आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA No. 1066/JP/2018
निर्धारण वर्ष / Assessment Year :2015-16

Global Institute of Technology, Society D-91, Ambabari, Jhotwara Road, Jaipur.	बनाम Vs.	Deputy Commissioner of Income Tax (Exemptions), Circle, Jaipur.
स्थायी लेखा सं. / जीआईआर सं. / PAN/GIR No.: AAATG 3217 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Adv) &
Ms. Isha Kanoongo (Adv)
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 23/10/2018
उदघोषणा की तारीख / Date of Pronouncement : 05/11/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 04/09/2018 of ld. CIT(A)-3, Jaipur for the A.Y. 2015-16. The assessee has raised following grounds of appeal:

"1. Under the facts and circumstances of the case, the ld Assessing Officer has erred in rejecting the claim of the assessee for exemption U/s 11 and 12 of the Income Tax Act, 1961.

2. Under the facts and circumstances of the case, the ld. Assessing Officer has erred in applying the provisions of Section 164(2) of the IT Act for assessing the income of the society as business income after denying the exemption U/s 11 of the Act.

3. Under the facts and circumstances of the case, the ld CIT(A) has erred in confirming the addition of Rs. 60,60,000/- made by the A.O. in violation of Section 13(1)(c) r.w.s. 13(2)(b) of the Income Tax Act, 1961 on account of interest free advances to the specified persons.

4. Under the facts and circumstances of the case, the ld. CIT(A) has erred in confirming the addition of Rs. 4,68,55,950/- by treating the development receipts as revenue receipts instead of capital receipts for development purposes without considering the earlier judgments of Hon'ble ITAT.

5. Under the facts and circumstances of the case, the ld. CIT(A) has erred in confirming the addition of Rs. 71,18,248/- (Rs. 2997140/- of registration receipts, Rs. 27500/- of book bank receipts and Rs. 4093608/- of form and late fees receipts) by treating the revenue receipt as against capital receipts and receipts for the particular purposes without considering the earlier judgments of Hon'ble ITAT.

6. Under the facts and circumstances of the case, the ld. CIT(A) has erred in not allowing the capital expenditure as application of income for computing income of the trust.

7. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing."

2. Grounds No. 1 and 2 of the appeal are regarding denial of exemption U/s 11 and 12 of the Income Tax Act, 1961 (in short the Act) and applying the provisions of Section 164(2) of the Act. The assessee is a society and running educational institution in the name and style of M/s Global Institute of Technology. The assessee was granted registration U/s 12AA of the Act. The assessee filed its return of income on 28/09/2015 declaring NIL income after claiming the benefit of Sections 11 and 12 of the Act. The Assessing Officer while completing the assessment U/s 143(3) of the Act on

14/11/2017 denied the exemption U/s 11 and 12 of the Act and determined the total income of the assessee at Rs. 6,60,47,840/-.

3. The assessee challenged the action of the Assessing Officer before the ld. CIT(A).Though, the ld. CIT(A) has granted part relief, however, the denial of exemption U/s 11 and 12 of the Act was sustained by the ld. CIT(A). The ld AR of the assessee has submitted that the Assessing Officer has denied the claim of exemption U/s 11 and 12 of the Act in view of the violation of provisions of Section 13 of the Act in respect of the interest payment to the specified persons as well as the advances given to the specified persons in violation of Section 13(1)(c) read with Section 13(2)(b) of the Act. Further the Assessing Officer has also made disallowances on account of salary paid to the specified persons. He has referred to the decisions of this Tribunal in assessee's case for A.Y. 2013-14 and 2014-15 and submitted that the Tribunal has allowed the claim of exemption U/s 11 and 12 of the Act and deleted the addition made by the Assessing Officer on similar grounds. Thus, the ld AR has submitted that even if there is a violation of Section 13 of the Act in respect of the certain payments, the entire claim of exemption U/s 11 and 12 of the Act cannot be denied so long the assessee is registered U/s 12AA of the Act. He has further contended that only to the extent of the excess payment to the specified persons can be treated as the income applied for non-charitable purposes

and consequently the amount to the extent of excess payment or benefit given to the specified persons can be treated as income not eligible for exemption U/s 11 and 12 of the Act. The Assessing Officer has denied the claim of exemption U/s 11 and 12 of the Act in entirety which is not the spirit of provisions of Section 13 of the Act. Thus, the ld AR has submitted that once the Tribunal has allowed the claim for the A.Y. 2013-14 and 2014-15 then the denial of exemption U/s 11 and 12 of the Act is not justified and the same may be allowed to the assessee for the year under consideration.

4. On the other hand, the ld CIT-DR has relied upon the orders of the authorities below and submitted that the Assessing Officer has clearly made out a case of violation of provisions of Section 13(1) and 13(3) of the Act and consequently the assessee is not eligible for exemption U/s 11 and 12 of the Act so as to exclude the income from total income of the previous year.

5. We have considered the rival submissions as well as the relevant material on record. The Assessing Officer has made various additions on account of interest payment to the specified persons U/s 13(3) of the Act as well as the advance paid to the specified persons. The Assessing Officer has also made disallowances in respect of the salary paid to the specified

persons. However, some of these disallowances made by the Assessing Officer were deleted by the ld. CIT(A) on the ground that the payment was not found to excessive or unreasonable having regard to the services rendered by those persons or fair market price of the services. Even the interest paid to the specified persons was considered by the ld. CIT(A) as reasonable and not excessive. However, these issues were examined by the ld. CIT(A) as per provisions of Section 40A(2) of the Act. At the outset we note that Section 13(1) of the Act contemplates as an exception to Section 11 and 12 of the Act so far as any part of the income of the property held Trust is used or applied directly or indirectly for the benefit of any person referred to sub-section (3) of Section 13 of the Act. The assessee has not denied that the interest payment, advance as well as salary paid to the persons are the persons referred in sub-section (3) of Section 13 of the Act. However, the denial of benefit of Section 11 and 12 of the Act is not automatic merely because some payments made to the some specified persons but the said payment should be in the nature of benefit of such specified persons. Therefore, if the payment is made without any service by the specified persons then to the extent of payment, which is excessive or without any service, the same will be treated as the income applied or used for the benefit of the specified person not eligible for exemption U/s 11 and 12 of the Act. Further sub Section (2) of Section 13 clarifies that any part of

the such income or property shall be deemed to have been used or applied for the benefit of person referred to in sub Section (3) if it satisfied any of the conditions enumerated in the said sub-section. For ready reference, we reproduce Section 13(2) of the Act as under:

"13(2) Without prejudice to the generality of the provisions of clause (*c*) [45][and clause (*d*)] of sub-section (1), the income or the property[46] of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—

(*a*) if any part of the income or property[47] of the trust or institution is, or continues to be, lent[47] to any person referred to in sub-section (3) for any period during the previous year without either adequate security[47] or adequate interest or both;

(*b*) if any land, building or other property[47] of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;

(*c*) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;

(*d*) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;

(*e*) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;

(*f*) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate;

[48][(*g*) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3):

Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so

diverted does not exceed one thousand rupees;]

(*h*) if any funds[49] of the trust or institution are, or continue to remain, invested[49] for any period during the previous year (not being a period before the 1st day of January, 1971), in any concern[49] in which any person referred to in sub-section (3) has a substantial interest.

Clause (c) of Section 13(2) of the Act envisages that if any amount is paid by way of salary allowances or otherwise during the previous year to any person referred to in sub-section (3) for the services rendered by that person to the Trust or Institution and the amount so paid is in excess of what may be reasonably paid for such services, then the payment to the specified persons is no doubt is rightly barred under the provisions of Section 13 of the Act but only to the extent the said payment is in excess of what may be reasonably paid for the services rendered by the specified persons and will be deemed as such income has been used or applied for the benefit of the specified persons. In the case in hand, the ld. CIT(A) has already considered that the salary and interest paid to the specified persons was not in excess of what may be reasonably paid, therefore, to that extent the payment of salary and interest will not attract the provisions of Section 13(1) of the Act. Hence, even if any part of the income or property which is found to be used or applied for the benefit of the persons specified to in sub-section (3) of Section 13 of the Act, the benefit of Sections 11 and 12 is not available only to that extent and the claim of the assessee cannot be

denied in toto. Accordingly we hold that the denial of exemption to the assessee U/s 11 and 12 of the Act is not justified except to the extent where the specific part of the income or property is found to be used or applied for the benefit of specified persons. Hence, the orders of the authorities below qua this issue are set aside and both the grounds of the assessee's appeal are allowed.

6. Ground No. 3 of the appeal is regarding the addition of Rs. 60,60,000/- on account of interest free advances to specified persons. The ld AR of the assessee has submitted that the assessee Trust advanced a sum of Rs. 5,05,00,000/- to M/s Perennial Real Estate Pvt. Ltd. for purchase of land vide agreement dated 27/8/2012. The Assessing Officer held that the provisions of Section 13(2) of the Act are attracted on such advances as the trustees of the assessee are also Director in the said company. The ld AR has submitted that since it is not a loan or advance given to the company but the money was paid for purchase of the land and it was not either used or applied directly or indirectly for the benefit of any person referred to in Section 13(3) of the Act. Once the amount was paid for purchase of land under an agreement then it will not fall in the category of the income or property used for the benefit of the specified person. The ld AR has submitted that the Assessing Officer has made addition on notional interest of Rs. 60.60 lacs. The ld AR has pointed out that the

payment was made under an agreement for purchase of land for a total consideration of Rs. 8.00 crores against which an advance of Rs. 5,05,00,000/- was paid. The possession of the said land was already transferred to the assessee, however, due to inevitable circumstances, no further payment could be made and the conveyance deed could not be registered. Once the assessee Trust has taken over the possession and enjoying the land in question then the advance paid under the agreement for the purchase of land cannot be treated as benefit to the specified persons. The Assessing Officer has added the notional interest whereas the assessee has not paid any interest on the said amount as it was out of assessee's own capital fund/corpus fund. Once the assessee has not incurred any expenditure on account of interest then the addition made by the Assessing Officer as notional interest is not justified. In support of his contention, he has relied upon the decision of the Hon'ble Supreme Court in the case of CIT Vs. Excel Industries Ltd. (2013) 358 ITR 295 (SC) and the decision of the Hon'ble Guwahati High Court in the case of Kesri Chand Jain Sukh Lal Vs. CIT 238 ITR 47 (Gau).

7. On the other hand, the ld. CIT-DR has relied upon the orders of the authorities below and submitted that the advance was given by the assessee to the specified persons as per provisions of Section 13(3)(c) of the Act. The ld CIT-DR has submitted that undisputedly the advance was

given to the company in which the trustees of the assessee are having substantial interest and therefore, the case falls under the provisions of Section 13(1) read with Section 13(3) of the Act. Since the assessee has not charged any interest on the said advance given to the specified persons, therefore, the Assessing Officer has made the addition of the reasonable interest to be charged.

8. We have considered the rival submissions as well as relevant material on record. Though, the advance of Rs. 5,05,00,000/- was paid to the company in which the trustees of the assessee are also Director and therefore, they are having substantial interest in the said company. However, since the advance in question was given under an agreement dated 27/08/2012 for purchase of land measuring 26,720 Sq. Meters for a total consideration of Rs. 8.0. crores then it is not a simple case of applying the income or property for the benefit of the specified persons. It is part consideration for purchase of land and in absence of any allegation that the consideration was more than the fair market rate or the prevailing price of the land, payment made under the agreement for purchase of land cannot be considered as the income or property of the trust is used or applied for the benefit of the specified persons. The assessee has clearly made out a case that the land in question was in the possession of the assessee and therefore, the payment made under the agreement for

purchase of land. Once the possession of land was already transferred to the assessee then the payment in question was evidently for purchase of land. Therefore, merely because the conveyance deed was not registered as the assessee has not paid the balance payment of purchase consideration would not lead to the conclusion or any inference that the said payment was made for the benefit of the specified persons. The assessee is in possession of the land of Rs. 8.00 crores against which only Rs. 5,05,00,000/- was paid, therefore, we do not find any substance in the opinion of the Assessing Officer as well as the ld. CIT(A) holding that the said payment is falling in the category of application of income or property for the benefit of specified persons. Even otherwise the Assessing Officer has made the addition of notional interest whereas there was no corresponding expenditure incurred by the assessee. In any case when the payment was made as a consideration for purchase of land, possession of which was already transferred to the assessee under the agreement dated 27/08/2012 then the said amount will not partake the character of income or property of the Trust applied or used for the benefit of specified persons. Hence, we delete the addition made by the Assessing Officer on this account.

9. Ground No. 4 of the appeal is regarding the addition of development receipt/fee treating the same as revenue receipt. The ld AR of the assessee

has submitted that the assessee is running educational institution which is technical institute and it charges fee as per the approved fees structure by the Government of Rajasthan for private technical institutions. He has referred to the circular dated 28/7/2012 and 04/9/2012 issued by the Government of Rajasthan whereby private institutions are permitted to charge up to 15% of the total tuition fee as development fee which can be utilized for specific purposes as mentioned in these circulars. Thus, the ld AR has submitted that the receipt of development fee is in accordance with the guidelines issued by the State Government and it is not in the hand of the assessee to fixe and charge the fee but it is monitored and supervised by the State Govt., therefore, the students who voluntarily agree to pay the fee as per the government fees structure takes the admission. Therefore, the development fee received by the assessee has to be used for the specific purpose and for creating infrastructures and acquisition of fixed assets and hence is a capital receipt by nature. The ld AR has relied upon the decision of the Hon'ble Supreme Court in the case of Modern School Vs. Union of India in Civil Appeal No. 2699 of 2001 dated 27/04/2004 and submitted that the Hon'ble Supreme Court has held that as per the recommendation of the Duggal Committee, development fees can be charged from 10 to 15% of tuition fee and the same shall be treated as capital receipt. The said fee shall be collected only if the school maintained

the depreciation reserve fund. The Hon'ble Supreme Court has further held that the development fee for supplementing resources for purchase, up-gradation and replacement of furniture and fixtures as well as equipments is justified. Thus, the ld AR has submitted that even the Hon'ble Supreme Court has held that the development fee is a capital receipt to be used by the institutions for supplementing the resources for purchase of the requisite furniture, fixtures, up-gradation etc. He has relied upon the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Children's Education Society 358 ITR 373 and submitted that the Hon'ble High Court has held that building fund received from students is a capital receipt in nature and therefore, it is created directly to the corpus fund. The ld AR has then relied upon the decision of the Hon'ble Delhi Benches of the Tribunal dated 08/1/2014 in the case of ITO Vs. J.D. Tytler School Society in ITA No. 4476/Del/2011 and submitted that the Tribunal has held that the development fee collected by the assessee is capital receipt in nature and cannot be assessed as income of the assessee. Hence, the ld AR has submitted that once the assessee having no discretion for utilizing the development fee received from the students but it has to be used for the specific purposes as specified in the circulars/orders of the State Govt. then the same is in fact capital receipt and not revenue receipt.

10. On the other hand, the ld DR has submitted that even if the development fee is treated as capital in nature the benefit of Section 12 of the Act is not available as it is not a voluntary contribution by the students but it is a fees charged by the assessee. He has relied upon the order of this Tribunal dated 15/11/2017 in the case of ACIT Vs. M/s Scholars Education Trust of India in ITA No. 1087/JP/2016. The ld CIT-DR has relied upon the orders of the authorities below.

11. In the rejoinder, the ld AR has submitted that the decision of this Tribunal in the case of ACIT Vs. M/s Scholars Education Trust of India (supra) is not applicable in the case of the assessee as in the said case, the Tribunal has given a finding that the fee was charged as a compulsory payment by the students and further the Trust was free to utilize the said receipt as per its discretion, therefore, it was not treated as capital in nature. Further the Tribunal has not considered the decisions relied upon by the ld AR in this case.

12. We have considered the rival submissions as well as relevant material on record. The assessee has received sum of Rs. 4,68,55,950/- as development fee from the students. The Assessing Officer has treated the said receipt as revenue in nature and thereby added the same to the income of the assessee while completing the assessment U/s 143(3) of the

Act. The Assessing Officer has given this finding in para 7.1 and 7.2 as under:

"7.1 The reply of the assessee has been considered but not found acceptable for the following reasons:-

(a) The development fees is a recurring income receipt like the other fee receipts which is charged from the students along with the tuition fees. While the tuition fees is regarded as revenue receipt by the trust, the development fees is regarded as capital receipt for no specific reason;

(b) As per the ledger of Development Reserve, there are no amounts debited against the reserves, which shows that the entire development fee receipts are treated separately only for the purposes of claiming the same as capital receipts and not for expenditure purposes. The capital expenditure incurred for infrastructure development and on fixed assets is not debited to the Development reserve account which shows that the assessee has itself not utilized the amount in the development reserve for the development purposes as claimed.

(c) Further, this also shows that on one hand, the assessee intends to claim depreciation as well as investment/purchase of fixed assets towards application of fund as allowed u/s 11, however, at the same time the assessee intends to immune the funds received as development fees from the tax liability by directly taking them to the balance sheet in the form of development reserve.

(d) The assessee claims that such funds were not utilized for operational purposes but only for the development of the institution. However,

the books of the assessee tell a different story altogether. Nowhere from the books, it is seen that the assessee has spent this amount towards the development of the institution. The assessee has itself not quantified in its records as to how much of the amount from this development reserve was utilized towards development of the institution. Though, the assessee has spent on infrastructure projects during the year but at the same time the assessee has not claimed any expenditure from the development reserve towards this purpose. Hence, the contention of the assessee in this regard is not acceptable.

7.2 In view of the above facts and discussion, it is held that the development fees of Rs.4,68,55,950/- collected by the assessee is a revenue receipt and must be taken into account while computation of the total surplus/deficit. The same is therefore added back to the total income of the assessee for the A.Y. 2015-16."

Thus, it is found by the Assessing Officer that the assessee has kept the entire development fee in the development reserve separately and not claimed any expenditure against the said reserve. Therefore, the treatment of the said receipt in the books of assessee is not disputed by the Assessing Officer as it is kept in the separate development reserve. The question arises whether the development fee received by the assessee is revenue in nature or it is capital. Our attention was invited to the orders dated 18/07/2008 as well as 04/09/2012 of Government of Rajasthan. By these orders, the government has prescribed the guidelines and fees structure to be charged from the students by the private technical institutions apart

from the other conditions that the fee should be collected semester wise and not for the entire year. It is also prescribed that the development and depreciation amount to be deposited in separate account called as depreciation reserve fund. Further as per the guidelines, the institutions are permitted to use the development fee for specific purpose such as (a) purchase and replacement of infrastructure, (b) betterment, growth and up-gradation of institution and (c) special amenities to the students. It was further provided that the management may charge development fee not exceeding 15% of the total amount of tuition fee. The development fee is to be treated as capital receipt and shall be collected only if the institution maintains the depreciation reserve fund equivalent to the depreciation charged in the revenue accounts and collected under the revenue head as well as income generated from the investments made out of this fund. Thus, the State Govt. vide these orders dated 18/7/2012 and 04/9/2012 has allowed the technical institutions to charge development fee not exceeding 15% of total tuition fee and further the said fee should be treated as capital receipt and can be utilized only for specific purposes such as purchase or replacement of infrastructure, up-gradation of institution, special amenities to students etc. Hence, the assessee is having no discretion about utilization of the development fee charged from the students but the said fee has to be utilized for the specific purpose as

allowed by the Government. The Hon'ble Supreme Court in the case of Modern School Vs Union of India (supra) while considering the provisions of Delhi School Education Act, 1973 as well as the Delhi Education Rules has observed as under:

> *"The judgment in TMA Pai Foundation's case was delivered on 31.10.2002. The Union of India, State Governments and educational institutions understood the majority judgment in that case in different perspectives. It led to litigations in several courts. Under the circumstances, a bench of five Judges was constituted in the case of Islamic Academy of Education v. State of Karnataka reported in [(2003) 6 SCC 697] so that doubts/anomalies, if any, could be clarified. One of the issues which arose for determination concerned determination of the fee structure in private unaided professional educational institutions. It was submitted on behalf of the managements that such institutions had been given complete autonomy not only as regards admission of students but also as regards determination of their own fee structure. It was submitted that these institutions were entitled to fix their own fee structure which could include a reasonable revenue surplus for the purpose of development of education and expansion of the institution. It was submitted that so long as there was no profiteering, there could be no interference by the Government. As against this, on behalf of Union of India, State Governments and some of the students, it was submitted, that the right to set-up and administer an educational institution is not an absolute right and it is subject to reasonable restrictions. It was submitted that such a right is subject to public and national interests. It was contended that imparting education was a State function but due to resource crunch, the States were not in a position to establish sufficient number of educational institutions and consequently the States were permitting private educational institutions to perform State functions. It was submitted that the Government had a statutory right to fix the fees to ensure that there was no profiteering. Both sides relied upon various passages from the majority judgment in TMA Pai Foundation's case. In view of rival submissions, four questions were formulated. We are concerned with first question, namely, whether the educational institutions are entitled to fix their own fee structure. It was held that there could be no rigid fee structure. Each institute must have freedom to fix its own fee structure, after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must be able to generate surplus which must be used for betterment and growth of that educational institution. The fee structure must be fixed keeping in mind the infrastructure and facilities available, investment made, salaries paid to teachers and staff, future plans*

for expansion and/or betterment of institution subject to two restrictions, namely, non-profiteering and non- charging of capitation fees. It was held that surplus/profit can be generated but they shall be used for the benefit of that educational institution. It was held that profits/surplus cannot be diverted for any other use or purposes and cannot be used for personal gains or for other business or enterprise. The Court noticed that there were various statutes/regulations which governed the fixation of fee and, therefore, this Court directed the respective State Governments to set up committee headed by a retired High Court Judge to be nominated by the Chief Justice of that State to approve the fee structure or to propose some other fee which could be charged by the institute.

In the light of the judgment of this Court in the case of Islamic Academy of Education (supra) the provisions of 1973 Act and the rules framed thereunder may be seen. The object of the said Act is to provide better organization and development of school education in Delhi and for matters connected thereto. Section 18(3) of the Act states that in every recognized unaided school, there shall be a fund, to be called as Recognized Unaided School Fund consisting of income accruing to the school by way of fees, charges and contributions. Section i8(4)(a) states that income derived by unaided schools by way of fees shall be utilized only for the educational purposes as may be prescribed by the rules. Rule 172(1) states that no fee shall he collected from any student by the trust/society running any recognized school; whether aided or unaided. That under rule 172(2), every fee collected from any student by a recognized school, whether aided or not, shall be collected in the name of the school. Rule 173(4) inter alia states that every Recognized Unaided School Fund shall be deposited in a nationalized bank. Under rule 175, the accounts of Recognized Unaided School Fund shall clearly indicate the income accruing to the school by way of fees, fine, income from rent, income by way of interest, income by way of development fees etc. Rule 177 refers to utilization of fees realized by unaided recognized school. Therefore, rule 175 indicates accrual of income whereas rule 177 indicates utilization of that income. Therefore, reading section 18(4) with rules 172,173, 174,175 and 177 on one hand and section 17(3) on the other hand, it is clear that under the Act, the Director is authorized to regulate the fees and other charges to prevent commercialization of education. Under section 17(3), the school has to furnish a full statement of fees in advance before the commencement of the academic session. Reading section 17(3) with section ı8(3)&(4) of the Act and the rules quoted above, it is clear that the Director has the authority to regulate the fees under section 17(3) of the Act.

The second point for determination is whether clause (8) of the Order passed by the Director on 15th December 1999 (hereinafter referred to as "the said Order") under section 24(3) of the Act is contrary to rule 177?

It was argued on behalf of the management that rule 177 allows the schools to incur capital expenditure in respect of the same school or to assist any other school or to set up any other school under the same management and consequently, the Director had no authority under clause (8) to restrain the school from transferring the funds from the Recognized Unaided School Fund to the society or the trust or any other institution and, therefore, clause (8) was in conflict with rule 177.

We do not find merit in the above arguments. Before analyzing the rules herein, it may be pointed out, that as of today, we have Generally Accepted Accounting Principles (GAAP). As stated above, commercialization of education has been a problem area for the last several years. One of the methods of eradicating commercialization of education in schools is to insist on every school following principles of accounting applicable to not-for-profit organizations/ non- business organizations. Under the Generally Accepted Accounting Principles, expense is different from expenditure. All operational expenses for the current accounting year like salary and allowances payable to employees, rent for the premises, payment of property taxes are current revenue expenses. These expenses entail benefits during the current accounting period. Expenditure, on the other hand, is for acquisition of an asset of an enduring nature which gives benefits spread over many accounting periods, like purchase of plant and machinery, building etc. Therefore, there is a difference between revenue expenses and capital expenditure. Lastly, we must keep in mind that accounting has a linkage with law. Accounting operates within legal framework. Therefore, banking, insurance and electricity companies have their own form of balance-sheets unlike balance-sheets prescribed for companies under the Companies Act 1956. Therefore, we have to look at the accounts of non-business organizations like schools, hospitals etc. in the light of the statute in question.

In the light of the above observations, we are required to analyse rules 172,175,176 and 177 of 1973 rules. The above rules indicate the manner in which accounts are required to be maintained by the schools. Under section 18(3) of the said Act every recognised school shall have a fund titled "Recognised Unaided School Fund". It is important to bear in mind that in every non-business organization, accounts are to be maintained on the basis of what is known as 'Fund Based System of Accounting'. Such system brings about transparency. Section 18(3) of the Act shows that schools have to maintain Fund Based System of Accounting. The said Fund, contemplated by Section 18(3), shall consist of income by way of fees, fine, rent, interest etc. Section 18(3) is to be read with rule 175. Reading the two together, it is clear that each item of income shall be accounted for separately under the common head, namely, Recognised Unaided School Fund. Further, rule 175 indicates accrual of income unlike rule 177 which deals with utilization of income. Rule 177 does not cover all the items of income mentioned in rule 175. Rule 177 only deals with one item of income

for the school, namely, fees. Rule 177(1) shows that salaries, allowances and benefits to the employees shall constitute deduction from the income in the first instance. That after such deduction, surplus if any, shall be appropriated towards, pension, gratuity, reserves and other items of appropriations enumerated in rule 177(2) and after such appropriation the balance (savings) shall be utilized to meet capital expenditure of the same school or to set up another school under the same management. Therefore, rule 177 deals with application of income and not with accrual of income. Therefore, rule 177 shows that salaries and allowances shall come out from the fees whereas capital expenditure will be a charge on the savings. Therefore, capital expenditure cannot constitute a component of the financial fees structure as is submitted on behalf of the schools. It also shows that salaries and allowances are revenue expenses incurred during the current year and, therefore, they have to come out of the fees for the current year whereas capital expenditure/capital investments have to come from the savings, if any, calculated in the manner indicated above. It is for this reason that under Section 17(3) of the Act, every school is required to file a statement of fees which they would like to charge during the ensuing academic year with the Director. In the light of the analysis mentioned above, we are directing the Director to analyse such statements under section 17(3) of the Act and to apply the above principles in each case. This direction is required to be given as we have gone through the balance- sheets and profit and loss accounts of two schools and prima facie, we find that schools are being run on profit basis and that their accounts are being maintained as if they are corporate bodies. Their accounts are not maintained on the principles of accounting applicable to non-business organizations/not-for- profit organizations.

As stated above, it was argued that clause 8 of the order of Director was in conflict with rule 177. We do not find any merit in this argument.

Rule 177(1) refers to income derived by unaided recognized school by way of fees and the manner in which it shall be applied/utilized. Accrual of income is indicated by rule 175, which states that income accruing to the school by way of fees, fine, rent, interest, development fees shall form part of Recognized Unaided School Fund Account. Therefore, each item of income has to be separately accounted for. This is not being done in the present case. Rule 177(1) further provides that income from fees shall be utilized in the first instance for paying salaries and other allowances to the employees and from the balance the school shall provide for pension, gratuity, expansion of the same school, capital expenditure for development of the same school, reserve fund etc. and the net savings alone shall be applied for establishment of any other recognized school under rule 177(i)(b). Under accounting principles, there is a difference between appropriation of surplus (income) on one hand and transfer of funds on the other hand. In the present case, rule 177(1) refers to

appropriation of savings whereas clause 8 of the order of Director prohibits transfer of funds to any other institution or society. This view is further supported by rule 172 which states that no fee shall be collected from the student by any trust or society. That fees shall be collected from the student only for the school and not for the trust or the society. Therefore, one has to read rule 172 with rule 177. Under rule 175, fees collected from the school have to be credited to Recognized Unaided School Fund. Therefore, reading rules 172,175 and 177, it is clear that appropriation of savings (income) is different from transfer of fund. Under clause 8, the management is restrained from transferring any amount from Recognized Unaided School Fund to the society or the trust or any other institution, whereas rule 177(1) refers to appropriation of savings (income) from revenue account for meeting capital expenditure of the school. In the circumstances, there is no conflict between rule 177 and clause 8.

The third point which arises for determination is whether the managements of recognised unaided schools are entitled to set up a Development Fund Account?

In our view, on account of increased cost due to inflation, the management is entitled to create Development Fund Account. For creating such development fund, the management is required to collect development fees. In the present case, pursuant to the recommendation of Duggal Committee, development fees could be levied at the rate not exceeding 10% to 15% of total annual tuition fee. Direction no.7 further states that development fees not exceeding 10% to 15% of total annual tuition tee shall be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipments. It further states that development fees shall be treated as Capital Receipt and shall be collected only if the school maintains a depreciation reserve, fund. In our view, direction no.7 is appropriate. If one goes through the report of Duggal Committee, one finds absence of non-creation of specified earmarked fund. On going through the report of Duggal Committee, one finds further that depreciation has been charged without creating a corresponding fund. Therefore, direction no.7 seeks to introduce a proper accounting practice to be followed by non-business organizations/not-for-profit organization. With this correct practice being introduced, development fees for supplementing the resources for purchase, upgradation and replacements of furniture and fixtures and equipments is justified. Taking into account the cost of inflation between 15th December, 1999 and 31st December, 2003 we are of the view that the management of recognized unaided schools should be permitted to charge development fee not exceeding 15% of the total annual tuition fee.

To sum up, the interpretation we have placed on the provisions of the said 1973 Act is only to bring in transparency, accountability, expenditure management and

utilization of savings for capital expenditure/investment without infringement of the autonomy of the institute in the matter of fee fixation. It is also to prevent commercialization of education to the extent possible."

Thus, the Hon'ble Supreme Court while considering the recommendation of Duggal Committee has held that the development fee could be levied at the rate not exceeding 10 to 15% of the total annual tuition fee. Further the said fee shall be treated as capital receipt and shall be collected only if school maintains a depreciation reserve fund. Hence, the development fee collected from the students can be used only for the specific purpose incurring capital expenditure. The Hon'ble Karnataka High Court in the case of CIT Vs. Children's Education Society (supra) has considered this question in para 27 as under:

"27. *This addition relates to assessment year 2001 to 2003. This addition is under the head of Building Fund. The Assessing Authority treated the Building Fund as revenue receipt. According to the society even if the addition is considered as income, that sum being an income of the society they can claim for exemption under Section 10(23C) of the Act. Therefore the society sought for exemption. The Tribunal held that the Building Fund are received specifically towards the corpus of the assessee-society for being applied in the construction of the building, the receipt is capital in nature and therefore it is credited directly to the corpus fund. The grievance is, the Assessing Authority has considered the same as revenue receipt and has made addition. It is not in dispute that the assessee and the various educational institutions run by the assessee have received substantial donations. The amount so received from the Building Fund is not included in the income and expenditure account of the society. The amounts received are accounted under the Building Fund. Building is to be constructed only for the educational institution run by the society. The object of donation is charity in nature. Therefore the Tribunal granted the benefit of exemption."*

Accordingly, it was held by the Hon'ble Supreme Court as well as the Hon'ble High Court that the building fund is a capital in nature and therefore is credited directly to the corpus fund and the same will not be included in the income and expenditure account of the Trust/Institution. Having considered the facts and circumstances of the case as well as the decisions relied upon by the ld AR, we hold that the development fee received by the assessee from the students as per the guidelines fixing the fee structure by the State Government for the technical institutions and applying the other conditions as specified in the orders of the State Govt. is capital in nature and not revenue. The decision as relied upon by the ld CIT-DR in the case of ACIT Vs. M/s Scholars Education Trust of India (supra) is based on different set of facts and it was not either pleaded or brought on record by the assessee in the said case that the development fee was to be used for specific purpose. Hence, the Tribunal has given the finding based on the fact that the said fee was not part of the corpus fund of the assessee Trust. Accordingly, we delete the addition made by the Assessing Officer on this account.

13. Ground No. 5 & 6 of the appeal are regarding the addition of Rs. 71,18,248/- on account of registration receipt, book bank receipt and late fee receipts etc. and not allowing the capital expenditure as application of income for computing income of the Trust.

14. At the time of hearing, the ld AR of the assessee stated at bar that the assessee does not press ground No. 5 and 6 of the appeal and pleaded that the same may be dismissed as not pressed. The ld CIT-DR has raised no objection if grounds No. 5 and 6 are dismissed as not pressed. Accordingly, grounds No. 5 and 6 of the assessee's appeal are dismissed being not pressed.

15. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 05/11/2018.

Sd/-	Sd/-
(विक्रम सिंह यादव)	(विजय पाल राव)
(VIKRAM SINGH YADAV)	(VIJAY PAL RAO)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 05th November, 2018

*Ranjan
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Global Institute of Technology, Jaipur.
2. प्रत्यर्थी/ The Respondent- The DCIT(E), Circle, Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 1066/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar