

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.N.CHARY, JUDICIAL MEMBER

ITA No. 4868/Del/2019
(Assessment Year: 2014-15)

NIIT Foundation, Plot No. 8, Balaji Estate, Sudarshan Munjal Marg, Kalkaji, New Delhi PAN: AACAN3951E	Vs.	CIT(E), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Yogesh Thar , CA Shri Ankit Agarwal, CA
Revenue by:	Ms. Parmita M. Biswas, CIT DR
Date of Hearing	19/03/2020
Date of pronouncement	27/05/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id. CIT (Exemption), New Delhi dated 26.03.2018 for the Assessment Year 2014-15 u/s 263 of the Act holding that the assessment order passed u/s 143(3) of the Act for Assessment Year 2014-15 on 28.12.2016 by ITO Exemption Ward-2(3), New Delhi accepting returned income of the assessee at Rs. Nil is erroneous, so far as prejudicial to the interest of revenue.
2. The assessee has raised the following grounds of appeal:-

“GROUND I: WANT OF NATURAL JUSTICE

- 1.1 *On the facts and in the circumstances of the case and in law, the Learned Commissioner Income tax (Exemptions), New Delhi ["the CIT"] erred in passing the order u/s. 263 of Income Tax Act, 1961 ("the Act") without giving a fair and reasonable opportunity hearing to the Appellant and thereby violating the principles of natural justice.*
- 1.2 *The Appellant prays that the order of the CIT be struck down as bad in law.*

WITHOUT PREJUDICE TO GROUND NO. I

GROUND II: CIT TRAVELLED BEYOND THE SHOW CAUSE NOTICE ISSUED

2.1 *On the facts and in the circumstances of the case and in law, the CIT erred in exercising jurisdiction under section 263 on the basis of issues/reasons which were not referred in the show cause notice issued by the CIT to the Appellant and without giving the Appellant the opportunity to controvert the same.*

2.2 *The Appellant prays the order passed by the CIT u/s. 263 be held as bad in law.*

WITHOUT PREJUDICE TO GROUND NO. I & II

GROUND III: CIT INVOKED PROVISIONS OF SECTION 263 BASED ON ALLEGED

FACTS/ALLEGATIONS WITHOUT ANY OPPORTUNITY OF REBUTTAL:

3.1 *On the facts and circumstances of the case and in law, the CIT erred in invoking provisions of Section 263 of the Act based on alleged facts and allegations without giving any opportunity to rebut the same and thereby, violating the principles of natural justice.*

3.2 *The Appellant prays the order passed by the CIT ought to be struck down and should be considered as bad in law.*

WITHOUT PREJUDICE TO GROUND NO. I, II & III

GROUND IV: REVISION UNDER SECTION 263 OF THE ACT IS BAD IN LAW

4.1 *On the facts and in the circumstances of the case and in law, the CIT erred in invoking provisions of section 263 of the Act and directing revision of the assessment order passed u/s. 143(3) of the Act by ITO(E), Ward 2(4), New Delhi ("the AO") on the alleged ground that the assessment order was erroneous and prejudicial to the interest of the revenue.*

4.2 *The Appellant prays that order passed u/s. 263 of the Act be struck down as null and void ab initio*

WITHOUT PREJUDICE TO GROUND NO. I, II, III & IV GROUND V: ACTIVITY OF THE APPELLANT IS IN THE NATURE OF EDUCATION

5.1 *On the facts and circumstances of the case and in law, the CIT erred in holding that the activity carried out by the Appellant is not in the nature of 'education' within the meaning of Section 2(15) of the Act and thereby invoking proviso to Section 2(15) of the Act;*

5.2 *The Appellant prays that it be held that the activity carried out by the Appellant is in the nature of 'education' within the meaning of Section 2(15) of the Act and thereby, the proviso to Section 2(15) of the Act is not applicable in case of the Appellant.*

5.3 *The Appellant prays that it be held that the Appellant is engaged in charitable activity as defined u/s. 2(15) of the Act and is eligible for claiming exemption u/s. 11 of the Act.*

WITHOUT PREJUDICE TO GROUND NO. I, II, III, IV & V GROUND VI: ACTIVITY OF THE APPELLANT IS NOT IN THE NATURE OF BUSINESS

6.1 *On the facts and circumstances of the case and in law, the CIT erred in holding that the activity carried out by the Appellant is in the nature of*

trade, commerce or business and accordingly, it is hit by the proviso to section 2(15) of the Act;

6.2 *The Appellant prays that nature of the activity of the Appellant be held as not in the nature of trade, commerce or business and accordingly, be held the proviso to section 2(15) of the Act is not applicable in the case of the Appellant.”*

3. Brief facts of the case shows that the assessee is a society registered under the Societies Registration Act, 1860 as per certificate dated 01.12.2004. It is also registered u/s 12A and recognized u/s 80G (5) (vi) of the Act as per order dated 07.03.2008. It filed its return of income on 23.09.2014 declaring Nil income.
4. The assessee was formed with the following objects:-
 1. *To promote, support and strengthen education, research and training of Information Technology and its application in all fields of activities and to collaborate, co-operate and enter into partnerships with Universities, Colleges and Schools for expanding IT Education and training to play an active role in the human development initiatives of the country by supporting and sponsoring, wherever feasible, the establishment of new Universities, Colleges and Schools for organizing innovative IT Education and training program.*
 2. *To support, sponsor and collaborate with teachers and researchers in Universities and research institutions to develop IT enabled teaching and learning paradigm and new education technologies and to sponsor and support conferences, seminars and workshops of academics and professionals engaged in IT and related fields to share experiences and to strengthen institution industry linkages.*
 3. *To co-operate with and seek cooperation from universities, research institutions and industry in Delhi for strengthening and modernizing the curricula, teaching methods and student assessment procedures in IT Education and training. To play a catalytic role in promoting popularizing and expanding IT education and training etc. The activities of the assessee Society are charitable in nature and within the meaning of Section 2(15) of the Income Tax Act, 1961.”*
5. During assessment proceedings Id. AO enquired about the object, activity, receipt of fees, TDS its reconciliation with form no 26AS, service tax payments and its nature, details of donors/ contributors etc. There was huge communication by the assessee, which we will come to later on. Therefore, Id. AO held that assessee society is engaged in Educational activity u/s 2 (15) of the act and eligible for benefits u/s 11 & 12 of the Income tax Act. The Id AO computed the total income as per income and

expenditure account of Rs. 45341153/- reduced it exempt the expenditure applied for the object of the trust to Rs. 41325810/- and balance amount was found to be less than 15% of the income of the society and therefore, income was computed at Rs. Nil. The Id. AO passed an order u/s 143(3) of the Act on 30.11.2016 determined the total income of the assessee at Rs. Nil

6. On examination of the records, the Id. CIT(E) issued show cause notice u/s 263 of The act as under:-

“Assessment order u/s 143(3) of the Act for A.Y 2014-15, was passed in the case of above assessee on 28.12.2016 by ITO (E) WARD-2(3), New Delhi accepting the returned income at nil.

2. On examination of the assessment records it was prima facie considered that the assessment order is erroneous in so far as it is prejudicial to the interest of revenue for the purpose of the provisions of section 263 of the Act on various grounds. Accordingly, a show cause u/s 263 was issued on 15/16.11.2018 requiring the assessee to explain why the aforesaid assessment order should not be treated as erroneous and prejudicial to the interest of revenue and hence amenable to revision under section 263 of the Act. The notice setting out the fact of the case and issues involved is reproduced below for reference:-

Show Cause Notice:-

It is noted that the Assessment in this case was completed u/s 143(3) on 30.11.2016 at NIL Income. While reviewing the assessment the following observations are made with regard to the quality of assessment framed:-

2. As per the income and expenditure account, the assessee has received an amount of Rs. 1,06,66,236/- as tuition fees. The assessee has itself stating that it is providing training to youth across India. The A.O. has failed to examine whether the activities carried out by the assessee in the absence of affiliation with any regulatory body and adherence to the criteria for formal education laid down by Hon'ble Supreme Court in Lok Shikshan Sansthan case, by Hon'ble Delhi High Court in Delhi Music Society case etc., still qualify as education. In case if the activities of the assessee do not qualify as education, these will qualify as General Public Utility and the proviso to section 2(15) will be applicable in such case. The assessee has received fees for training student which is in the nature of trade, commerce or business and accordingly the surplus from these activities should be brought to tax. This is further required due to the fact that the receipts from different corporate houses have been subjected to TDS u/s 194(J) and therefore, the nature of these receipts in commercial in nature.

2.1 In case if the activities of the assessee do not qualify as education, these will qualify' as General Public Utility and the proviso to section 2(15) will be applicable in such case. The assessee has received fees for training student which is in the nature of trade, commerce or business and accordingly the surplus from these activities should be brought to tax. This is further required due to the fact that the receipts from different corporate houses have been subjected to TDS u/s 194(J) and therefore, the nature of these receipts in commercial and nature.

2.2 The reasons for the selection of the case under CASS is the turnover from services reported to the Service Tax Authorities amounting to RS.3,86,65,028/-. The assessee has also paid service tax on the fees etc received from the students making it a further strong case for invoking the proviso to section 2(15).

3. In view of the facts referred to in Para 2 above, you are hereby given an opportunity of being heard to explain as to why the order passed by the AO should not be considered to be erroneous in so far as it is prejudicial to the interest of the revenue & why an order enhancing or modifying the assessment or cancelling the assessment or directing fresh assessment should not be passed in terms of provision of section 263 of IX Act, 1961.

4. Date of hearing in your case has been fixed for 03.12.2018 at 11:45AM at my office. You may produce all necessary evidence in support of your explanation.,"

7. Assessee responded to that by filing detailed representation explaining the reason for show cause stating that order is neither erroneous and nor prejudicial to the interest of assessee . However , the ld. CIT € proceeded to pass the order u/s 263 of the act as under :-

"Facts of the case:-

4. The assessee society is registered under Societies Registration Act, 1860 vide Order No,S-50787 dated 01.12.2004. The assessee Society is also registered u/s 12A of the Income Tax Act, 1961 vide order No. DIT(E)/12A/2005-06/N-845/1616 dated 30.03.2006. The assessee society is notified u/s 80G (5)(vi) of the Income Tax Act, 1961 vide order no. DIT(E)/2007-08/N- 845/136 dated 07.03.2008.

As per the assessee, it is a society registered on 01st December 2004 under the Societies Registration Act, 1860 with the main object promote, support and strengthen education, research, and training of Information Technology and its application in all fields of activity and to collaborate, cooperate and enter into partnerships with Universities, Colleges and Schools for expanding IT education and training and to play and active role in the human development initiatives of the country by supporting and sponsoring, wherever feasible, the establishment of new Universities, Colleges and Schools for organizing innovative IT

education and training programmes. It is seen from the records that the assessee has receipt various payments from many corporate entities. On these payments TDS has been deducted at source u/s 194C/194J characterizing the payment as in the nature of contractual/professional services rendered by the assessee.

4.1 The details of payments received from various corporate as per TDS statement during the year are under:-

S.No.	Name	Receipts	TDS deducted u/s 194C/J
1.	HINDUSTAN COCA COLA BEVERAGES PVT. LTD.	8223755	164474
2.	M.P. BUILDING & OTHER CONSTRUCTION WORKER WELFARE BOARD	348170	38686
3.	TATA CONSULTANCY SERVICES LIMITED	195003	19500
4.	WORLD VISION INDIA	815130	16302
5.	ATC TOWER COMPANY OF INDIA PVT. LTD.	1039075	20782
6.	APNE AAP WOMEN WORLD WIDE (TRUST)	46765	4677
7.	EFICOR	14000	1400
8.	HOPE FOUNDATION	96098	1922
9.	NUT INITIATIVE FOR LEARNING	10697	1071
10.	NIIT YUVAJYOTI LIMITED	5947278	190360
11.	NIIT LIMITED	444876	44487
12.	SAHYOG FOUNDATION	25667	2567
13.	VIDYA INTEGRATED DEVELOPMENT FOR YOUTH AND ADULTS	60000	1200
14.	ZILA PANCHAYAT	64000	1280
15.	JUBILANT BHARTIA FOUNDATION	10000	1000
16.	GRAM NIYOJAN KENDRA	73034	1460
17.	AIRPORTS AUTHORITY OF INDIA	1058596	21772
18.	AEGIS LIMITED	61500	6150
19.	CIPLA FOUNDATIONS	991160	99440
20.	TATA HOUSING DEVELOPMENT COMPANY LIMITED	263260	5266
21.	THE TATA POWER COMPANY LIMITED	4248962.26	388941
22.	TATA COSULTANCY SERVICES LIMITED	719202	31000

5. A perusal of the records of the case it is seen that the exact nature of these payments vis a vis services rendered by the assessee has not been examined in the assessment proceedings for A.Y.2014-15. Why commercial establishments are making such payments and deducting TDS on such payment, impliedly claiming the expenditure in computation of their taxable income have not been examined in the course of the proceedings. It cannot be disputed that the AO in the course of the assessment proceedings is supposed to examine the nature and genuineness of activities undertaken by the assessee so as to ascertain whether such activities fall within the scope of charitable activities or whether they are hit by proviso to section 2(15) of the Act. From the records, it is clear that no such exercise has been undertaken by the assessing officer and the submissions of the assessee has been

accepted without making necessary enquiries and investigations. The following points have not been specifically examined by the A.O. in the assessment proceedings.

- a. The assessee has been showing the receipts as donations but the payers are consistently deducting TDS and claiming the same as business expenditure towards professional or contractual services. Whether the terms of the agreement and the nature of services rendered by the assessee show that the assessee is merely rendering services for fee or profit and is not engaged in charitable activity as defined under section 2(15) of the Income Tax Act. Whether assessee is merely a tool for these entities that may or may not be engaged in charitable activities on their own.*
- b. Terms of the contracts with various clients and documents show that that the payment to the assessee are booked in their respective accounts as 'recruitment or training expenses' (with TCS), for installation and supply of computer equipment (with Chemical Terminal Trombay limited), for managing, operating and upgrading recruitment centers (with JSL Limited), to act as a technical consultant for course run by Aga Khan Foundation, etc. The fact that essentially comes out from the said agreement is that the assessee is providing supplies and services to its clients who are actually undertaking serme activities in the field of training etc. All the Clients of the assessee have invariably deducted TDS and termed the services received from the assessee as either professional or contractual receipts. The assessee has also raised invoices terming the same as consultancy or professional services and service tax was raised in the invoices The A.O. has failed to appreciate the actual nature of activities undertaken by it.*
- c. It has also came to notice that in all the development centers, the name of the client and the name of NIIT is incorporated prominently in the naming of the centers. The certificates also show the names of the client and NIIT. Thus not only the activities result in advertisement of client but also in creation of brand value of NIIT Limited. The assesee does not have wherewithal to develop the course content. It is clear that the course program is developed by NIIT Limited At many places the centers are run within the premises of NIIT Limited and payments towards rent are also made. Thus in the eyes of the general public the activities of the assessee result in enhancement of brand NIIT, which is a benefit being accrued to a related party, no permissible under section 13(1)(c) of the Act. This aspect of the matter has no been examined at all.*

- d. *It has also come to notice that there is hardly any difference between the training centers run by NIIT Limited and the CDC run at the premises of NIIT by the assessee. Both of them work as a training entity on commercial lines for skill development for raising the employability of personnel being trained in IT, ITes, retail sector. However, the only difference is that in the case of the assessee, the training is sponsored by some corporate, trusts where the assessee acts as a consultant to provide training on their behalf. As the agreements mentioned above state that the role of the assessee is limited to rendering of services to its clients. It is like any other contractor/consultant. The assessee is actually undertaking commercial contracts of providing consultancy on the projects of its clients. The client of the assessee debits amount paid to the assessee as business expenses and claims 100% deduction. In case of donation/grant 100% deductions not allowed. The assessee itself books the income as receipt from educational services.*
- e. *The contracts with clients invariably come with advertisement/logo obligation on the part of the assessee, which also shows the commercial angle of the arrangement.*
- f. *The amounts received by the assessee are not in the nature of specified grant/legal obligation. Rather it is based on commercial arrangements. The payments are received on the basis of invoices raised on deliverables. The donor does not promise to pay the deficit or the assessee has any obligation to pay back the unutilized amounts. The deduction of tax at source on every payments made to the assessee and issue of invoice including service tax show the actual intent of commercial transaction on the side of both the parties.*
- g. *There is no element of charity from the side of the assessee, as it is earning surplus from providing training, by not only charging the training but also getting its cost and profit recouped, who make payments either out of business considerations or out of CSR obligations. The assessee is acting only under a commercial contract as a consultant/contractor.*

The activity of the assessee cannot be categorised as an activity within the meaning of 'education as defined in section 2(15) of the income tax act'. Even if the activity of the assessee is considered as charitable under the limb of General Public Utility, it is hit by proviso to section 2(15) of the act.

- 6. *Now the arguments submitted by the assessee during the course of present proceedings, it is seen that the assessee*

has filed a very detailed reply, which can be summarized in following points.-

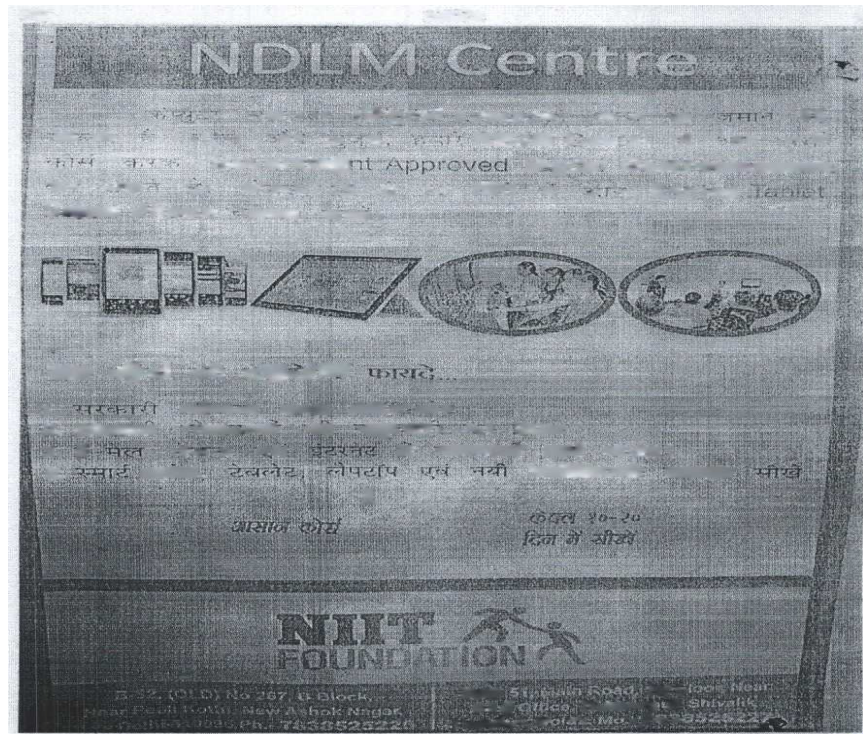
Summary of reply:-

- a. Its courses are affiliated with competent authorities and accordingly its activity would classify as education. It has stated that its courses are mainly approved by NSDC (a government body) and it is incorrect to state that the course are not approved by regulatory authorities.*
- b. it further states that even otherwise there is no requirement that the courses conducted by the assessee should be appointed to any regulatory authoritative. It has relied upon various judicial precedents including the decision of Hon'ble Delhi high Court in the case of Delhi Music Society(357ITR265), Hon'ble Gujrat High Court in Gurjat State Cooperative Union Vs Commissioner of Income Tax(195ITR279), Hon'ble Bombay High Court in DIT(E) vsSamudra Institute of Maritime Studies Trust etc.*
- c. Without prejudice even if the activity is not regarded as education, the same is clearly for the purpose of advancement of general public utility and since it is not engaged in any trade, business or manufacture, it is still eligible for exemption u/s 11 of the Act.*
- d. Without prejudice to the above, if it is held that the activity of the assessee is business activity and therefore taxable, then the losses incurred by the assessee from said activity in earlier years ought to be allowed to be carried forward and set off against the activity of the captioned year.*
- e. In addition to the above, it has also made a detailed submission on invoking of section 263 of the Income Tax Act, by claiming that the order is neither erroneous nor prejudicial to the interest of revenue.*
- 7. The assessee has made elaborate submissions in respect of each of the points highlighted above and also filed supporting documents. The reply of the assessee on the above has been carefully considered with reference to the records of the case.*

7.1. The assessee claims that the course conducted by it at many of its centers located across India is dully approved by National Skill Development Corporation (NSDC). NSDC is a not for profit government set up under the Ministry of Skill Development and Entrepreneurship, Govt, of India. This argument is made to meet the point that its courses are not approved by any government authority. It has also filed sreet shots of the website of NSDC in the paperbook filed showing that its centers are approved.

A careful perusal of the screen shots filed by the assessee show that it is blatantly misrepresenting the fact. In all the screen shots, the NSDC partner, who is authorized to run the course is "NIIT YUVA JYOTI LIMITED", Name of the assessee appears at Building Name and Number. NIIT YuvaJyoti Limited is one of the related parties of the assessee, which is a commercial company. It is thus clear that it is using logistical and infrastructural support of the assessee for running NSDC courses. The assessee is merely hired for providing some support and services. The approval for running the courses are with NIIT YuvaJyoti Limited and not with the assessee. Apart from the assessee, the said company would have employed other professional commercial agencies also. Whether all such agencies can be said to be running an authorized course by NDMC. The reply is clearly in negative, As such, at the outset itself, it is seen that the assessee has misrepresented the fact that it is running approved course from its centers, it is also seen from the details of payments received by the assessee that NIIT YuvaJyoti Limited has made payment of Rs.5947278/- on which TDS of Rs.190360 has been made by it. Thus it is clear that the payment is made for the use of infrastructure and support services rendered by the assessee. The assessee cannot claim that it is authorized agency for running of NSDC course and thus the argument that its courses are approved by government authorities are factually incorrect.

7.2 The assessee has alternatively claimed that for undertaking charitable activities in the field of 'education' it is not required to be approved by any government authorities. It has relied upon various decisions of the High Courts. It is however seen from the facts of the case, the assessee is not rendering any education activities on its own. It is only employed by its clients to run various centers and provide equipment etc at per their requirements. Further the contents of various courses run through it do not inspire a confidence that it can be called education in the nature envisaged by the law for the limited purpose of section 2(15) of the Act, for which exemption from payment of tax could be granted by the government. The details of courses in which the assessee participates on behalf of its clients are from in the nature of digital literacy, certificate course in basic IT, English Foundation, Social Media, Personality development etc for a person qualified 8th class and without any age limit. The duration of the courses runs from 20 hours to maximum 200 Hours. One of the example of courses brought to my notice is



7.2.1 After considering the provisions of sections 2(15) of the Act, the Apex Court in the case of Sole Trustee, LokaSikshana Trust found that all kinds of acquiring knowledge will not come within the meaning of "education". What "education", connotes in section 2(15) is the processing of training and developing the knowledge, skill, mind and character of students by normal schooling. In fact, the Apex Court has observed as follows at page 241 of the 101ITR 234(1975):

"The sense in which the word "education" has been used in section 2(15) is the systematic instruction, schooling or training given to the young is preparation for the work of life. It also connotes the whole course of scholastic Instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of

section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling."

From the above judgment of the Apex Court it would be abundantly clear that there should be a systematic instruction to the students by way of normal schooling. Mere Training classes may provide some kind of knowledge to the students. But that kind of acquisition of knowledge through coaching classes cannot fall within the meaning of "education" as provided in section 2(15) of the Act. As the Apex Court observed, one may acquire knowledge in the course of travelling; during the course of reading newspaper; etc. But that kind of knowledge cannot fall within the term "education" as provided in section 2(15) of the Act. There should be a normal schooling by way of regular and systematic instruction.

7.2.3. The assessee has relied upon the decision of the Hon'ble Delhi High Court in the case Delhi Music Society v. DGIT [2012] 17 taxmann.com 49/204 Taxman 231/(2013) 357 ITR 265/(2012) 246 CTR 327 stating that the court took a very broad view of 'education' for the purposes of section 2(15) and gave a new perspective to the Supreme Court decision in the case of Sole Trustee, LokoSikshana Trust v. CIT [1975] 101 ITR 2.34. It held that teaching music should also be treated as education even if the society was not affiliated to boards and universities providing schooling which resulted in a degree or diploma, because even without any such affiliation the society was creating musicians which were acclaimed worldwide. It may be noted that even in this case the court recognized the world acclaimed educational activities which are not covered by traditional Universities. This ruling has in no way suggested that any kind of educational activity whether it results in a recognized degree or not can be treated as education. The Hon'ble Court had gone into the facts of the case and analysed it before holding Delhi Music Society to be an educational institution. The relevant extracts from the case are reproduced below;

11. Even if these tests are applied to the case of the petitioner the petitioner fulfils them. As has already been noticed, the petitioner is teaching and promoting all forms of music and dance, western, Indian or any other. In accordance with the object, it is running a music school in Delhi, collecting tuition fee and admission fee from the students. Teachers have been employed and they have been paid salaries. Expenditure is also incurred on the maintenance of musical instruments. All these are reflected in the income and expenditure account for the years ended 31st March, 2006 to 31st March, 2010. The petitioner has also filed audited account for these years. In annexure P-5 to the writ petition, the petitioner has annexed a write up of its activities. From this, it is seen that there are 549 students enrolled with the petitioner who are taught western instruments according to their choice such as Piano, Guitar, Electronic Key Board, Wind Instruments, Drums and Vocal. The school faculty

comprises of 30 teachers with 25 of them being Grade 8 and above in western music. There is reference to scholarships that are open to the students including waiver of fees from 25% to 90%. It has been stated that several students of the school have gone on for higher musical studies to places like Moscow, London, New York, Prague and Rome. The schedule of fees effective from April, 2011 is also made part of the annexure. There are rules and regulations governing the running of the school which are also made part of the annexure. The main rules and regulations are that the school works for all seven days a week and remains closed only on national and public holidays; that the school year is divided into four terms of three months each; that students who are attending instrumental music classes would be taught individually by the teachers; that dance students would be taught in groups; that there would be workshops/lecture demonstrations arranged for the benefit of the students from time to time and that attendance in such workshops would be compulsory; that students who report late by more than 20 minutes may be marked absent and so on. There is also a rule that the students who are irregular in attending the classes or absent themselves frequently for long periods without prior intimation, would be removed from the rolls and if any of the students are found lacking in application or discipline, they are liable to be terminated by the Principal.

12. It is seen from the above that the petitioner is being run like any school or educational institution in a systemic manner with regular classes, vacations, attendance requirements, enforcement of discipline and so on. Those provisions in the rules and regulations satisfy the condition laid down in the judgment of the Hon'ble Supreme Court, Sole Trustee, LokaSikshana Trust, cited (supra) that there should be a process of training and developing the knowledge, skill, mind and character of the students by "normal schooling". It cannot be doubted that, having regard to the manner in which the petitioner runs the music school, that there is imparting of systematic instruction, schooling or training given to the students so that they attain proficiency in the field of their choice - vocal or instrumental in western classical music.

Thus Hon'ble Delhi High Court in the case of Delhi Music Society has followed the conditions laid down in the judgment of the Hon'ble Supreme Court, Sole Trustee, LokaSikshana Trust, cited (supra) that there should be a process of training and developing the knowledge, skill, mind and character of the students by "normal schooling".

7.2.4 The Gujarat High Court also had an occasion to consider identical issue in the case of Sourashtra Education Foundation v. CIT [2005] 273 ITR 139/[2004] 141 Taxman 26. The Gujarat High Court found that all kinds of education would not fall within the meaning of section 2(15) of the Act, unless the training, instruction, etc. results in grant of a diploma or degree by a university or a governmental agency.

7.2.5 The Patna High Court in the case of Bihar Institute of Mining & Mine Surveying v. CIT [1994] 208 ITR 608/76 Taxman 455 held that mere conducting of classes for open university / distance education can not be construed as charitable activity within the meaning of section 2(15) of the Act. The Patna High Court, after considering the judgment of the Apex Court in CIT v. Andhra Chamber of Commerce [1965] 55 ITR 722 and in the case of CIT v. Sole Trustee, LokaShikshana Trust [1970] 77 ITR 61 (Mys.) has observed as follows at page 615 of the ITR;

" It is true that by reason of the Finance Act, 1983, the question as to whether any charitable institution is being run with a profit motive or not has lost its relevance. However, the word "charitable" prefixing the word "institution" has to be given its full effect. It appears that one of the principal projects of the petitioner's institution has the object of coaching and preparing the students for appearing in various examinations conducted by the Board of Mining Examination and / or Ml(l) section imparting of education which can be said to be a process of training and developing knowledge and character of students by normal schooling. A coaching institute cannot be said to be an institution where normal schooling is done. The definition of "charitable purpose" is inclusive and not exhaustive."

The above ruling is a landmark ruling wherein the Hon'ble Bihar High Court further ruled that an incidental educational activity or a training program can be considered as education only if such activities are conducted by a recognized educational institution. But if such training program are conducted stand alone by an institution then they cannot be treated as educational activity in the absence of the primary educational activity. The relevant extracts are reproduced as under:

"From the aforesaid observation, it becomes clear that, in order to earn total exemption under section 10(22) of the Act, an assessee should be an educational institution or an establishment which primarily engages itself in educational activities."

"However, such incidental activities alone, in the absence of actual activity of imparting educational by normal schooling or normal conducting of classes, would not be sufficient for the purpose of qualifying the institution to earn the benefit of section 10(22) of the said Act."

"In this case, the school in question does not appear to be recognised by any authority."

"An indicated hereinbefore, the institution is being run for a specific purpose, namely, to prepare the students for appearing in various examinations, but it itself appears to be not authorised, therefore, nor can it be said to have any element of normal schooling."

7.2.7 In the case *New Elim Charitable & Educational Trust vs. Commissioner of Income-tax-1, Cochin-1* [2014] 62 SOT 126 (Cochin - Trib.)(URO)

Where assessee-trust was conducting a study centre for Karnataka Open University, it could not be considered to be an educational institution within meaning of section 2(15).

7.2.8 In the case *Impressario Educational Trust vs. Commissioner of Income-tax-1, Kochi* [2014] 65 SOT 70 (Cochin - Trib.)

In order to fall within meaning of 'education' as provided in section 2(15), there should be a normal schooling by way of regular and systematic instruction.

Where assessee-trust ran an institution conducting classes in event management which were not recognized by governmental bodies and as a consequence it did not result in conferment of any degree or diploma, said activity did not fall within meaning of 'education' and, thus, assessee's claim for registration under section 12AA was to be rejected.

7.2.9 In the case *Information Systems Audit & Control Association vs. Deputy Director of Income-tax (Exemptions) -1, Chennai* [2016] 46 ITR(T) 665 (Chennai - Trib.)

Where assessee-trust conducted courses and seminars to help its members in preparation of a foreign certification course, assessee's activity was not of education but of advancement of any other object of general public utility and involved trade, commerce or business, hence, not entitled for exemption under section 11

8. The purpose of citing the above decisions is merely to show that the activities undertaken by the assessee cannot be categorized as 'education' per se, even if the same were being conducted on its own accounts as the element of formal schooling as envisaged therein is competely missing.. The above decisions emphasize the fact that the definition of 'education' in section 2(15) of the Act is much narrow and every kind of training cannot be considered for exemption from taxation by the legislature. The courses run on behalf of its clients spanning for a duration .of 20 hours to 200 hours without any fixed curriculum, criteria, disciple and other essential ingredients of formal education, but merely to teach how to operate a smart phone, or use e-mail, and speak English cannot be considered education Thus from the facts of the case and nature of courses run by it, it is very clear that the assessee cannot place reliance on the decisions referred by it because:-

a. It is rendering the services only as a contractor/service provider.

b. The content and nature of the service cannot be characterized as "education" in any manner whatsoever.

- c. *The nature, duration and quality of courses run by the assesseees in referred*

9. *Third ground of the assessee is that even if it is not considered a charitable organization imparting education, then also must be considered providing general public utility services. As is not involved in any business, it would not hit by provision to section 2(15). The facts of the case however clearly contradict the argument of the assessee. It has been elaborated in details above that the assessee is merely acting as a professional/consultant appointed by its client for rendering certain services in the field of training. The payment received by it is not in the nature of grant or donation, but it raises invoice upon its clients and earn profit from the services rendered by it. Hence, even if it is considered charitable in nature under the category of GPU, it is clearly hit by proviso to section 2(15) of the Act as all the conditions required therein are clearly satisfied.*

10. *The, next ground of the assessee is that even if it is found to be not eligible for exemption u/s 11 and 12 of the Act, it is entitled to carry forward and set off of loss of earlier years. There is not denying the fact that the assessee is entitled to all the rightful legal claims under the law. Thus, if it is not entitled to exemption u/s 11 and 12 of the Act, the A.O. is duty bound to examine the claim of carry forward and set off of loss in accordance with the provisions of law. It is also required to be examined whether the loss in the earlier year was due to claim of capital expenditure which is allowable to an exempt institution only.*

11. *In the last point the assessee has argued that the order is not erroneous in as much as prejudicial to the interest of revenue because, the AO had taken one of the possible stands. When two views are possible, and the AO has taken one of the possible views, with which the CIT does not agree, it will not make the order amenable to provisions of section 263 of the Act. A number of case laws have been relied upon by the assessee in this regard. The argument of the assessee no longer holds good in view of amended provisions of law. It is firstly seen that the AO has not taken a considered view of the matter and merely accepted the return of the assessee without making the necessary enquiries. The law as it stands today contains a deeming provision when the order of the assessing officer can be deemed to be 'erroneous and prejudicial' to the interest of revenue. Explanation 2 of section 263 of the Act clearly states that where the order is passed without making inquiries or verification which should have been made or the order is passed allowing any relief without inquiring into the claim then such order shall be deemed to be erroneous in so far as prejudicial to the interest of revenue. The case laws relied upon by the assessee is therefore not discussed as it no longer holds good in view of the extant provisions of law relating to revision of assessment."*

8. Thereafter, the learned CIT – exemption held that the assessment order passed by the learned assessing officer accepting the contention of the assessee and allowing exemption under section 11 and 12 ignoring the clear

provisions of section 2 (15) of the act and also its first proviso. Thus, the order passed by the learned assessing officer is clearly erroneous within the meanings of provisions of section 263 of the act and prejudicial to the interest of the revenue. He further referred to the explanation – 2 added by The Finance Act 2005 with effect from was 1 June 2015 to support his order. Consequently he cancelled the assessment order passed under section 143 (3) of the act dated 28/12/2016 for assessment year 2014 – 15 and directed the learned assessing officer to pass fresh assessment order.

9. Thus, the assessee aggrieved has preferred this appeal.
10. Shri CA Yogesh Thar, authorized representative submitted a detailed paper book in two volumes containing 698 pages comprising of the submissions made before the assessing officer on 24 November 2016, 7 November 2016 and 3 September 2016 (two submissions of the even date) and of 16 June 2016. Volume 2 of the paper book is comprising of ground -wise documents relied upon along with the audited financial statements, computation etc. It also contains the assessment order passed under section 143 (3) of the act for past year.
11. The learned authorized representative first took us to the show cause notice issued under section 263 of The Income Tax Act by the learned Commissioner of Income Tax Exemption and also referred to various reasons why the learned CIT exemption has held that assessee is not carrying on the educational activities. Thereafter, he referred to the written submission made by the assessee before CIT Exemption during the course of proceedings placed at page number 627 – 676 of his paper book. He referred to para numbers 1.7 with respect to conducting various approved educational, vocational courses at various development centers run by assessee. He submitted that assessee is primarily operating various educational and development centers in rural areas and slums for all economically backward pockets of semi urban and urban areas across India so as to impart education to the students belonging to the under privileged, economically backward strata of the society with an object to develop their skill so that their employability can increase. He further submitted that assessee has conducted various educational courses in the field of information technology and other communication and vocational courses

such as information technology, English, soft skills, business process outsourcing, banking sector, accounting skills, personality development etc. duly developed or approved by the government authorities and/or globally recognized institutions for the poor and physically and mentally challenged students at either free of cost or at heavily subsidized rates. Assessee also assists its student in getting job placement after completing certified educational courses offered by assessee. He further referred to Para number 1.9 of his submission to say that the assessee operates centers, which are duly approved by National Skill Development Corporation to conduct various educational courses. He submitted that assessee has around 24 centers located across India and presently they have almost 133 centers across India. He also referred to the various locations of the centers. He submitted that from those centers assessee has educated and trained almost 4.25 lakhs students till date and other completing certified educational courses, which has made those students to get better employment opportunity. Therefore, he submitted that the basic activity of the assessee is helping to the poor, economically backward strata of the society to get them employment by imparting them knowledge/training in centers approved by national skill development Corporation. He further stated that National Skill Development Corporation was founded in 2009 by the Ministry of finance and is operated under the Ministry Of Skill Development And Entrepreneurship, Government of India. Thereafter he submitted that those classes of those programs are conducted as per fixed curriculum, conducted and completed within a fixed duration, the students had to compulsorily attend classes and the students who do not have proper attendance are not allowed to take examination. Thereafter the examinations are conducted and necessary certificates are issued. He further stated that these educational courses are offered free either of cost or at heavily subsidized rate at the aforesaid centers. He also submitted a comparative chart to show that the courses conducted by the assessee are at heavily subsidized rate at its centre from the comparison of fees charged from the students by assessee and market rate of such courses. He further stated that assessee is also conducting various approved educational/vocational courses in government schools, community schools

and schools or centers operated by various other NGOs. He further referred that the assessee has been given various recognition and awards by several institutes or organization, which are listed in para number 1.25 of his submission. He further referred to the some of the articles published in newspapers and electronic media recognizing the contribution of the assessee in the field of education and charitable activities. He further submitted that as the activity carried on by the assessee providing educational courses at free coffee of cost or at heavily subsidized rates at its centers, the amount of tuition fees received is not adequate to fund the aforesaid charitable activity of the assessee and therefore part of the expenses are funded by donations received from various persons. He further referred that several corporate shave also sponsored various centers operated by the assessee and these corporate sponsors reimburse the cost incurred by the assessee for operating these centers on actual basis. He also referred the details of such contribution and corporate sponsor during the relevant previous year. Therefore, he submitted that as the courses conducted by the assessee are affiliated with the competent authorities and accordingly activities of the assessee would classify as an educational activities.

12. He further submitted that the learned CIT has treated the activity carried out by the assessee as business since the persons who have contributed have deducted tax at source on the payments made to the assessee and assessee has charged service tax on the fees collected from the students and on those sums. In response to this he submitted the nature of the activities carried on by the assessee are educational in nature, merely for these reasons and cannot be regarded as a business of the assessee. He referred to the decision of the honourable Delhi High Court in India Trade Promotion Organization Versus Director of Income Tax (Exemption) 371 ITR 333. He submitted that as the inherent nature of the activity itself is not the business of the assessee but the 'educational activities' for charitable purposes, merely because service tax has been charged by the assessee or tax has been deducted at source by the payer in compliance with some specific law, the nature of the receipt in the hands of the assessee trust would not become business receipts. He further submitted that these

factors are not relevant at all in determining the nature of receipt of the assessee. For this proposition, he relied upon the decision of the coordinate bench in case of a CIT versus Kalyan Mitra Trust 15 SOT 11 (Delhi). Objecting to the action under section 263 of The Income Tax Act, he made detailed submission that in the present case, the learned assessing officer has made detailed enquiries about the activities performed by the assessee and has reviewed the details in respect of the receipt on which service tax was charged by the assessee and tax deducted at source by the payers. He further referred that relevant details were submitted before the learned assessing officer during the assessment proceedings he referred to various submissions made before the assessing officer on 24 November 2006, 7 November 2006 and 3 September 2006. He specifically referred to submission dated 7 November 2016 before the assessing officer where the note on tuition fees charged from the students belonging to economical weaker section of students and other physically and mentally challenged students was submitted. He submitted that these fees are highly subsidized, discounted or free of cost. He also referred to the revenue received from various sponsors including NGOs, corporate and other institutions for rendering education to poor on which service tax has been charged. He further referred to the submission dated 3 September 2016, which comprise of the consolation of service as per service tax return and revenue as per income and expenditure account as well as the copy of the service tax return filed by the assessee. He further submitted to the submission of the same date (second submission) where the assessee has submitted the details of the reconciliation of receipt as per form number 26AS and income and expenditure account along with the income tax return. He also submitted the submission dated 6 June 2016 where the copy of the memorandum of Association of the society containing its objects and note on the history of the activities conducted by the assessee were also explained to the assessing officer. He therefore submitted that the learned assessing officer during the course of assessment proceedings had made specific enquiries about the nature of services and activities conducted by the assessee and assessee has furnished complete details of the activities along with the relevant supporting documents. He submitted that after

satisfaction with respect to the nature of activities of the assessee, the income stream of donation and fees, the learned assessing officer accepted the activities of the assessee as charitable and education in nature. He therefore submitted that the order passed by the learned assessing officer couldn't be considered as erroneous and prejudicial to the interest of revenue as the learned assessing officer has made all the due enquiries which he should have made to grant exemption to the assessee under section 11, 12 and 13 of the income tax act holding that assessee is engaged in educational activities. He therefore submitted that the due enquiries have been made, the learned CIT exemption has not held that what kind of enquiries further the assessee officer should have made in that particular case. He thereafter relied upon the plethora of judicial precedent to submit that where the learned assessing officer based on income tax return of the assessee has made the detailed enquiries, the order passed by him cannot be said to be erroneous and prejudicial to the interest of revenue. He further referred to specifically the decision of the coordinate bench in case of Narayan Tatu Rane versus Income Tax Officer (70 taxman.com 227) with respect to the explanation – 2 inserted in the section 263 of the act. He further submitted that the order is neither erroneous, nor not at all prejudicial to the interest of revenue. Therefore, according to him the order passed by the learned CIT – E is not at all sustainable in the law.

13. His further grievance was that that certain issues decided by CIT E were not at all part of the proceedings before the learned CIT – E. They were used without confronting the assessee on those issues. He referred to show cause notice and proceedings to show that. He further stated that agreements, which have been referred by the learned CIT exemptions under the order passed under section 263 of the income tax act, were not at all confronted to the assessee. He further submitted that even otherwise the learned CIT exemption did not confront the assessee about his view on the contracts. He further stated that in Para number 5 (b) the learned CIT exemptions have dealt with this issue without confronting the assessee. He further stated that in para number five (e) the learned CIT – E has held that the activities of the assessee has resulted in enhancement of brand in NIIT which is a benefit being accrue to a related party not permissible under

section 13 (1) (C) of the act. The CIT has held that this aspect of the matter has not been examined at all. The learned authorised representative submitted that these issues were not confronted to the assessee during the course of 263 proceedings. Otherwise, they could have been explained. He therefore submitted that NIIT and NIIT foundation have different structures and they are not at all related as defined under section 13 (1) (C) of the act. He further referred to the various agreements entered into by the assessee titled as Memorandum of Understanding. The first referred such agreement placed at page number 677 of his paper book being memorandum of understanding entered into between the assessee and Tata consultancy services Ltd. He submitted that the Tata consultancy services in order to alleviate the condition of meritorious students hailing from economically backward areas particularly from the Chindwara district of M P. TCS offered scholarship for NIIT foundation students in that region. For that purpose, the memorandum of understanding was entered into. He further referred to clause 2 of that agreement which has scholarship objective and stated that ₹ 20,000 per annum per student was provided by that Institute in 12 equal monthly installments to assessee foundation for the scholarship. He further referred to clause 5, which deals with the scholarship eligibility of the students. In view of this, he submitted that the above agreement is purely for imparting education to the meritorious students and the TCS has merely provided a grant/donation/ scholarship to the students who are participating in the courses conducted by the assessee. He further referred to page number 82 of the paper book which consist of memorandum of understanding in the month of June 2014 between NIIT foundation, appellant, as well as, CTTL a Tata group company. He submitted that when the memorandum of understanding has been entered in the month of June 2014 could not be part of the record. Even otherwise, he submitted that Tata Company wanted to engage the assessee for setting up and maintaining “Hole- in -the- wall” learning stations for schoolchildren. He further submitted that the total project cost of that educational activity was Rs 1011608/- which was to be paid by that company to the assessee for conducting these activities. Similarly, he referred to agreement with the Aga Khan foundation dated 27 February

2013 for training agency conducting courses at CDC Centre at MCP school under urban renewal program. He further referred to page number 695 of that agreement which is in annexure A stating that these are the courses, which are being conducted by the assessee in the nature of courses in data entry, certificate course in customer service associate training. He also referred to the fees charged by the assessee is only Rs 987 per student. He submitted that above fees charged is at concessional rate and the teaching is in the classroom manner. He also referred to page number 119 of the paper book, which is structure of student fees charged by the assessee and its compass comparison with the market price of such courses. He submitted that there is a vast difference between what is charged in the market about such courses and what the assessee has charged from the students who are needy and economically backward. In view of this, he submitted that the learned assessing officer has granted the exemption to the assessee holding it to be an educational Institute carrying on the charitable activities and is entitled to the exemption under section 11, 12 and 13 of The Income Tax Act after due verification. Even otherwise, he stated that the order passed by the learned assessing officer is neither erroneous nor not at all prejudicial to the interest of revenue.

14. He further submitted copies of the several certificate of appreciation issued to the various students as appreciation of Digital Literacy Certificates, which are for examination conducted by the National Institute of Open Schooling under the scheme of National Digital Literacy Mission of Department of Electronic And Information Technology Under The Ministry Of Communication And Information Technology, Government of India. He therefore submitted that the assessee is engaged in the educational activities in the manner in which it should have been conducted. Thus assessee is eligible for exemption which has been rightly granted by the learned assessing officer under section 11 and 12 of The Income Tax Act holding it to be an society engaged in the Educational Activities falling within the meaning of section 2 (15) of The Income Tax Act.
15. He further submitted a detailed paper book containing 39 judicial precedents supporting his arguments with respect to his various contentions. With respect to the fact that the assessee should have been put

to the notice before any issue in order under section 263 of the income tax act has been passed by the learned CIT – E, he relied on the decision of the honourable Supreme Court of India in C IT Versus Amitabh Bachchan [384 ITR 200] wherein it has been specifically held that though there can be no dispute that while CIT is free to exercise his jurisdiction in consideration of all relevant facts, a full opportunity to contribute the same and to explain the circumstances surrounding such facts, as may be considered relevant by the assessee, must be afforded to assessee by the CIT prior to the finalization of the decision. He submitted that the various contracts/memorandum of understanding as well as the provisions of section 13 (1) (c) of the act were not at all confronted to the assessee either in the original show cause notice or during the course of revision proceedings. On the issue of the want of natural justice, he submitted that the law always provides assessing officer as well as the assessee to respond to the assessing officer in the process ensuring that both the parties have many opportunities of being heard and there is no injustice merely for want of time. He further stated that the learned CIT could not pass an order under section 263 based on the issue/reasons which were not referred to in the show cause notice issued by the CIT to the appellant and without giving an appellant fair and reasonable opportunity of being heard. He submitted that no doubt those issues were not in the show cause notice, however even otherwise before the conclusion of the proceedings under section 263 of the income tax act the learned CIT exemption should have given the assessee to confront various observation and findings reached by him. The assessee should get a reasonable opportunity of hearing and to explain those issues. He even otherwise submitted that the for the purpose of the invocation of jurisdiction under section 263 of the income tax , both the conditions of section 263 need to be satisfied i.e. that as the order must be erroneous and it should also be prejudicial to the interest of revenue. He submitted that even one of the conditions fails, and then the order under section 263 cannot be sustained. He submitted that the learned assessing officer has though made detailed enquiry on the issue of applicability of provisions of section 2 (15) of the income tax act as well as applicability of section 11 and 12 with respect to the income of the assessee, however, if the learned CIT –

On any basis to dislodge that finding, it should be put to the notice of the assessee, by stating that in order of revision that what kind of inquiries the learned assessing officer has failed to make. He submitted that merely enquiry, which the CIT exemption thought fit, but which are not warranted in the case of the assessee, or has already been examined by the assessing officer, cannot be a basis on which revision under section 263 can be made. He further submitted that if two views are possible and AO has accepted one of the plausible views, then section 263 cannot be invoked. He referred to the celebrated decision of the honourable Supreme Court in case of Malabar industrial Co Ltd versus CIT [243 ITR 83] to support his contention. On the issue of the assessment order being cryptic, small, not discussing the issues in details, he submitted that the decision of the assessing officer could not be prejudicial or erroneous for the only reason that assessing officer has not made any elaborate discussion in his order. He submitted that such discussion can only be made, or generally are made by the learned assessing officer, when the assessee is denied certain benefits or they are not satisfied with the explanation given by the assessee. When the learned assessing officer is satisfied with the detailed explanation given by the assessee, there is no need of mentioning the same in elaborate manner in the assessment order itself. Even otherwise, that does not make the order passed by the learned assessing officer erroneous.

16. He also submitted that the order is not at all prejudicial to the interest of revenue. He submitted that even if the activity of the assessee is regarded as business activity, then the losses incurred by the assessee in earlier years would be eligible for set off against that income and that may be determined for the current year and accordingly there would not be any loss of revenue in the current year. He submitted that appellant has been incurring losses from the activities to last year aggregating to ₹ 3.6 crores which is never been claimed by the assessee. He referred to page number 622 of the paper book volume 2. He therefore submitted that if in this year income from said activity were considered as business income then the losses from past year would be eligible to be set off against the same. He stated that the learned CIT exemption has principally accepted in his revisionary order. Therefore, there would not be any loss of revenue in this year, therefore the order of

the learned assessing officer cannot be considered as prejudicial to the interest of the revenue, and accordingly section 263 of the income tax act cannot be invoked as one of the limb/conditions prescribed under section 263 fails.

17. Thus, he concluded his argument by saying that the order passed by the learned assessing officer is neither erroneous nor prejudicial to the interest of revenue and therefore the order passed by the learned Commissioner of income tax exemption deserves to be set-aside.
18. The learned Commissioner of Income Tax, Department representative vehemently supported the order passed by the learned CIT Exemption. He submitted that the lack of natural justice cannot be claimed by the assessee now as the assessment order has been passed under section 143 (3) of the income tax act and in that process the assessing officer has granted enough opportunities to the assessee to substantiate the claim made by the assessee. He further stated that the learned assessing officer has not made any enquiry during the course of assessment, which he should have made. He referred to the assessment order passed on 30/11/2016 stating that it has been passed in the two paragraphs, wherein the first paragraph the learned assessing officer has mentioned about the status of the assessee and the objects for which it has been framed. Thereafter the learned assessing officer has computed the income of the assessee granting the assessee exemption under section 2 (15) and 11/12 of the income tax act on holding that activities of the assessee are charitable in nature and within the meaning of section 2 (15) of The Income Tax Act 1961. He further referred to para number 2.1 of the show cause notice issued by the learned CIT Exemption which state that in case of the activities of the assessee do not qualify as education and there would be qualifying as general public utility and the proviso to section 2 (15) will be applicable in such cases. The reasons for the same is that assessee has received fees for training student which is in the nature of, trade, commerce or business and accordingly the surplus from these activities should be brought to tax. This is further because of the reason that the receipt from different corporate houses have been subjected to tax deduction at source under section 194J of The Income Tax Act and therefore the nature of these

receipts are in commercial in nature. He further referred to the order of the learned CIT Exemption wherein the reliance was placed on the decision of the Honourable Supreme Court in sole trustee Lok Shiskhsan sansthan Trust wherein it has been held that there should be a process of training and developing the knowledge, skill, mind and character of the student by normal schooling. He submitted that assessee is not conducting educational activities as it should have been and in conformity with the decision of the honourable Supreme Court. Therefore, on this ground no fault can be found with the order of the learned CIT Exemption. He further referred to the argument of the learned authorised representative and submitted that on the two views possible concept the learned CIT Exemption has given detailed answer in para number 11 of the order. He submitted that the assessing officer has not taken a considered view of the matter and merely accepted the return of the assessee without making the necessary enquiries. He therefore submitted that explanation 2 of section 263 of the act clearly applies to the facts of the case and therefore the order is erroneous and prejudicial to the interest of revenue as learned assessing officer has failed to make adequate enquiry in this regard. He therefore submitted that there is no infirmity in the order passed by the learned CIT Exemption setting aside the order passed by the learned assessing officer holding that it is erroneous and prejudicial to the interest of revenue.

19. In rejoinder, the learned authorized representative referred to his written submission placed at page number 627 – 665 of the paper book, which was placed before the learned CIT Exemption. He submitted that these issues are replied there and nothing more is required to be said.
20. We have carefully considered the rival contention and perused the orders of the lower authorities. In the case of the assessee, assessment under section 143 (3) of The Income Tax Act, 1961 was passed by the learned assessing officer on 30/11/2016 where the learned assessing officer has recorded the fact that assessee is a society which is registered under the societies registration act, under section 12 A of The Income Tax Act, 1961 and is also holding the recognition under section 80 G (5) (vi) of The Income Tax Act, 1961. The learned assessing officer has noted the objects of the society and thereafter held that income of the assessee society is a charitable in nature

within the meaning of section 2 (15) of The Income Tax Act, 1961. Thereafter he computed the income of the assessee and assessed at Rupees Nil. During the course of assessment proceedings, assessee submitted a letter dated 24 November 2016 wherein the assessee explained its charitable activities conducted during the financial year. Assessee submitted that during the financial year 2013 – 14, 15656 underprivileged youths were trained by in NIIT foundation across various streams such as information technology, English, soft skills, BPO, retail sector banking sector and service sectors. The training was conducted at NIIT foundation run centers and NGO partner centers. Out of the youths that were eligible for job, 2903 students were placed with an average income of ₹ 6800 per month. Each employed student contributed to increase family income making the family more sustainable. It was further stated that various digital literacy initiatives were also started during the period. Assessee is holding Hole in The wall learning stations were also set up across Telangana, Sikkim, West Bengal, and Bihar to provide free access to technology to children in the age group of 6 – 12 years. The children learned to use this learning stations to improve their understanding of science, IT, English, GK and mathematics apart from this Digital Literacy Program was also launched at several locations to provide teacher training and free basic information technology contained. Further, Delhi, Haryana, Rajasthan, Maharashtra, MP, Tamil Nadu, Telengana, Sikkim, West Bengal, and Bihar were the main geographies where the impact was created during this financial year. The assessee further submitted the details of its activity by letter dated 7 November 2016 where the assessee explained its revenue from tuition fees and educational services. The assessee submitted that in respect of fees charged, the assessee is imparting educational services to the economically weaker section of students and other physically and mentally challenged, for students wherein the educational services are rendered either free or heavily subsidized, discounted. Assessee offers highly subsidized training to underprivileged youth. A very small part of the training courses charges fees to the students. This builds commitment to the students to complete the training course and they do not dropout. Anything free is not valued so students are encouraged to pay small fees. For those students who cannot

afford even that small fee, additional discounts are provided. To demonstrate this fact the assessee disclosed a fee structure during the year reflecting number of students and the fees charged compared it with the market rate and number of students and type of course undertaken. Thus, assessee demonstrated before the assessing officer that educational services rendered are heavily subsidized to cater to the needs of poor sections of the society. Assessee also explained that it receives as participation by the NGOs, Corporation, and other institutions, which sponsor educational services of the assessee or vocational training etc for the poorer section of the society. It was also demonstrated that the amount received is spent by the assessee on the intended purpose as mandated by the sponsors. Assessee also submitted a detailed list of educational services receipts for sponsors during the year. Assessee also explained various expenditure incurred by it in the form of office and building rent, repairs and maintenance activities as well as administrative expenses. On 3 September 2016, assessee also explained before the assessing officer the reconciliation of revenue as per the service tax returns filed by the assessee and the revenue disclosed in the income tax returns. Further, the reconciliation of receipts as perform number 26AS and receipts shown in the income tax return are also reconciled with the tax deduction at source made by the corporate. As per page number 283, which is part of the submission made by the assessee before the assessing officer, as per communication dated 6 June 2016, assessee submitted brief note indicating the history of the appellant. Assessee explained that assessee is 'not for profit education society' set up by the promoters of NIIT in 2004 in the name of NIIT education society to reach the unreached, uncaring and unattended for ensuring inclusive development in India. It was further explained that assessee has begun a number of programs that will positively influence the underserved society of the country through various educational interventions. It was stated that intent of the assessee is to better understand the education and employability issues at the grassroots level and build sustainable training intervention models of the assessee, explored the back to training in information technology and IT enabled areas for various not-for-profit organizations across the country. It has many

prototypes with the intent to build scalable and sustainable models. At the same time assessee is also continuing to expand the areas of impact as they collaborate with the corporate social responsibility in the corporate sector, NGOs and funding organizations. The main objects of the assessee were also explained by submitting the copy of the memorandum of Association and a subsequent amendment. Assessee also supported its activity narrated by the assessee by producing before him the various bank accounts as well as the details of donation. After examination of all these information, learned assessing officer passed an order granting assessee exemption provided under 2 (1% as educational institute u/s 11, 12 of The Income Tax Act, 1961 holding that assessee is carrying on charitable activities within the meaning of section 2 (15) of The Income Tax Act, 1961. It is also important to note that for assessment year 2008 – 09, where the assessee was last assessed, on similar lines, where the assessee was held to be carrying on the activities of charitable nature within the meaning of section 2 (15) of The Income Tax Act, 1961. Then learned assessing officer specifically mentioned that the provisions of section 13 of The Income Tax Act, 1961 are not violated at all. Thus for the earlier years also on the similar set of activities the learned assessing officer in that year has taken a view that assessee is carrying on educational activities. Thus in past the activities of the assessee were accepted as educational.

21. Despite this examination carried out by the learned assessing officer during the course of assessment proceedings, the learned CIT exemption issued a notice for setting aside the assessment under section 263 of The Income Tax Act, 1961 on 16/11/2018. The main reason for stating so, is that the income and expenditure account of the assessee has shown that assessee has received the tuition fee income of ₹ 10666236 and the AO has failed to examine whether the activities carried out by the assessee in the absence of affiliation with any regulatory body and adherence to the criteria for formal education laid down by the honourable Supreme Court in case of Sole Trustee, Lok shikhasn Sansthan case does not qualify as education. It was further alleged that the assessee has received fees for training students, which is in the nature of trade, commerce or business, and accordingly the surplus from these activities should be brought to tax. The learned CIT

exemption was also guided by the fact that the receipt from different corporate houses has been subjected to tax deduction at source under section 194J and therefore the nature of these receipts are commercial in nature. Further it was also point of concern for CIT exemption that the turnover from services reported to the service tax authorities amounted to ₹ 38665028 and assessee has also paid service tax on the fees etc received from the students making it a further strong case for invoking the proviso to section 2 (15) of the act. Thereafter considering the reply filed by the assessee the learned CIT Exemption set aside the order passed by the learned assessing officer holding that assessee is only rendering services as a contractor, service provider, the content and nature of the services cannot be characterized as education in any manner whatsoever, and the nature, duration and the quality of courses run by the assessee are not comparable to the activities of the assessee in any manner. It was further held that the courses run on behalf of its clients for a duration of 20 hours to 200 hours without any fixed curriculum, criteria, discipline and other essential ingredients of formal education, but merely to teach how cooperate a Smartphone or use an email, and speak English cannot be considered as an education thus it was held that the order passed by the learned assessing officer is erroneous as he has not made any such enquiries.

22. The details of the activities conducted by the assessee have been explained above at various places therefore to avoid repetition, they are not reiterated. The assessee has categorically stated that it is primarily operating various education and development centers in rural areas and slum and economically backward pockets of semi urban areas across India so as to impart education to the students belonging to the under privileged or economically backward strata of the society with an objective to develop their skill so that their employability can increase. Assessee has also shown that it has charged fees from the students either at subsidized rate or at free of cost. The nature of the training that has been imparted at its various centers, generally, comprises of classrooms, computer labs and other infrastructure required conducting educational classes along with trained faculties to educate and train the students. The assessee is also getting those centers approved by NATIONAL SKILL DEVELOPMENT

CORPORATION to conduct various educational courses approved by them. Thus it is apparent that educational courses conducted by assessee are in the same manner as that of any course or classes conducted by other educational Institute in a schooling format. The assessee has also developed the fixed curriculum, which is duly recognized by these government authorities or may be recognized by other globally recognized institutions. The complete session plan for every course is covered. Therefore it is in a planned manner. The attendance of the students is also compulsory to allow them to take further examination. The necessary certificates to the successful candidates are also issued. The fees charged by the assessee to the various students are compared to the market rate are very low, the deserving student are granted concession or subsidy. The assessee has also conducted various approved educational and vocational courses in government schools, community schools and centers operated by other NGOs. The digital literacy Mission trainings are also provided to the children. The work of the assessee has been accredited by various organizations by awarding recognition and awards. Assessee has also shown various newspaper reports, which clearly shows that assessee, is providing education. Merely because of in certain projects there is a deficit, which deficit is reimbursed by the several corporate entities by spending out of their corporate social responsibility funding to the assessee does not make assessee an non-educational Institute. If, for any reasons, those entities have deducted tax at source due to their own tax obligations, it does not make the income so received by the assessee as business income, Naturally, the character of outflow from the payer cannot always be used in characterizing the inflow of the recipient. The obligation of the assessee of complying with the service tax law also does not make assessee an Institute, which is carrying on business. More so, the opinion of the assessing officer for this year that assessee is carrying on an educational activity is also supported by the assessment history of the assessee where in earlier year also on identical facts and circumstances, the assessee was held to be carrying on educational activities, entitled to deduction/exemption under section 11 and 12 of The Income Tax Act, 1961. Honourable Supreme Court

23. Further , the decision of the honourable Supreme Court in case of The Sole Trustee, Lok Shikshana Trust vs. The Commissioner of Income Tax, Mysore (28.08.1975 - SC) : MANU/SC/0273/1975 It is held that

“5. The sense in which the word "education" has been used in Section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction, which a person has received. The word "education" has not been used in that wide and extended sense according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in Clause (15) of Section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling.

24. These observation of honourable Supreme court were in case of the assessee who was saying that

“ The communication sent by the Sole Trustee to the income-tax officer shows that the trust at present is carrying out only the last mentioned object of the trust, namely, supplying the Kannada speaking people with an organ or organs of educated public opinion.”

25. In fact the activities carried on by the assessee squarely fits into the above criteria.
26. Further honourable Gujarat High court in 195 ITR 279 has analyzed and interpreted the decision of the Honourable supreme court of Sole Trustee Lok shikshan sansthan (Supra) as under :-

“It appears to us that the decision of the Tribunal which seeks to rest it on the observations made by the Supreme Court in *LokaShikshana Trust's* case [1975] [101 ITR 234](#), for holding that, the assessee is not entitled to exemption under section 10(22) of the Act is based on a complete misreading of the observations of the Supreme Court. In *LokaShikshana Trust's* case [1975] [101 ITR 234](#), the Supreme Court, while dealing with the provisions of section 11 read with section 2(15) of the Act which defines "charitable purpose" observed as under (at page 241) :

"The sense in which the word 'education' has been used in section 2(15) in the systematic instruction, schooling or training given to the young is preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word 'education' has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge.....But that is not the sense in which the word 'education' is used in clause (15) of section 2. What 'education' connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling."

The Supreme Court, in the above observations, by referring to the systematic instruction, schooling or training given to the young has only cited an instance in order to indicate as to what the word "education" appearing in section 2(15) of the Act which

defines "charitable purposes" is intended to mean. **We are certain that these observations were not intended to keep out of the meaning of the word "education", persons other than "young". The expression "schooling" also means "that schools, instructs or educates" (The Oxford English Dictionary, Vol. IX, page 217). The Supreme Court has observed that the word "education" also connotes the whole course of scholastic instruction which a person has received. This clearly indicates that the observations of the Supreme Court were not intended to give a narrow or pedantic sense to the word "education". By giving further illustrations of a traveller gaining knowledge, victims of swindlers and thieves becoming wiser, the visitors to night clubs adding to their knowledge the hidden mysteries of life, the Supreme Court has indicated that the word "education" is not used in a loose sense so as to include acquisition of even such knowledge. The observations of the Supreme Court only indicate the proper confines of the word "education" in the context of the provisions of section 2(15) of the Act. It will not be proper to construe these observations in a manner in which they are construed by the Tribunal when it infers from these observations, in para 17 of its judgment, that the word "education" is limited to schools, colleges and similar institutions and does not extend to any other media for such acquisition of knowledge.** The observations of the Supreme Court do not confine the word "education" only to scholastic instructions but **other forms of education also are included in the word "education". As noticed above, the word "schooling" also means instructing or educating. It, therefore, cannot be said that the word "education" has been given an unduly restricted meaning by the Supreme Court in the said decision.** Though, in the context of the provision of section 10(22), the concept of education need not be given any wide or

extended meaning, it surely would encompass systematic dissemination of knowledge and training in specialised subjects as is done by the assessee. **The changing times and the ever widening horizons of knowledge may bring in changes in the methodology of teaching and a shift for the better in the institutional setup. Advancement of knowledge brings within its fold suitable methods of its dissemination and though the primary method of sitting in a classroom may remain ideal for most of the initial education, it may become necessary to have a different outlook for further education. It is not necessary to nail down the concept of education to a particular formula or to flow it only through a defined channel. Its progress lies in the acceptance of new ideas and development of appropriate means to reach them to the recipients.**

Even if it were to be held that the observations of the Supreme Court would apply only to the schools, colleges and similar institutions as held by the Tribunal, we are satisfied from the nature of the activities of the assessee-Co-operative Union of running colleges and training centres for various courses for the purposes of imparting training and/or awarding diplomas and certificates, that the assessee is an educational institution existing solely for educational purposes and not for the purposes of profit.

The question before the Supreme Court, in the above case was as to whether exemption under section 11 read with section 2(15) of the Act could be given to a trust which was at the relevant time publishing newspapers and journals. Section 11(a) applies to income derived from property held under trust wholly for charitable or religious purpose while section 10(22) covers any income of a university or other educational institution existing solely for educational purposes and not for purposes of profit. The exemption incorporated in section 11(a) is only in respect of the extent to which the income derived from

the property is applied for charitable purpose which includes educational charity. If the income is only accumulated or set apart for such purpose, the exemption is limited to the extent of 25 per cent, of the income of the property held under such trust. The exemption under section 10(22), on the other hand, is without any such limitation. The language of section 10(22) emphasizes that the sole purpose of the existence of the institution should be educational. The very provision of exemption under section 10(22) indicates that the income of such institutions is contemplated. Therefore, mere existence of profit will not disqualify the institution if the sole purpose of its existence is not profit-making but is educational activity. Incidental activities connected with the educational purposes for which the institution exists which result in income will not disqualify the institution, for section 10(22), by its very nature, contemplates income of such institutions which is to be exempted under that provision. It is, therefore, difficult to accept the contention canvassed on behalf of the Revenue by the learned advocate, Mr. Shelat, that because the assessee was having income from its properties, it was not qualified to get exemption under section 10(22) of the Act.”

[Underline supplied by us]

27. If the activities carried out by the assessee are visualized in the context of judicial precedent as relied upon above, it is apparent that assessee is not engaged in any other activity other than education. Therefore, for this reason, we are of the view and hold so that the learned CIT – E is not correct in holding that assessee is not engaged in educational activities covered under section 2 (15) of the Act.
28. No evidences have been put forth by the revenue except merely an allegation of violation of the provisions of section 13 (1) (C) of the act. It has not been shown that how the assessee has conferred any benefit directly or indirectly on any person. It is also not shown that who are those persons who are fulfilling the criteria of section 13 (3) of the act. Thus, the order of the

learned CIT exemptions so far as this issue is involved is not supported by any evidence.

29. Further, it is apparent from the assessment order and the communication made by the assessee during the course of assessment proceedings before the assessing officer it is apparent that all and every aspect of the assessment of the income of the assessee have been examined by him. The learned assessing officer has in detailed look into the activities, object, the functions, nature of receipts, nature of expenditure, applicability of service tax, applicability of tax deduction at source credit and above all the applicability of the provisions of section 2 (15) of the act. Thereafter, the learned assessing officer has granted assessee the benefit of being an educational Institute. It is not required for the assessing officer to examine how the payer of an income has dealt with receipt of an income in the hands of the assessee. This cannot be a general law but in the specific facts of the case where the payment made by the parties are subjected to tax deduction at source under section 194J of the income tax act cannot go against the assessee. The learned CIT – exemption has not in substance held that any due enquiry which should have been made by the assessing officer has not been made by him. Perhaps at the level of enquiry and the manner of enquiry may be different because of change in perception. However, that does not make the order erroneous.
30. Before parting, we would like to put on record that, at the time of dictation, whole world is experiencing ‘new normal’ in all spheres of activities. Education is no exception. Naturally, classrooms have no bricks and mortar, no benches and blackboards. ‘Blackboard Collaborate’ and digital white boards have replaced blackboards. Teachers and students do not assemble at one place but they reach each other on cloud through Meets, Teams, WebEx and Zoom! Such cloud classes have wide representation of students across the globe blurring the geographies of traditional classrooms. Students love Polls, Live Q & A sessions and prerecorded videos. Books and Notebooks have been replaced by smart phones, tabs etc. Most importantly, attendances are also virtual instead of physical. Chat boxes are medium of group discussion. Strikingly, Timings are 24*7. Still it has all the essential of a “classroom”. It definitely covers ‘process of

training, developing the knowledge, skill, mind and character of students' like normal schooling. Thus, in true sense the activities performed by the assessee are no different from 'classrooms.'

31. In view of above facts, we hold that assessee is carrying on educational activities which are covered by the provisions of section 2 (15) of the income tax act and it is neither business nor profession of the assessee. It definitely constitute a charitable activity as it does not charge the fees at the level of market rate and even otherwise the surplus generated is also used for charitable activities of education. This is the finding of the learned assessing officer for assessment year 14 – 15 and for earlier assessment years. In view of this, the order passed by the assessing officer is not at all erroneous. Therefore, we set aside and quash the order passed by the learned CIT – exemption under section 263 of the Income Tax Act For assessment year 20 14-15 on 26th of March 2018. Thus, we allow ground number 3- 6 of the appeal of the assessee.
32. As we have in substance allowed the appeal of the assessee, the ground number one raised against violation of principles of natural justice and CIT travelling beyond the show cause are now infructuous, therefore, they are not required to be adjudicated hence dismissed.
33. In the result, the appeal of the assessee is allowed.
Order pronounced in the open court on 27/05/2020.

-Sd/-

(K.N.CHARY)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 27/05/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

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