Bombay and the Farm house at Warje.*
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> *83. We find force in the above argument of the Ld. Counsel for the assessee. We find the CIT(A) in assessee's own case for A.Y. 2008-09 vide order dated 14-10-2014 at Para 6.8 of the order has observed as under :*
>
> > *"6.8 The first contention of the appellant is that the farm house at Warje and the flats at Sion, Mumbai, which are among the properties in respect of which excess rent is stated to have been paid to the Managing Trustee, Shri M. N. Navale, in fact belonged not to M. N. Navale (Individual) but to the M.N.Navala (Bigger HUF) which was not one of the persons specified in S.13(3). The appellant's contention in*

this regard is that the AO had rejected the appellant's contention regarding the existence of the M.N. Navale (Bigger HUF). In this regard it is pointed out that ITAT Pune in its order dated 30/03/2012 has since upheld the existence of the Bigger HUF and therefore, the very basis of the AO's reasoning in invoking the provisions of S. 13(1)(c) does not survive vis-avis these properties, namely, Flats No. 7,8 &9, Geeta Building, Sion, Mumbai and the property at Warje (NDA Road). I have given careful consideration to this contention of the appellant. The underlying facts have been discussed at great length in my order in the case of M.N.Navale (Individual) for AY 2008 – 09. As mentioned therein, the issue of existence of the M.N.Navale (Bigger HUF) as well as ownership of assets by the HUF had travelled to the ITAT (Pune Bench) in ITA No. 149/PN/2010. In their order dated 30/03/2012, in that case, the jurisdictional bench of Hon'ble. ITAT upheld the existence of the M.N.Navale (Bigger HUF) in the eyes of law, but left the issue of quantification of the income generated by the HUF out of its agricultural holdings to the Ld. AO. That exercise for quantification by the AO of income potentially earned by the HUF and the assets acquired by the HUF out of the same, is still underway. From the point of view of the issue at hand, however, the significant fact to be noted is that the ITAT categorically held that the Compromise Decree passed by the Civil Court, Pandharpur is sacrosanct and binding upon the department "so far as the quantity allocated by the Hon'ble Court, Pandarpur are concerned:". Having perused a copy of the said Compromise Decree, I find that the properties under contention namely, Flat No.7,8 & 9, Geeta Building, Sion, Mumbai and the property at Warje (NDA Road) are listed as properties of the M.N. Navale (Bigger HUF) which have been partitioned among the smaller HUFs. Such being the facts, respectfully following the decision of jurisdictional bench of ITAT which still holds the field notwithstanding the department's appeal before the Hon. High Court, I hereby uphold the appellant's contention and delete the addition worked out by the Ld. AO on account of excess rent paid to the bigger HUF. It is also correct that the said Bigger HUF does not stand in a relationship specified under section 13(3) of the Act. Therefore, the provisions of section 13(1)(c) will not be attracted vis-à-vis these properties.

6.9. . . . . . .

. . . .

6.17. In view of the detailed discussions above, the addition made by the Ld. Assessing Officer vis-à-vis the properties at Flats No.7,8 & 9, Geeta Building, Sion, Mumbai and Farm House at NDA Road, Warje, Pune are hereby deleted and the additions in respect of the remaining properties are confirmed. For the same reasons, the applicability of S.13(1)(c) in the appellant's case is hereby upheld since a part of the income of the institution was used during the PY for the benefit of a person referred to under section 13(1)(c). Accordingly, these grounds may be treated as partly allowed."

84. We find following the above order the CIT(A) in assessee's own case for A.Y. 2007-08 at Para 6 and 6.1 of the order has observed as under :

*"6. **Grounds No.1 (a) and 2(c):** Under these grounds of appeal it is contended that the AO erred in holding that the appellant had contravened the provisions of section 13(1)(c) by reason of payment of excess rent to Shri M. N. Navale and that no disallowance under section 40A(2)(b) was called for on account of the rents paid to Shri M.N.Navale. This ground is identical to Ground No.1 (a) and 2(b) of appeal for AY. 2008-09. Hence, the ratio of decision for AY 2008-09 applies equally to this AY too.*

*6.1 In view of the detailed discussions in my order in the appellant's own case for AY 2008-09, the addition made by the Ld. AO vis-a-vis the properties at Flats No.7, 8 & 9, Geeta Building, Sion, Mumbai and Farm House at NDA Road, Warje, Pune are hereby deleted and the additions in respect of the remaining properties are confirmed. For the same reasons, the applicability of S.13(1)(c) in the appellant's case is hereby upheld since a part of the income of the institution was used during the PY for the benefit of a person referred to under section 13(1)(c). Accordingly, these grounds may be treated as **partly allowed** .*

85. Since the impugned order of CIT(A) was prior to the order of CIT(A) for A.Y. 2007-08 and 2008-09 and since the Revenue has not challenged the order of CIT(A) on this issue for A.Y. 2007-08 and 2008-09, therefore, we hold that the assessee trust has not violated the provisions of section 13(1)(c) by giving rent to M.N. Navale (Bigger HUF) in respect of the properties stated at Flat No.7, 8 and 9, Geeta Building, Bombay and Property at Warje.

86. So far as the first property is concerned it is the submission of the Ld. Counsel for the assessee that the fair rent needs to be decided from the view point of the tenant who pays the rent. Any tenant for that purpose will take into consideration utility, locality, availability, total area of the said property etc. Although the assessee has submitted certain details such as valuers report during the appellate stage, however, we find the CIT(A) has not accepted those additional evidences. It is also his submission that since the rent given to Shri M.N. Navale although may be higher according to the Assessing Officer, however, considering the services rendered by Shri M.N. Navale to the trust free of any remuneration should have also been considered.

87. We find the CIT(A) has directed the Assessing Officer to adopt 9% of the cost of the property at Karve Road as reasonable rent. While doing so, he has also relied on the decision of the Hon'ble Allahabad High Court in the case of Smt. Radha Devi Dalmia reported in 125 ITR 134. In our opinion, the above decision is not applicable to the facts of the present case. In that case, the property was vacant and for the purpose of section 22 of the I.T. Act the notional annual value was required to be decided u/s.23. Under these circumstances the annual value of the property was directed to be determined at 7% of the cost of the property. However, in the instant case the assessee had filed certain details before the CIT(A) for calculation of fair rent of the property which has been ignored by him. Under these circumstances and in the interest of justice, we deem it proper to restore this issue to the file of the CIT(A) with a direction to adjudicate this issue in the light of facts and submissions made and the additional evidences filed before him. The CIT(A) shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct

accordingly.

87.1 We may also clarify here that only the excess fair rent, if any, which is determined will be subject to tax at the maximum marginal rate and there cannot be wholesale denial of exemption for violation of provisions of section 13(1)(c) on account of excess rent, if any, paid to Shri M.N. Navale. The additional ground by the assessee is accordingly allowed and ground of appeal No.6 is allowed for statistical purposes."

Since the issue which is raised is identical to the issue in A.Y.2006-07, we, therefore, remit the issue back to the file of CIT(A) to decide the same in the light of our direction in A.Y.2006-07. Needless to state that CIT(A) shall grant reasonable opportunity of hearing to both the parties and decide the issue as per facts and in accordance with law. Thus, ground of appeal No. 2 raised by assessee is dismissed but linked ground of appeal Nos. 1 and 2 raised by the Revenue is allowed and the issue is sent to the file of CIT(A). Ground of appeal Nos. 3 and 5 raised by the Revenue are related issue and since the matter is remitted back for verification, the same become academic.

11. Ground No 3 of Assessee's appeal and ground No 4 of Revenue's appeal are interconnected and are with regard to acquisition of shares which were held to be in contravention of provisions of Section 13(1)(d) of the Act.

11.1 During the course of assessment proceedings, the Assessing Officer asked the Assessee to submit the details of investments made by it to which Assessee submitted the details of shares acquired and inter-alia submitted that it had paid Rs. 1.50 lacs for acquisition of shares. It was further submitted that the shares of the cooperative banks were acquired for availing loan facilities from those banks and thus it was for the interest

of the Assessee and therefore the provisions of Section. 13(1)(d) was not attracted. The submissions of the Assessee were not found acceptable to Assessing Officer. Assessing Officer was of the view that Assessee had violated the provisions of Sections 11(2) r.w.s 11(5) of the Act and that the benefits available to a trust are not allowable to Assessee by virtue of the provisions of Section 13(1)(d) of the Act and accordingly, the Assessee trust is to be assessed as AOP. Aggrieved by the order of AO, Assessee carried the matter before CIT(A) who, following his order for AY 2008-09 granted partial relief to the Assessee by observing as under:

> "*7. Ground No. 1(b): Under this ground of appeal, the appellant has challenged the AO's action of holding that the appellant had contravened the provisions of S. 13(1)(d) for the reason of investment in shares of cooperative banks and public limited companies. Upon closer perusal it is seen that this ground is identical to Ground No. 1(b) for A.Y. 2008-09. Hence, the ratio of decision for A.Y 2008-09 applies equally to this AY too.*"

12. While deciding the issue for A.Y 2008-09, the Ld. CIT(A) has observed as under:

> "*7.8 The next issue therefore is applicability of the said provision, namely, S. 13(1) (d) vis-à-vis Shares held in Public Limited Companies. In this regard, the appellant vide submission dated 14.03.2012 has enclosed a list of the shares acquired. It is contented that there are the shares of different companies having different activities. The quantity of the shares acquired was hardly in the range of 1 to 5 shares. The total cost invested Rs.1,50,000/- as against the total outlay of the appellant institution of Rs.413.56 Crore. From this , the appellant states, it is crystal clear that the cost of shares in Public limited Co. is too miniscule in comparison to the total outlay and therefore the cost of these shares by any standard cannot be considered as investment. It is further contended as follows:*
>
> > *"Moreover we have already explained the propriety of acquiring these shares that being undisputedly directly connected with the objects of the institution. This is the capital expenditure incurred for furtherance of the object of the trust similar to making deposits for availing electricity connection, water connection, telephone connection or acquiring property on hire by making security deposit etc. therefore shares in Public Limited Companies cannot be considered as acquired as investment in contravention of Sec.13(1)(d)."*

> *7.9 I have considered the above submissions of the appellant. In view of the facts mentioned in Para 7.8 above, I do not find the contention of the appellant acceptable on this issue. However, the alternate contention of the appellant that denial of exemption has to be restricted to the relatable income only has to be accepted in view of the categorical observation of the jurisdictional Bench of the Tribunal in Para 28 of ITA No. 113/PN/10 in the appellant's own case for 1999-200."*
>
> *7.10 The AO is directed accordingly. In view of the above decision with regard to investment in shares of co-operative society and shares of public limited Companies, this ground of appeal may be treated as partly allowed."*

Aggrieved by the order of CIT(A), Assessee and Revenue are now in appeal before us.

13. Before us, Ld AR reiterated the submissions made before Assessing Officer and CIT(A) and further submitted that the quantity of shares of each of the companies range from 1 to 5 shares and thus there is no profit motive for acquisition of shares. On the contrary, the expense incurred is for furtherance of the objects of the trust and therefore, it is an application of income. He further submitted that identical issue arose in Assessee's own case in A.Y. 2006-07 and while deciding the issue, the Co-ordinate Bench of the Tribunal has held that there cannot be wholesale denial of exemption of the entire income and at the most dividend on shares would lose the benefit of exemption. He pointed to the relevant findings of the order. He therefore submitted that since the facts of the case in the year under appeal are identical to that of AY 2006-07, following the order of the AY 2006-07, the ground be allowed. Ld DR on the other hand supported the order of Assessing Officer and further submitted that once there was violation of the provisions of Section.13(1)c) rws 13(2)(a) to 13(2)(h) of the Act, for diversion of income or part of the income for the benefit of the interested persons as prescribed under Section 13(3) of the Act, the

Assessee would forfeit the benefit of exemption under Section 11 and 12 of the Act on the entire income and no benefit of application of income can be given.

14. We have heard the rival submissions and perused the material on record. We find that identical issue arose in Assessee's own case in A.Y 2006-07 and the issue was decided by the Co-ordinate Bench of the Tribunal by observing as under:

> *"128. We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We find the assessee in the instant case is holding 220 shares ranging from 1 to 15 in different limited blue-chip companies. Although the Assessing Officer has not discussed the issue in the body of the assessment order, however, on the basis of the information provided by the Assessing Officer in the remand report for the preceding assessment years the CIT(A) observed that the assessee has violated the provisions of section 13(1)(d) of the I.T. Act by investing in shares in the listed blue chip companies. Therefore, the assessee is not entitled to the benefit of provisions of section 11. It is the submission of the Ld. Counsel for the assessee that the assessee trust is conducting courses on business management namely, MBA, MCA, DBM etc. for which the audited accounts of different companies are required for the benefit of the students and therefore considering the miniscule amount invested in the shares of these companies for Rs.1,50,000/- it can be considered as application of income and not an investment. It is also his alternate submission that there cannot be wholesale denial of exemption u/s.11 and at the most the dividend earned on these shares should lose the benefit of exemption.*
>
> *129. We find some force in the alternate argument of the Ld. Counsel for the assessee. The Pune Bench of the Tribunal in assessee's own case in ITA No.113/PN/2010 order dated 18-03-2011 for A.Y. 2009-10 at Para 28 of the order has held that denial of exemption has to be restricted to the relatable income in view of the specific provisions of the proviso to section 164(2) of the Act as explained by the binding jurisdictional High Court judgment in the case of Sheth Mafatlal Gagalbhai Foundation Trust (Supra) and in principle the denial cannot be extended to other income of the trust. It was also brought to our notice that relying on the decision of the Tribunal in assessee's own case for A.Y. 2009-10 the CIT(A) has decided the issue in favour of the assessee for A.Y. 2008-09 by observing as under :*
>
>> *"7.9 I have considered the above submissions of the appellant. In view of the facts mentioned in para 7.8 above, I do not find the contention of the appellant acceptable on this issue. However, the alternate contention of the appellant that denial of exemption has to be restricted to the relatable income only has to be accepted in view of the categorical observation of the jurisdictional Bench of the Tribunal in para 28 of ITA No.113/PN/2010 in the appellant's own*

case for 1999-2000.

7.10 The AO is directed accordingly. In view of the above decision with regard to investment in shares of co-operative society and shares of public limited companies, this ground of appeal may be treated as partly allowed."

130. We find the CIT(A) has also followed the same view in A.Y. 2007-08. It was brought to our notice by the Ld. Authorised Representative that the Revenue has not gone on appeal on this issue.

131. While deciding the additional ground No.3 we have already held that there cannot be wholesale denial of exemption of the entire income of the assessee and at the most dividend on shares would lose the benefit of exemption. In view of the above, we restore the issue to the file of the Assessing Officer with a direction to find out the dividend income, if any, out of these shares including that of value of bonus shares that were received/obtained during the year and bring the same to tax. We hold and direct accordingly. Ground of appeal No.8 by the assessee is accordingly partly allowed for statistical purposes."

15. Before us, the submission of the Ld AR that the facts in the year are identical to that of AY 2006-07 has not been controverted by Revenue. Further, Revenue has not pointed any distinguishing feature in the facts of the present case and that of AY 2006-07. We find that the co-ordinate Bench while deciding the appeal in A.Y.2006-07 has restored the issue back to the file of AO to find out the dividend income, if any that were receivable /obtained by the assessee and bring the same to tax. Following the same parity of reasoning as in A.Y.2006-07 with special reference to Para 131, the ground of appeal No.3 raised by assessee is, thus, partly allowed for statistical purpose.

15.1 Now, coming to the linked ground of appeal No. 4 raised by Revenue which is against the order of CIT(A) in holding that the investment in share in Co-operative Society are covered under section 13(1)(d) of the Act. The Tribunal vide para 122 and 123 had held as under:

> "*122. Similar view has been taken by the Tribunal in the case of Patangrao Kadam Pratisthan Vs. DCIT and vice versa vide ITA No. 289/PN/2011 and 312/PN/2011 dated 31.12.2012 and various other decisions relied on by the Ld. Counsel for the assessee. We further find the CIT(A) following the decision of Hon'ble Bombay High Court in the case of Vikhe Patil Foundation (supra.) has held in his order for A.Y.2008-09 in assessee's own case that section 13(1)(d) cannot be invoked, vis-à-vis the investment in share of Co-operative Society.The relevant observation of Ld. CIT(A) at Para 7.7 of his order reads as under:*
>
> > *"7.7 It is evident from the above extract that while dismissing the Department's appeal, the Hon' High Court kept in view (i) that Tribunal had recorded a finding of that fact that the shares were subscribed to only for purposes of obtaining the loan and the amounts so obtained were used for furtherance of the object of the trust, (ii) on identical facts, the revenue has granted the benefit of exemption under section 11/12 of the Act for the assessment years 2006-07, 2009-10, 2010-11 and 2011-12 on scrutiny assessment under section 143(3) of the Act, and most significantly, (iii) that the findings of the Tribunal is a findings of fact and therefore the proposed question of law could not be entertained. Comparable facts do not exist in the present case. Nevertheless, it is true that the Hon'ble High Court, which is the jurisdictional High Court, has categorically observed that investment in shares of Co-operative banks which is a pre-condition for raising of loans is not an 'investment' as normally understood. It is also true that there is no adverse finding of fact in the impugned assessment order either as regards the fact that the investment were utilized for the objects of the trust. In view of these facts, I find the contention of the appellant acceptable and accordingly, hold that section 13(1)(d) cannot be allowed invoked vis a vis the investments in shares of co-operative society."*
>
> *123. In the instant case also the Ld. Counsel for the assessee substantiated that the shares were obtained on account of loans availed. He has also filed a chart showing that after the loans were repaid, the shares were subsequently redeemed in May 2010 and July 2010. Therefore, considering the totality of the facts of the case and relying on the decision of Hon'ble Bombay High Court cited (supra), we hold that the assessee has not violated the provisions of section 13(1)(d) by investing in shares of cooperative banks from which it has taken loans. Therefore, the assessee cannot be denied the benefit of section 11. Ground raised by the assessee is accordingly allowed."*

Provisions of section 13(1)(d) cannot be invoked vis-à-vis investment in share in Co-operative Society. Since the assessee has not violated the provisions of section 13(1)(d) of the Act, the assessee cannot be denied the

benefit of section 11 of the Act. Following the same parity of reasoning as held while deciding the assessee's appeal in A.Y.2006-07, we uphold the order of CIT(A) and thus, the ground of appeal No.4 raised by Revenue is dismissed.

16. Ground no.4 of assessee's appeal is with regard to disallowance of expenditure for it being of prior period.

16.1 The Ld.CIT(A) in his order on page 11 has noted that it was Assessee's contention that the addition of Rs.70,50,000/- on account of prior period expenses was made by the Assessing Officer on the basis of the report of Special Auditor appointed under Sec.142(2A) of the Act. It was contented before Assessing Officer that though the expenditure related to earlier period but since the liability for the expenses crystallized during the year, the expenses were allowable. The submissions of the Assessee were not found acceptable to Assessing Officer and therefore he disallowed the expenses. Aggrieved by the order of Assessing Officer, Assessee carried the matter before CIT(A) who upheld the order of Assessing Officer by observing as under:

> *"9.2 I have given careful consideration to the appellant's submissions. Upon perusal of the order of Jurisdictional bench in the appellant's case for 1999-2000, however, I do not find that the issue has arisen for that AY and that the Hon'ble Tribunal had set it aside to the AO for verification as claimed by the appellant. In any case, the Ld. AR has himself submitted that the issue has no tax impact. Accordingly, for want of any submissions on merits, this ground is hereby dismissed."*

Aggrieved by the order of Ld CIT(A), Assessee is now in appeal before us.

17. Before us, Ld AR reiterated the submissions made before CIT(A) and submitted that since the liability crystallized during the year, the expenses be allowed. He further submitted that identical issue arose in Assessee's case in AY 2006-07 and the Hon'ble Tribunal decided the issue in favour of the Assessee but however for verification of the claim remitted the issue to AO. He pointed to the relevant paras 159 to 162 of the Tribunal and submitted that since the issue under the year in consideration is similar to that of AY 2006-07, therefore, with similar directions, the matter may be remitted to AO. Ld DR did not controvert the submissions of Ld AR but however supported the order of CIT(A).

18. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to allowability of prior period expenses which were disallowed by AO and CIT(A). We find that identical issue arose in Assessee's case in AY 2006-07. The Co-ordinate Bench of Tribunal, by following the decision of Hon'ble Bombay High Court in the case of CIT Vs. Nagri Mills (33 ITR 681) and Ahmedabad Bench of Tribunal in the case of ACIT Vs. Home & Life Solutions (India) Ltd (41 taxmann.com) remitted the matter back to the AO. The relevant observations of the Tribunal in AY 2006-07 as under:

> *"159. We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find on the basis of the recasted final accounts by the special auditors the Assessing Officer disallowed an amount of Rs.94,84,854/- on account of prior period expenses debited during the year. Since the assessee had not taken any ground before the CIT(A) the same was not adjudicated by him. Since the assessee has taken this ground for the first time before the Tribunal, therefore, following the decision of Hon'ble Bombay High Court in the case of Brokers and Shareholders Pvt. Ltd. (Supra) the same is admitted.*
>
> *160. It is the case of the Ld. Counsel for the assessee that the assessee*

has given full details of the prior period expenses as per pages 14 and 73 to 110 of the paper book No.3. According to the Ld. Counsel for the assessee as long as these expenses are otherwise allowable it does not make any difference even if these are claimed and allowed in A.Y. 2006-07. We find the Hon'ble Bombay High Court in the case of CIT Vs. Nagri Mills Company Ltd. reported in 33 ITR 681 the Hon'ble High Court has observed as under (short notes) :

> *"Where a company which maintained its accounts on the mercantile basis did not make any entry towards bonus for the calendar year I95I, but, on a dispute regarding bonus payable to the workers for that year being referred to the conciliation board, the board, by its award in June, I952, directed the company to pay bonus out of the profits for that year, and the company in making the return claimed to deduct for the year I95I, the bonus which it distributed in December, I952, against the last item of Part IV of the income-tax return:*
>
> *Held, that as under section 10(5) of the Income-tax Act actual payment was not necessary for the purpose of deduction and it was sufficient if the liability to bonus was incurred according to the method of accounting upon the basis of which the profits or gains were computed, the company was entitled to the deduction under section 10(2)(x) of the bonus paid from the profits for the year I95I, even though the amount had not been entered in its accounts for that year.*

161. We find the Ahmedabad Bench of the Tribunal in the case of Hitachi ACIT Vs. Home and Life Solutions (India) Ltd. reported in 41 taxmann.com while deciding an identical ground has observed as under :

> *"14. For the ground no.4 of the Revenue in the present year, the learned DR supported the assessment order, whereas the learned AR supported the order of the learned CIT(A).*
>
> *15. We have considered rival submissions. We find that it is observed by the learned CIT(A) at page no.11 of his order that this request was also made by the assessee before the AO that this expense, related to prior period, should be either allowed in the present year or if it is not allowed in the present year, then the same should be allowed in the earlier year, to which such expenses are related to. He also noted that the AO has totally ignored this aspect, although, he has passed the assessment order for the preceding year i.e. A.Y.2000-2001 on the same date. We are of the considered opinion that when there is no other objection of the AO, regarding allowabililty of expenses relating to prior period, the same should be allowed either in the present year or in the preceding year, to which such expenses are related to. The assessee has disclosed a loss of Rs.6,92,700/- in the present year, and in A.Y.2000-2001, the assessee has filed return of income disclosing NIL income after setting off of brought forward loss of earlier years to the extent of Rs.303.11 lakhs. Hence, even if this expenses are allowed in the earlier years i.e. A.Y. 2000-2001, it will ultimately be adjusted in the present year, by way of set off of brought forward loss, and therefore, it will make no difference even if deduction is allowed in the present year. Hence, we feel that no interference is called for in the order of the learned CIT(A) on this aspect. The ground no.4 of the Revenue is rejected."*

> *162. In view of the above discussion, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to decide the issue afresh in the light of the decisions cited above. Needless to say the Assessing Officer shall give due opportunity of being heard to the assessee and decide the issue as per law. We hold and direct accordingly. Ground of appeal No.13 by the assessee is accordingly allowed for statistical purposes."*

19. Before us, since both the parties have admitted that the facts of the case in the year under consideration are identical to that of AY 2006-07, we therefore for the similar reasoning as given by the co-ordinate Bench of the Tribunal while deciding the Assessee's appeal in AY 2006-07 and with similar directions set aside the issue to the file of AO. **Thus the ground of Assessee is allowed for statistical purposes.**

20. Now we take up Revenue's ground No.6 which is with respect to amounts paid to various trusts in alleged contravention of provisions of Section 13(1)(c) of the Act.

21. AO noted that Assessee had given advances of Rs. 2,12,85,506/- to other trusts (Savitrbai Phule Shikshan Prasarak Mandal, Shri Yeshwantrao Chavan Shikshan Prasarak Mandal and Shrinath Shikshan Prasarak Mandal). He noticed that the trustees of Assessee were also trustees in Savitribai Phule Shikshan Prasarak Mandal and Shrinath Shikshan prasarak Mandal and hence granting of advance was in violation to the provisions of Section. 13(1)(c) of the Act and invoked the provision. Aggrieved by the order of AO, Assessee carried the matter before CIT(A), who decided the issue against the Assessee by observing as under:

> *"13. **Ground No 4**: Under this ground of appeal, the appellant has contended that the AO erred in adding an amount of Rs.2,04,00,000/- which represented donations received towards the trust corpus which was in the nature of capital receipts and could not be taxed regardless of allowability of claim of exemption under section 11.*

13.1 The AO has not specifically discussed this issue in the order other than holding that the assessee was not entitled to the benefit-of section 11 and 12 and was to be assessed as an AOP. He added the said amount to the income of the appellant in the computation occurring at the end of the order with the remark "Add: Donation".

13.2 The appellant in its brief submission on this issue vide letter dated 14/03/2012, has contended that the AO has made the addition merely relying on the report of the Special Auditor ignoring the fact that these donations were received from doners towards trust corpus with specific directions to this effect. Being earmarked donations towards the trust corpus, the receipts capital in nature and could not be taxed regardless of whether or not the appellant was held to be eligible for deduction under section 11.

13.3 I have given careful consideration to the above facts. The scheme of taxation of charitable trusts and institutions under the IT Act is that firstly all voluntarily contributions received by them are deemed to be the income of such entities under section 2(24)(iia) and thereafter, subject to the fulfillment of conditions laid down in Section 11/Section 12/Section 10(21)/Section 10(23)/Section 10(23C) etc, as the case may be, the same are eligible for exemption. In respect of entities claiming under section 11 and 12, the exemption of corpus donations is provided for under section 11(i) (d). Therefore, once the provisions of section 11 and 12 are found to be inapplicable in view of the provisions of section 13, the effect would be that the corpus donations would be deemed to be the income of the appellant but would not qualify for exemption under section 11(i)(d). The appellant's case being of this nature, the AO has rightly added the said amount to the income of the appellant. Accordingly, this ground of appeal is without merit and is hereby dismissed."

22. The Revenue has filed appeal against the decision of CIT(A) on the issue which is decided against the assessee. Consequently, assessee has not agitated the said decision of CIT(A). Hence, there is no merit in the ground of appeal No. 6 raised by Revenue and the same is dismissed.

23. **In the result, the appeal of Assessee in ITA No.2075/PUN/2014 is partly allowed and the Appeal of Revenue in ITA No.15/PUN/2015 is partly allowed.**

24. We now take up assessee's appeal in ITA No. 2076/PUN/2014 and Revenue's appeal in ITA No.16/PUN/2015 for AY 2008-09.

25. The grounds raised by the Assessee in ITA No.2076/PUN/2014 for A.Y. 2008-09 reads as under:

> *"1. On the facts and in the circumstances of the case the CIT(A) has erred in not appreciating that the order passed u/s.143(3) is void-ab-initio and bad in law as the appellant being a connected person the assessment should had made u/s.153C of the Income Tax Act 1961.*
>
> *2. On the facts and in the circumstances of the case and without prejudice to the above ground the CIT (A) has erred in –*
>
> *a) Holding that The appellant has paid excessive and unreasonable rent for the property owned by Shri M.N Navale relying on the decision of Allahabad High Court in case of Radhabai Dalmiya 125 ITR 134 thereby appellant has contravened the provisions of section 13(1)(c).*
>
> *b) Rejecting the valid contention made alternatively that to the extent of alleged excess amount of rent that only shall disqualify the exemption and that there cannot be wholesale denial of exemption.*
>
> *3. On the facts and in the circumstances of the case the CIT (A) has erred in holding that shares acquired in Public Ltd Company are in the nature of investment contravening the provisions of section 13(1)(d) overlooking the fact that the said expenditure of Rs.1,50,000/- incurred on acquiring those shares constitute the capital expenditure incurred for furtherance of objects of trust and therefore it amounts to application of income.*
>
> *4. On the facts and in the circumstances of the case the CIT (A) has erred in sustaining the disallowance of Rs 69,00,538/- on the ground that it is a prior period expenditure.*
>
> *The above grounds of appeal may kindly be allowed to be amended, altered, modified etc., in the interest of' natural justice."*

25.1. On the other hand, the grounds raised by the Revenue (which have been subsequently revised) in ITA No.16/PUN/2015 for A.Y. 2008-09 reads as under:

> *" 1. On facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance made u/s.40A(2)(b) on account of payment on rent in excess made to M.N. Navale (Bigger HUF), a related party.*
>
> *2. On facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the provision of section 13(1)(c) r.w.s.13(3) of the Income Tax Act, 1961 are not attracted.*

3.On facts and in the circumstances of the case, the Ld. CIT(A) has erred in deciding the issue of excess payment of rent considering only one limb of the Hon'ble ITAT's order no.149/PN/2010 dtd. 31/03/2012 regarding the existence of M. N. Navale (bigger HUF), however has entirely overlooked the other limb of the said order wherein the Hon'ble ITAT had directed the AO to examine the veracity of source of investment in the properties by the Bigger HUF which were let Out on rent to the assessee.

4. On the facts and in the circumstances of the case, the Ld. CIT (A) was not justified in deleting the addition made by the AO on account of Investment In shares of Co-operative bank and Public Limited Companies by not appreciating the facts that the assessee had contravened the provisions of Section 13(1)(d) for the reason of investment in shares of co-operative bank and Public Limited Companies as these are not specified in section 11 (5) of the Act. The Ld. CIT (A) has also not appreciated the fact that similar addition made in A.Y. 2006-07 with respect to investment in shares of Co-operative Banks which has been confirmed by Ld. CIT (A). Further, the Ld. CIT (A) has not considered the amended provisions of section 13(1)(d)(iii) of the Act with respect to investment in shares of Public Limited Companies.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that Shri M. N. Navale (Bigger HUF) does not stand in a relationship specified under section 13(3) of the Act, without appreciating that Bigger HUF was a concern in which trustees of the trust had a substantial interest therefore, M. N. Navale (Bigger HUF) is a person specified in section 13(3) of the Act.

6. On the facts and in the circumstances of the case, the Ld. CIT (A) was not justified in deleting the addition made by the A.O. on account of disallowance in respect of amount written off of Rs.1,49,532/- which was detected on account of special audit.

7. The order of CIT(A) may be vacated and that of the Assessing Officer be restored."

26. Before us, at the outset the Ld.AR submitted that the Assessee does not wish to press ground No.1 of the present appeal. Further, grounds Nos.2 to 4 raised in the appeal are identical to the grounds raised by the assessee in its appeal for A.Y. 2007-08 and therefore the submissions made by him while arguing the appeal for A.Y. 2007-08 would be equally applicable to the present appeal also. Ld DR did not controvert the submissions made by Ld AR.

27. We have heard the rival contentions. Ground of appeal No.1 is dismissed. The Ld. AR for the assessee pointed out that the ground No.2, 3

and 4 raised in A.Y.2008-09 and ground of appeal No.2 and 3 raised in A.Y.2009-10 are identical to issue raised in A.Y.2007-08 by the assessee. According, we hold that our decision given in A.Y.2007-08 on the said issues would apply mutatis-mutandis. Accordingly, said grounds of appeal are decided as in A.Y.2007-08. The Ld. AR for the assessee pointed out that the issues raised by Revenue in ground of appeal No. 1 to 5 are similar to ground raised by Revenue in A.Y.2007-08. Hence, our decision in A.Y.2007-08 would apply mutatis-mutandis. Grounds of appeal raised by Revenue are, thus, decided as indicated above.

28. Ground No 6 raised by Revenue is with respect to deletion of disallowance of Rs.1,49,532/- in respect to amounts written off.

29. CIT(A) while deciding the issue in Para 9 of the order has noted that the disallowance was made on the basis of the report of Special Auditor under Section 142(2A) of the Act. It was assessee's submission that the amounts represented petty debit balances carried forward which had remained to be adjusted against the relevant expenses and on realizing that these balances represented fictitious receivables, the aggregate amount of Rs.1,49,532/- was written off and further the write off was in accordance with Generally Accepted Accounting Policies. CIT(A) has noted that the AO has not discussed the issue at all on merits and in the absence of any discussion on the nature of amounts, he deleted the addition.

Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

30. Before us, Ld.DR submitted that Ld CIT(A) has wrongly deleted the addition. Ld AR on the other hand reiterated the submissions made before CIT(A) and supported his order.

31. We have heard the rival submissions and perused the material on record. The issue being of deletion of addition of Rs. 1,49,532/-. Before us, Ld DR has not pointed out any fallacy in the findings of CIT(A). In such circumstances, we find no reason to interfere with the order of CIT(A) in allowing write off of preoperative expenses and thus, the **ground No.6 of Revenue is dismissed.**

32. **In the result, the appeal of assessee and appeal of the Revenue are decided as indicated above.**

33. We now take up assessee's appeal No. ITA No 2110/PUN/2014 and Revenue's appeal in ITA No17/PUN/2015 for AY 2009-10.

34. The grounds raised by the Assessee in ITA No. 2110/PN/2014 reads as under:

> *"1. On the facts and in the circumstances of the case the CIT(A) having accepted that there is no contravention of section 13(1)(c) in respect of rent paid for the properties owned by M.N.Navale (Bigger HUF), not being a specified person and directing the Assessing Officer to delete the disallowance made u/s.40 (A)(2)(b) in respect of rent paid, has erred in further holding that invocation of see 13(1)(c) is upheld as the part of income was used for benefit of a prohibited person.*
>
> *2. On the facts and in the circumstances of the case the CIT (A) has erred in holding that shares acquired in Public Ltd Company are in the nature of investment contravening the provisions of section 13(1)(d) overlooking the fact that the said expenditure of Rs.1,50,000/- incurred on acquiring those shares constitute the capital expenditure incurred for furtherance of objects of trust and therefore it amounts to application of income.*

> *3. On the facts and in the circumstances of the case the CIT (A) has erred in sustaining the disallowance of Rs.59,33,827/- in the ground that it is a prior period expenditure."*

35. On the other hand, the grounds raised by the Revenue (which were subsequently revised) in Appeal No.17/PUN/2015 reads as under:

> *"1. On facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance made u/s.40A(2)(b) on account of payment on rent in excess made to M.N. Navale (Bigger HUF), a related party.*
>
> *2. On facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the provision of section 13(1)(c) r.w.s.13(3) of the Income Tax Act, 1961 are not attracted.*
>
> *3. On facts and in the circumstances of the case, the Ld. CIT(A) has erred in deciding the issue of excess payment of rent considering only one limb of the Hon'ble ITAT's order no.149/PN/2010 dtd.31/03/2012 regarding the existence of M. N. Navale (bigger HUF), however has entirely overlooked the other limb of the said order wherein the Hon'ble ITAT had directed the AO to examine the veracity of source of investment in the properties by the Bigger HUF which were let Out on rent to the assessee.*
>
> *4. On the facts and in the circumstances of the case, the Ld. CIT (A) was not justified in deleting the addition made by the AO on account of Investment In shares of Co-operative bank and Public Limited Companies by not appreciating the facts that the assessee had contravened the provisions of Section 13(1)(d) for the reason of investment in shares of co-operative bank and Public Limited Companies as these are not specified in section 11 (5) of the Act. The Ld. CIT (A) has also not appreciated the fact that similar addition made in A.Y. 2006-07 with respect to investment in shares of Co-operative Banks which has been confirmed by Ld. CIT (A). Further, the Ld. CIT (A) has not considered the amended provisions of section 13(1)(d)(iii) of the Act with respect to investment in shares of Public Limited Companies.*
>
> *5. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that Shri M. N. Navale (Bigger HUF) does not stand in a relationship specified under section 13(3) of the Act, without appreciating that Bigger HUF was a concern in which trustees of the trust had a substantial interest therefore, M. N. Navale (Bigger HUF) is a person specified in section 13(3) of the Act.*
>
> *6. The order of CIT(A) may be vacated and that of the Assessing Officer be restored."*

36. Before us, at the outset, the Ld. AR submitted that the Assessee does not wish to press ground No 1 of the present appeal and that the grounds No 2 & 3 raised in the appeal are identical to the grounds raised

by the assessee in its appeal for AY 2007-08 and therefore the submissions made by him while arguing the appeal for AY 2007-08 would be equally applicable to the present appeal also. As far as the grounds raised by the Revenue are concerned he submitted that the grounds raised by Revenue are also similar to the grounds raised by Revenue in AY 2007-08 and therefore the submissions made by him while arguing the appeal for AY 2007-08 would be equally applicable to the present appeal also. Ld DR did not controvert the submissions made by Ld AR.

37. We have heard the rival submissions and perused the material on record. In view of the Ld AR's submission**, ground No.1 is dismissed as not pressed.** As far as the issues raised in ground Nos.2 & 3 are concerned, in view of the submissions of both the parties that the facts in those grounds are identical and similar to the grounds raised by Assessee in AY 2007-08. Following the same parity of reasoning, our decision given in A.Y.2007-08 would apply mutatis-mutandis to the issue raised by assessee. Hence, grounds of appeal raised by assessee are decided accordingly. Similarly, issues raised by Revenue are also identical to the issues raised in A.Y.2007-08 and our decision shall apply mutatis-mutandis.

38. In the result, appeal of the assessee and appeal of the Revenue are decided as indicated above.

39. We now take up Assessee's appeal No.2077/PUN/2014 for AY 2008-09.

40. The grounds raised by the Assessee in ITA No.2077/PUN/2014 reads as under:

> *"On the facts and in the circumstances of the case the CIT(A) has erred in not directing the Assessing Officer to rectify the assessment order by setting off the unabsorbed deficit of earlier A.Y. 2000-01 and 2003-04."*

41. Before us, at the outset, the Ld AR submitted that the grounds raised have become academic. The aforesaid contention of the Ld AR has not been controverted by Ld DR.

42. We have heard the rival submissions. In view of the Ld AR's contention that the ground raised in the appeal has been rendered academic, **the ground is dismissed and thus, the appeal of assessee is dismissed.**

43. **In the result, the appeal of assessee in ITA No.2077/PUN/2014 is dismissed.**

44. Before close of hearing, the learned Authorized Representative for the assessee stated that for assessment year 2007-08 (in ITA No.2075/PUN/2014) because of confusion of Revenue raising a ground of appeal against addition of Rs. 2.04 crores, being deleted by the CIT(A), the assessee by an error had not pressed the ground of appeal No.5. However, he wanted to now press the ground of appeal No.5.

45. The Assessing Officer at page 7 of assessment order has dealt with the issue. The assessee had advanced sum of Rs. 2.04 crores to educational institution as application of income and had claimed the same

to be treated as case of donation. However, the Assessing Officer at page 7 holds as under:-

> "***Advances to others.***
>
> *It was observed that the trust has given advances of Rs.2,12,85,506/- to other trusts as under:*
>
> *Savitribai Phule Shikshan Prasarak Mandal Rs.1,87,60,506/-*
>
> *Shri yeshwantrao Chavan Shikshan prasarak Mandal Rs.17,25,000/-*
>
> *Shrinath Shikshan prasarak mandal Rs. 8,00,000/-*
>
> *It is seen that the trustees of STES are trustees in two of these trusts viz. Savitribai Phule Shikshan prasarak mandal and Shrinath Shikshan prasarak mandal. Hence it is obviously a case where there is violation of section 13(1)(c).*

46. The Assessing Officer had disallowed the said claim of assessee in view of violation of provisions of section 13(1)(c) of the Act, which has been upheld by CIT(A) vide para 13.3, which is being reproduced by us in the paras hereinabove while dealing with ground of appeal No.6 raised by Revenue. The assessee had made advances to other educational institutions but the plea of assessee before us is that the Circular on this issue though refers to donations but taking analogy, it also refers to advances, wherein CBDT talks of payment of sums and not advances. He, therefore, submitted that the same cannot be added as income.

47. The learned Departmental Representative for the Revenue strongly rebutted the submissions of assessee and pointed out that provisions of section 13(1)(c) of the Act were directly or indirectly applicable.

48. We have heard the rival submissions and perused the material on record. We find that the Tribunal in assessee own case in ITA

No.320/PUN/2010, relating to assessment year 2006-07, order dated 14.12.2016 vide para 72 had held as under:-

> *"72. In view of the above, we are of the considered opinion that whenever there is violation of section 11(5) and 13(1)(c) of the I.T. Act, exemption cannot be withdrawn for the entire income and income which is the subject matter of violation only can be brought to tax. Accordingly, additional ground No.3 by the assessee is allowed."*

Following the same parity of reasoning, since the advances made by assessee to other educational institutions violate the provisions of section 13(1)(c) of the Act, then the said advances cannot be allowed as deduction under section 11 of the Act, same is brought to tax in the hands of assessee. We direct accordingly. Consequently, the assessee is not entitled to any exemption under section 11 of the Act, where there is violation of section 13(1)(c) of the Act. Hence, ground of appeal No.5 raised by assessee is dismissed.

49. **To sum up, appeals of the assessee in ITA Nos.2075 and 2076/PUN/2014 for A.Ys.2007-08 and 2008-09 and ITA No. 2110/PUN/2014 for A.Y. 2009-10 are partly allowed. The appeal of assessee in ITA No.2077/PUN/2014 for A.Y. 2008-09 is dismissed. All the appeals of Revenue in ITA Nos. 15 to 17/PUN/2015 for A.Ys. 2007-08 to 2009-10, respectively, are partly allowed.**

Order pronounced on this 17th the day of October, 2018.

Sd/-	Sd/-
(SUSHMA CHOWLA)	**(ANIL CHATURVEDI)**
न्यायिक सदस्य/JUDICIAL MEMBER	लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 17/10/ 2018.
SB / Yamini

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Central, Pune.
4. The CIT(Appeals)-III, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**ए**" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार/ BY ORDER,

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वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.