

**IN THE INCOME TAX APPELLATE TRIBUNAL
CUTTACK BENCH, CUTTACK
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

S.No.	ITA No.	AY	Appellant	Respondent
01	368/CTK/2019	2008-09	Roland Educational & Charitable Trust, Ganjam. PAN- AAATR 2166G	Dy. Commissioner of Income-tax, Berahampur Circle, Berahampur.
02	258/CTK/2019	2005-06	-do-	Chief Commissioner of Income-tax, Bhubaneswar.
03	259/CTK/2019	2007-08	-do-	-do-
04	260/CTK/2019	2009-10	-do-	-do-
05	261/CTK/2019	2010-11	-do-	-do-
06	262/CTK/2019	2011-12	-do-	-do-
07	263/CTK/2019	2012-13	-do-	-do-
08	264/CTK/2019	2005-06	-do-	-do-
09	265/CTK/2019	2007-08	-do-	-do-
10	266/CTK/2019	2008-09	Roland Institute of Pharmaceutical Science, Ganjam PAN- AAATR2165F	-do-
11	267/CTK/2019	2009-10	-do-	-do-
12	268/CTK/2019	2010-11	-do-	-do-
13	269/CTK/2019	2011-12	-do-	-do-
14	270/CTK/2019	2012-13	-do-	-do-
15	469/CTK/2019	2005-06	Roland Educational & Charitable Trust, Ganjam. PAN- AAATR 2166G	Dy. Commissioner of Income-tax, Berahampur Circle, Berahampur.
16	470/CTK/2019	2006-07	-do-	-do-
17	471/CTK/2019	2007-08	-do-	-do-

Assessee by:	Shri S.K. Tulsian
Revenue by:	Shri M.K. Goutham, CIT-DR
Date of hearing:	04/12/2021
Date of pronouncement:	15/02/2021

ORDER

PER BENCH:

The instant batch of seventeen appeals pertains to two assessees namely M/s Roland Educational & Charitable Trust and Roland Institute of Pharmaceutical Science. Relevant details of all these cases are as follows:

S.No.	ITA No.	AY	Authority's order dated/Case No.	Proceedings u/s
01	368/CTK/2019	2008-09	CCIT(Orissa Region), Bhubaneswar, order dated 26/03/2009	10(23C)(vi)
02	258/CTK/2019	2005-06	-do-, dated 24/03/2010	-do-
03	259/CTK/2019	2007-08	-do-, dated 06/09/2013	-do-
04	260/CTK/2019	2009-10	-do-, dated 29/05/2009	-do-
05	261/CTK/2019	2010-11	-do-, dated 26/09/2011	-do-
06	262/CTK/2019	2011-12	-do-, dated 25/09/2012	-do-
07	263/CTK/2019	2012-13	-do-, dated 06/09/2013	-do-
08	264/CTK/2019	2005-06	-do-, dated 24/03/2010	-do-
09	265/CTK/2019	2007-08	-do-, dated 06/09/2013	-do-
10	266/CTK/2019	2008-09	-do-, dated 27/03/2009	-do-

11	267/CTK/2019	2009-10	-do-, dated 29/05/2009	-do-
12	268/CTK/2019	2010-11	-do-, dated 26/09/2011	-do-
13	269/CTK/2019	2011-12	-do-, dated 25/09/2012	-do-
14	270/CTK/2019	2012-13	-do-, dated 06/09/2013	-do-
15	469/CTK/2019	2005-06	CIT(A) - 1, Bhubaneswar, dated 23/10/2019, IT Appeal No. 0424/13-14.	u/s 143(3)/147
16	470/CTK/2019	2006-07	CIT(A) - 1, Bhubaneswar, dated 18/10/2019, IT Appeal No. 0425/13-14.	-do-
17	471/CTK/2019	2007-08	CIT(A) - 1, Bhubaneswar, dated 26/11/2019, IT Appeal No. 0426/13-14.	-do-

2. On perusal of case(s) record(s), we find that there is delay in filing of the following appeals:

1. ITA Nos. 261 & 262/CTK/2019 - 13 days
2. ITA No. 260 & 270/CTK/2019 - 19 days
3. ITA Nos. 267, 266, 265, 259, 263/CTK/2019
- 29 days
4. ITA Nos. 268 & 269/CTK/2019 - 12 days

3. The assessee(s) has filed condonation petitions explaining delay in filing the above appeals stating, inter-alia, therein that due to consultation of sr. lawyer when the CCIT rejected the approval u/s 10(23C) of the Act, who

advised to file appeals before the Tribunal, caused the impugned delay resulting in filing of the instant appeals. Case law Collector Land Acquisition vs Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that assessee's impugned delay (supra) is neither intentional nor deliberate but due to circumstances beyond its control. Cases are now taken up for adjudication on merits.

4. We advert to the sole identical issue of section 10(23C)(vi) approval raised in assessee's cases in ITA Nos. 368/H/2019, 258/H/2019, 259/H/2019, 260/H/2019, 261/H/2019, 262/H/2019, 263/H/2019, 264/H/2019, 265/H/2019, 266/H/2019, 267/H/2019, 268/H/2019, 269/H/2019, 270/H/2019, 469/H/2019, 470/H/2019 and 471/H/2019 and notice the same is no more res-integra as per the learned coordinate bench decision in ITA no. 433/CTK/2015, dated 29/05/2017 for AY 2014-15 allowing assessee's claim as follows:-

“The Appellant, Roland Educational and Charitable Trust(hereinafter referred to as ‘the assessee’) by filing the present appeal sought to set aside the impugned order dated 24-09-2015 passed by the Principal Chief Commissioner of Income-tax, Odisha, Bhubaneswar qua the assessment year 2014-15

denying approval under section 10(23C)(vi) of the Income-tax Act, 1961 (for short 'the Act') on the grounds inter alia that :-

"1. The order dated 24.09.2015 passed by the Ld. Principal Chief Commissioner of Income-tax denying exemption to the appellant u/s 10(23C)(vi) of the Income-tax Act, 1961 for F.Y. 2013-14 is bad in law and on facts.

2. That the reasons given for denying exemption u/s 10(23C)(vi) of the Act are contrary to law and facts since the appellant being a trust exists solely for educational purposes and not for the purpose of profit.

3. The Ld. Principal Chief Commissioner of Income-tax was not justified in denying exemption on the ground that the amended Trust Deed executed on 26.03.2012 deleting certain objects alleged to be non-educational, was not valid.

4. Assuming without admitting that the amended Trust Deed dated 26.03.2012 was not valid, the Ld. Principal Chief Commissioner of Income-tax was not justified in denying exemption as the alleged non-educational objects were not implemented or acted upon.

5. That the Ld. Principal Chief Commissioner of Income-tax was not justified in ignoring the clarification issued by the CBDT in Circular No.14/2015 dated 17.08.2015 and in denying the exemption to the appellant trust u/s 10(23C)(vi) of the Act.

6. That the Ld. Principal Chief Commissioner of Income-tax has further erred in not following the principles laid down by the Hon'ble Supreme Court in American Hotel & Lodging Association Educational Institute CBDT (2008) 301 ITR 86(SC) and ignoring that appellant trust was an institution existing solely for education eligible for exemption u/s 10(23C)(vi) of the Act and not for profit.

7. The appellant craves leave to add, amend or modify any ground before or at the time of hearing of the appeal."

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee trust came into existence vide registered

Trust Deed dated 19-11-1997 and has been running various educational institutions under the name and style of Roland Institute of Technology, Roland Junior College, Roland Institute of Computer & Management Studies and Supriya Junior College. Apart from the educational objects, other non-educational objects of the Trust are as under :-

- (i) to contribute towards human resource development in the country;*
- (ii) to establish, maintain or grant aid to homes for the aged, orphanages or other establishments for the relief and help to the poor, needy and destitute people, orphans, widows and aged persons;*
- (iii) to charge tuition fees and other fees to cover expenditure incurred in the upkeep and maintenance of the institution established and to be established under the deed.*

3. Earlier application moved by the assessee Trust for grant of approval u/s.10(23C)(vi) of the Act for F.Y.2009-10 was rejected on the ground that the assessee was not committed to pursue exclusive educational activities and subsequently, the assessee Trust moved application on the ground that it has since deleted the non-educational object as contained in the registered Trust Deed dated 19-11-1997 through a registered amended Trust Deed dated 26-03-2012.

4. Ld. Pr. CCIT declared the amended registered Trust Deed dated 26-03-2012 vide which certain objects, particularly the non-educational objectives, were deleted, as invalid on the grounds that the Governing Body Members of assessee Trust did not have mandate to delete or remove any or some of the objects. Ld. Pr. CCIT came to the conclusion that on the strength of such non-educational objects as per original Trust Deed dated 19-11-1997, the assessee Trust has power and authority to undertake non-educational activities which could possibly dilute the exclusive pursuit of educational

purpose. Pr. CCIT further proceeded to conclude that since the assessee Trust is carrying out its activities since 1997 covering a period of more than 20 years, its mere existence as an educational institution would not be enough to preclude the prescribed authority from looking into the other aspects. So, Pr. CCIT held that the assessee Trust does not qualify for approval u/s. 10(23C)(vi) of the Act and thereby rejected the application without going into the merits of the activities and maintenance of the accounts.

5. Feeling aggrieved with the impugned order passed by Ld.Pr.CCIT, the assessee has come up before the Tribunal by filing the present appeal.

6. We have heard the Ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. Undisputedly, earlier application moved by the assessee Trust for grant of approval u/s 10(23C)(vi) of the Act for FY 2009-10 was rejected on the ground that the assessee is not engaged in exclusive educational activities. It is also not in dispute that non-educational objects, namely, to contribute towards human resource development in the country; to establish, maintain or grant aid to homes for the aged, orphanages or other establishments for the relief and help to the poor, needy and destitute people, orphans, widows and aged persons; and to charge tuition fees and other fees to coup expenditure incurred in the upkeep and maintenance of the institution established and to be established under the deed, has been deleted from the Memorandum of Association through a registered amended Trust Deed on 26-03-2012.

8. In the backdrop of the aforesaid undisputed facts, grounds raised by the assessee Trust and

impugned order passed by the Ld.Pr.CCIT, the first question arises for determination in this case is:-

“as to whether ld. Pr. CCIT has erred in denying the exemption u/s 10(23C)(vi) of the Act by declaring the amended registered Trust Deed dated 26.03.2012 deleting certain objects alleged to be noneducational as invalid?”

9. *Pr.CCIT primarily declared the amended Trust Deed dated 26-03-2012, whereby all the non-educational objects have been deleted, as invalid by relying upon Clause No.27 of the registered Trust Deed dated 19-11-1997. Pr.CCIT further relied upon the decision rendered by Hon’ble Supreme Court in the case of **CIT vs. Kamala Town Trust – (1996) 217 ITR 699** wherein it is held that the Trust Deed could be rectified through a competent civil court under the relevant provisions of Specific Relief Act or by the settler himself by executing a supplementary Trust Deed. Clause 27 of the original Trust Deed dated 19-11-1997 reads as under :-*

“27. The Permanent Trustees shall have the power to add, alter, amend any of the clauses mentioned herein for the advantage / benefit of the Trust.”

10. *The Ld.AR for the assessee challenging the impugned order firstly relied upon the CBDT Circular No.14/2015 dated 17-08-2015 in denying the exemption to the assessee Trust, the operative part of which is reproduced as under for ready reference:-*

“Sub: Clarification on certain issues related to grant of approval and claim of exemption u/s 10(23C)(vi) of the Income-tax Act, 1961.

Sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 ('Act') prescribes that income of any university or other educational institutions, existing solely for educational purposes and not for purposes of profit, shall be exempt from tax if such entities are approved by the prescribed authorities. Such approval is not required in cases of university or educational institutions wholly or substantially financed by the Government [sub-clause (iiiab)] or if their aggregate

annual receipts do not exceed Rs.1 crore [sub-clause (iiid) r.w. rule 2BC). Thus, while granting approval to entities covered under subclause (vi), the prescribed authority has to ensure that the applicant institution must exist "solely for educational purposes and not for purposes of profit". There are several Provisos to clause (23C) of section 10 and prescribe, inter alia, various monitoring conditions subject to fulfillment of which only the exemption can be availed.

These monitoring conditions include mode and manner of application of funds, maintenance and audit of books of accounts in certain situations etc. Some other Provisos prescribe the manner of making application u/s 10(23C)(vi) and the circumstances when an approval granted earlier can be withdrawn.

Representations have been received seeking clarification on certain issues related to operation of section 10(23C)(vi). These have been examined by the Board and following clarifications are made-

1. Scope of enquiry while granting approval

1.1 Clarification has been sought on (he score of enquiry that can be made by the prescribed authority while granting approval u/s 10(23C)(vi), i.e., whether it would be sufficient for the prescribed authority to consider the nature, existence for non-profit purposes and genuineness of the applicant institution or the conditions prescribed under various Provisos are also required to be considered at the stage of granting approval.

1.2 In this connection, attention is drawn to the decision of Hon'ble Supreme Court in case of American Hotel and Lodging Association Educational Institute vs. CBDT [301 ITR 86](20(8) in which it has been held that at the time of granting approval u/s 10(23C)(vi), the prescribed authority is to be satisfied that the institution existed during the relevant year solely for educational purposes and not for profit. Once the prescribed authority is satisfied about fulfillment of this criteria i.e. the threshold pre-condition of actual existence of an educational institution under section 10(23C)(vi), it would not be justifiable, in denying approval on other grounds, especially where [he compliance depends on events that have not taken place on the date on which the application for grant of approval has been made.

1.3 However, the prescribed authority is eligible to grant approval u/s 10(23C)(vi), subject to such terms and conditions as deemed necessary including those falling within the framework of various Provisos to the said clause of section 10. It has also been clarified in the said judgment that the compliance of prescribed conditions can be gauged while monitoring the case and in case of any breach thereof, the approval can be withdrawn. It is, therefore, clarified that the principle laid down by the Apex Court in American Hotels case (supra) must be followed while considering the applications filed seeking approval for exemption u/s 10(23C)(vi).”

11. Bare perusal of the CBDT circular (supra) goes to prove that the directions contained in the Circular (supra) are based upon **American Hotel and Lodging Association Educational Institute vs. CBDT - (2008) 301 ITR 86**. Ratio of the judgment in case of **American Hotel and Lodging Association Educational Institute** (supra) is the threshold precondition to accord approval u/s.10(23C)(vi) of the Act is the actual existence of educational institution as section 10(23C)(vi) of the Act seeks to exempt income of institutions with laudable objects and activities, such as, universities, hospitals, etc. and stipulation of monitoring conditions as different from compliance with these conditions. Compliance or non-compliance can be gauged at the assessment stage. So, in other words, the actual existence of educational institutions is the precondition and thereafter the applicant can approach the prescribed authorities for approval in terms of section 10(23C)(vi) of the Act by making application in the prescribed form.

12. Even otherwise, as per para 1.3 of the CBDT Circular (supra), the prescribed authority is eligible to grant approval u/s.10(23C)(vi) of the Act subject to such terms and conditions as deemed necessary including those falling with the framework of various proviso to said clause of section 10, which can be gauged while monitoring the case and in

case of any breach thereof, the approval can be withdrawn. It is clarified in unequivocal terms that application seeking approval for exemption u/s 10(23C)(vi) of the Act is to be disposed off in view of law laid down by Hon'ble Apex Court in **American Hotel and Lodging Association Educational Institute** (supra).

13. As per amended Trust Deed dated 26-03-2012, the assessee Trust is empowered to carry out following activities :-

- (1) To open, run, continue, educational and vocational institutions in healthy surroundings.
- (2) To engage, teachers, professors, instructors, experts of good moral character and conduct and able to impart efficiently up-to-date instruction to students in modern sciences, industrial avocations, research work, intellectual projects.
- (3) To develop a healthy as well as critical attitude towards the development of mental physical and moral uplift of the students and all those connected with the institutions so as to make them good citizens.
- (4) To establish and run boarding house and a residential institution for the students and those connected with the institution.
- (5) To invest, dispose of, transfer and otherwise deal with the subject matter of the Trust in such manner as the Trustees should deem fit so as to enable the institution to carry on the objectives of the Trust efficiently.
- (6) To accept donations, grants, presentations and other offerings and to deal with the same for the purpose of the Trust.
- (7) To bring out, encourage and develop the inventive and research facilities to the students and teachers and to provide an opportunity for research work in Arts, Science, Industry and other fields.
- (8) To sell, dispose off, alienate or otherwise deal with any property comprising the Trust fund.

- (9) To let out, demise any immovable property comprised in the trust fund for such period and at such rent and on such terms and conditions as the Trustees in their discretion may think fit.
- (10) To make, vary, alter or modify schemes, rules and regulations for carrying out the objects of the Trust and for management of the affairs thereof and/or running any institution in furtherance of the objects of the Trust.
- (11) To apply to the Government, Public Bodies, urban, Local, Municipal, District and other bodies, corporations etc. for and accept grant of money and of aid, donation, gifts, subscriptions and other assistance with a view to promoting the objects of the trust and to discuss and negotiate with the Government Department, public and other bodies, corporations, persons scheme and other work and matters within the framework of the objects of the Trust and to conform to any proper condition upon which such grants and other payments be made.
- (12) To take over, acquire, manage, control, organize or maintain or to assist in establishing, promoting, managing, organizing or maintaining any branch of the Trust and to promote or carry on with affiliation or amalgamation of such other Trust with this Trust.”

14. Assessee Trust has established institutions / colleges to provide various courses, namely, BCA, +2 Science & +2 Commerce, B.Tech & MCA and +2 Science & +2 Commerce in the following educational institutions / colleges :-

(i)	Roland Institute of Computer and Management Studies providing Bachelor Degree in Computer Education-BCA Course (set up in 1998).
(ii)	Roland Supriya Junior College (set up in 1999).
(iii)	Roland Junior College (set up in 1999)
(iv)	Roland Institute of Technology (set up in 2001) started with providing MCA Course with 60 seats and in the year 2002, added an Engineering Course

<p><i>consisting of several engineering streams comprising of 4 years' and providing a 'B. Tech' degree.</i></p>
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15. *Perusal of the amended Trust Deed dated 26-03-2012, available at pages 15 to 29 of the paper book, apparently goes to prove that post amendment, the assessee trust is engaged exclusively to carry out educational activities by amending the non-educational clauses existing in the original Trust Deed dated 19-11-1997. Furthermore, all the courses being imparted by the institution of the assessee Trust are affiliated to State Government bodies, Central Government bodies / Universities like AICTE, Regional Directorate of Education, Berhampur, universities like BPUT (Biju Patnaik University Of Technology), Orissa, Berhampur University, Orissa, Director of Higher Education, Govt. of Orissa, Recognition Director of Higher Education, Govt. of Orissa, Council of Higher Education, Orissa, Bhubaneswar.*

16. *Ld. Pr.CCIT declined the approval to the assessee Trust u/s.10(23C)(vi) of the Act primarily by declaring the amended Trust Deed as invalid on the ground that for granting approval u/s.10(23C)(vi), only original Trust Deed is to be looked into which contains non-educational objectives. However, we are of the considered view that in the original Trust Deed dated 19-11-1997, though the assessee Trust has undertaken both educational and non-educational objectives but predominant objectives were for promotion and imparting education as discussed in the succeeding paras.*

17. *In order to decide the issue in controversy, the provisions contained u/s.10(23C)(vi) of the Act are required to be perused which are as under :-*

“10 In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

.....

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority;”

18. A cursory look at section 10(23C)(vi) of the Act goes to prove that the predominant condition for any university or other educational institution for getting approval u/s. 10(23C)(vi) of the Act is that the institution is existing solely for educational purposes and not for purposes of profit. So far as , instant case is concerned, when by way of amendment of the original Trust Deed dated 19-11-1997 vide registered amended Trust Deed dated 26-03-2012, the assessee Trust has come up with its sole objective i.e. to carry out educational activities for educational purposes, Pr.CCIT travelled beyond his power by examining the validity of Trust Deed which came into existence on 26-03-2012.

19. Furthermore, when we examine audited annual accounts for FY 2013-14 and FY 2012-13 available at pages 94 to 162 of the paper book, in the light of the statement of income & expenditure account of the assessee for FY 2012-13 available at page 97 of the paper book and statement of income & expenditure account of the assessee for FY 2013-14 available at page 133 of the paper book, it is proved that the assessee Trust's expenditure was more than its income and as such, it is an educational institution existing solely for educational purpose and not for purposes of profit.

20. Moreover, vide order dated 15-01-2013, assessee Trust is registered as a charitable Trust u/s 12AA of the Societies Registration Act, copy of order available at page 43 of the paper book. This fact goes to prove that the assessee Trust is established not for profit motive. Furthermore, coordinate Bench of the Tribunal vide order dated 28-07-2015 passed in

IT(SS)A.No.44/CTK/2004 in assessee's own case held the assessee Trust eligible for exemption u/s 11 of the Act for block assessment period 01-04-1989 to 22-12-1998, copy of order is available at pages 30 to 32 of the paper book.

21. Furthermore, details of fixed assets given by the assessee Trust for FYs 2011-12, 2012-13 and 2013-14, available at pages 71, 129 & 158 respectively, also go to prove that the assets include laboratory equipment, library, building, computer etc. which are necessary for imparting education and running educational activities of an educational institution.

22. This fact is also clear from the individual balance sheet of Roland Institute of Computer and Management Studies, Roland Supriya Junior College, Roland Junior College and Roland Institute of Technology for the FY 2013-14, available at pages 159, 155, 148 & 140 of the paper book respectively showing assets as Xerox machine, DVD Writer, Scanner, EEE Purchases (Electrical & Electronics Engineering Purchases), Mechanical Purchases, Civil Department Purchases, Licensed Software, library books & magazines, projectors & printers, computers, white boards, notice boards, fax machine, library, lab equipments, which can be used for carrying out educational activities only.

23. So, merely declining the approval u/s 10(23C)(vi) of the Act by Ld. Pr.CCIT on the premise that amended Trust Deed dated 26-03-2012, to prove the assessee's existence, is invalid document being not in conformity with provisions contained u/s 12A of Societies Registration Act, 1860 is not sustainable in the eyes of law. Rather Pr.CCIT has travelled beyond his power by determining the issue as a civil court.

*24. Hon'ble Supreme Court in case cited as **CIT vs. Kamla Town Trust - (1996) 217 ITR 699 (SC)** "while deciding the question whether any*

rectification of trust deed which changed the character of a private trust into a public charitable trust could be relied upon before the Income-tax authority for claiming exemption u/s 11 of the Income-tax Act by the assessee trust” held that in case, in the original trust deed, no real intention of the settler is visible to create a charitable trust on account of certain sub-clauses of the object, it would not be open to the Income-tax authority to refuse to look at such rectified instrument of the trust on the ground that the trustee of the trust should ignore the said rectified objects and should stick to the instrument as it existed prior to its rectification. The income-tax authority has to take the instrument as it exists in its actual amended form when it pressed in service for framing the assessment concerning the relevant assessment year in which such rectified instrument holds the field.

25. Ratio of the judgment in **CIT vs. Kamla Town Trust** (supra) is when the powers had been given to the trustee by the settler as, in the instant case, it can be amended without approaching the civil court provided all the conditions laid down by the settler are fulfilled. So, the ratio of the judgment is applicable to the facts and circumstances of the case.

26. We are of the considered view that Pr.CCIT by ignoring the basic law as enunciated in **American Hotel and Lodging Association Educational Institute** (supra) has exceeded his jurisdiction to decline the approval for exemption u/s. 10(23C)(vi) of the Act which is not sustainable in the eyes of law.

27. Hon’ble Apex Court in judgment cited as **Queen’s Educational Society vs. CIT - (2015) 372 ITR 699 (SC)** explained the provisions contained u/s 10(23C)(iiiad) & (vi) as under :-

“11. Thus, the law common to Section 10(23C) (iiiad) and (vi) maybe summed up as follows:

(1) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.

(2) The predominant object test must be applied –the purpose of education should not be submerged by a profit making motive.

(3) A distinction must be drawn between the making of a surplus and an institution being carried on “for profit”. No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.

(4) If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes.

(5) The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons.”

28. Hon’ble Apex Court in **Queen’s Educational Society** (supra) held that to determine whether an educational institution exists solely for educational purposes and not for purposes of profit, three Supreme Court judgments, namely, **Addl.CIT vs. Surat Art Silk Cloth Manufactures Association – (1980) 121 ITR 1**, **Aditanar Educational Institution vs. Addl. CIT – (1997) 224 ITR 310 (SC)** and **American Hotel and Lodging Association Educational Institute vs. CBDT – (2008) 301 ITR 86 (SC)** would apply. Hon’ble Apex Court further held that 13th Proviso to section 10(23C) is of great importance in determining the issue that the AO must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down and activities of such institutions be looked at carefully. In case, the activities are not genuine or are not being carried out in accordance with all or any of the conditions subject to which

approval is given, such approval and exemption must forthwith be withdrawn.

29. In the decision rendered by Hon'ble Allahabad High Court in case cited as **Allahabad Young Men's Christian Association vs. CCIT & Ors. - (2015) 371 ITR 23 (All)**, the Hon'ble Court while dealing with identical issue also held the same in favour of the assessee by determining the following findings :-

“Held, allowing the petition without entering into the merits, (i) that the assessee was in existence since the year 1910 and on the land, which was taken for 99 years lease, it had constructed a building for a school. It was prima facie engaged for "educational activities". So, it was incorrect to say that it was not providing education. Undoubtedly, the assessee was an educational institution, which was providing education. No other activity was proved by the Department. Moreover, the Chief Commissioner had already granted exemption under section 12A / 12AA with effect from April 1, 2007. Merely because there were other objects of the society, that did not mean that the educational institution did not exist solely for educational purpose. The emphasis of the word "solely" is in relation to the educational institution, which is running not for the purpose of making profit and is not in relation to the objects of the society.”

30. Judgment rendered by Hon'ble Allahabad High Court in case cited as **Young Men's Christian Association** (supra) is applicable to the facts and circumstances of the case because, in the instant case, the assessee has also been granted exemption u/s.12AA of the Act vide order dated 15.01.2013 and the Trust is also found to be eligible for exemption u/s.11 of the Act for block assessment period 01-04-1989 to 22-12-1998 by the coordinate Bench of the Tribunal in assessee's own case in order dated 28-07-2015 (supra). Even perusal of the original Trust Deed shows that the predominant object was educational though noneducational objects were also there. So, merely because of the

fact that there were other objects of the Trust, the educational institution did not exist solely for educational purpose. But, in the instant case, the assessee Trust has gone one step further by amending the original Trust Deed vide registered amended Trust Deed dated 26-03-2012 deleting all the non-educational objectives. So, the impugned order passed by Ld.Pr.CCIT is not sustainable.

*31. In view of what has been discussed above, when it is proved on record that the assessee Trust is running an educational institution, the application to grant approval u/s 10(23C)(vi) of the Act cannot be denied merely because there are other objects in the original Trust Deed also. But, in the instant case, assessee has gone one step further even by amending the original Trust Deed which has been declared invalid by the ld. Pr.CCIT and rejected the application by ignoring the settled principle of law laid down by Hon'ble Apex Court in **American Hotel and Lodging Association Educational Institute** (supra) and **Queen's Educational Society** (supra). So, we are of the considered view that impugned order is not sustainable, hence set aside and Pr.CCIT is directed to decide the application afresh in view of the observations made herein above.*

32. Resultantly, the appeal filed by the assessee is allowed.

5. There is also no dispute between the parties that CIT(E)'s order dated 27/09/2018 has already granted the impugned approval to the assessee(s) for AY 2014-15 in compliance of the tribunal's order.

6. Learned CIT-DR at this stage invited our attention to the CCIT's impugned order(s) under challenge denying

these assessee section 10(23C)(vi) approval in AY 2005-06
vide following identical detailed reasoning as follows:

"The appellant i.e. Roland Educational & Charitable Trust runs four educational institutions viz. (i) Roland Institute of Computer & Management Studies, (ii) Supriya Junior College, (iii) Roland Institute of Technology and (iv) Roland Junior College to impart education in Computer & Management Studies, General Education and Engineering Pharmacy. application for grant of exemption 10(23C)(vi) of the I.T. Act, 1961 in form No.56D was filed in the Office of the Chief Commissioner of Income Tax, Bhubaneswar on 24.03.2004. The case was fixed for hearing on 18.02.2010. Dr. J.Surya Rao, Permanent Trustee of the Trust along with Sri S. R. Wadhwa, Advocate appeared and the case was discussed. The details and documents submitted by the assessee with the application and filed at the time of hearing were perused.

The Trust was created on 19.11.1997 and registered under the Indian Trust Act vide registration No.409 of 1997. It is seen from the Trust Deed that the objects of the Trust contain both educational as well as non-educational clauses. A plain reading of the objects of the Trust shows the following non-educational and mixed purposes:

"8. To train and equip the pupils so as to be self supporting in an honourable and decent way of life so as to develop into good citizens.

9. To develop disciplinary conduct and a habit to observe the rule of law and self restraint.

11. To contribute towards human resource development in the country.

12. To establish, maintain or grant aid to homes for the aged, orphanages or other establishments for the relief and help to the poor, needy and destitute people, orphans, widows and aged persons."

*Section 10(23C)(vi) of the I.T.Act, 1961 stipulates that in order to qualify for **approval**.....**the** following basic conditions should be satisfied.*

- (i) It has to be a University or other educational Institution.*
- (ii) It has to exist solely for educational purposes.*
- (iii) It should not be for purposes of profit.*

One of the basis pre-requisites for considering claim of exemption u/s.10(23C)(vi) is that the educational institution must exist 'solely' for educational purposes. The expression 'solely' came up for consideration before the Rajasthan High Court in the case of Maharaja Sawai Mansinghji Museum Trust (169 ITR 379). The Hon'ble Court had held that the expression 'solely' means exclusively and not primarily. This case was decided in the context of erstwhile provisions of section 10(22) of the Income Tax Act, 1961. Since the provisions of section 10(23C)(vi) are similar, the same interpretation will hold good in the context of provisions of section 10(23C)(vi).

The above clauses as per the Trust deed are clearly either non-educational or mixed in nature. As already held by the Hon'ble Supreme Court in the case of Loka Shiksha Trust (101 ITR 234)(SC), the sense in which the word 'education' has been used in section 2(15) is systematic instruction, schooling or training given to the young for preparation for the work of life. The word 'education' has not been used in wide and extended sense according to which every acquisition of knowledge would constitute education. This decision makes it very clear that the term education means only formal education aimed at preparing the students and citizens of the work of life and it does not include non-formal type of education.

In this context, it will be relevant to point out that in its instruction dated 29.10.1977, the Central Board of Direct Taxes, had also clarified that if the Trust has the option to apply its surplus for non-educational purposes, it cannot be said to exist "solely" for educational purposes and such institutions will not qualify for exemption u/s.10(22) of the Income Tax Act, 1961. Since the provisions of section 10(23C)(vi) are similar, the same view will hold good in the context of the aforesaid provisions. The interpretations contained in the Board's instruction find support from the decision of Reliance Motor Co. Pvt. Ltd. reported in (213 ITR 733) (Madras). In the aforesaid case, the Hon'ble Court had

categorically held that it is not the actual user but the likelihood of the user and the capacity of the Trust to undertake a particular activity, which is relevant. Though this case law was decided in the context of grant of exemption u/s.80G, but the interpretations will hold good in the context of the provisions of Section 10(23C)(vi) also. In the present case, the objects of the Trust very clearly show that the Trustees have the power and authority to undertake activities other than educational. Therefore, it cannot be said that the Trust exists "solely" for educational purpose.

Further, there are various clauses in the Trust Deed which give unbridled power to the permanent trustees to have absolute control over the management of the Trust and utilize the property of the Trust at their own will. Some of such clauses are reproduced below:

"18. The funds of the trust shall be kept in a scheduled Bank and shall be operated by either of the permanent Trustees.

20. The permanent Trustees may appoint THREE more Trustees of their choice function as con-trustees and their tenure of office shall be not more than two years from the date of appointment unless they are re-nominated for further period.

21. The temporary Co-Managing Trustee will exercise their duties as co-trustee subject to the control and supervision of the permanent Trustees and in case any mal-feasance or mis-feasance or negligence in discharging their duties in the management of the educational institution the said temporary managing co-trustees may be dismissed by tile Permanent Trustees prior to the expiry of the stipulated period of two years.

22. That either of the Two Permanent Trustees shall represent the institution for all purposes including to sue or to be sued.

23. That the Permanent Trustees shall have the power to nominate their successors to be Permanent Trustees, failing which two of their heirs shall become Permanent Trustees. The said procedure of filling of succession shall be adopted in future also."

From the above, it is clear that the Trust is in the nature of a family concern of Dr. J.Surya Rao and his Wife Smt. J. Jayalakshmi. The Permanent Trustees have extraordinary powers in the matter of management of the Trust and its property and have absolute powers to take decision on financial matters which vitiate the very term charity.

In view of the above, I am of the opinion that the Trust does not fulfill the conditions laid down u/s.10(23C)(vi) of tile I.T. Act, 1961. Accordingly, the application filed by the assessee-trust for the financial year 2004-05 for grant of approval u/s.10(23C)(vi) is hereby rejected.

6.1 The Revenue accordingly submitted that since the assessee is having mixed nature of educational/other object clauses, it is not eligible for the impugned approval. Mr. Goutham sought to support the CCIT's findings, inter-alia, that the assessee trust object Nos. 8 to 12, giving unbridled powers to its office bearers, namely J. Surya Rao (supra) as well which disentitle it from blocking section 10(23C)(vi) approval relief.

7. We have given our thoughtful consideration to rival pleadings against and in support of the CCIT's order(s) denying section 10(23C)(vi) approval benefit to the assessee on the above said twin reasoning, inter-alia, that the impugned objects do not fall solely in the category of "educational purposes" and its trustees enjoyed unchecked extraordinary powers.

We find no merit in Revenue's foregoing stand for the detailed reasoning in succeeding paragraphs.

7.1 There can hardly be any dispute that section 10(23C)(vi) of the Act entitles the assessee to claim exemption relief when it receives any income on behalf of any university or other educational institution existing solely for educational than profitable purposes. We wish to observe here that Revenue's emphasis is on assessee's original clauses in its trust deed dated 19/11/1997 that the same also include some of the non-educational purposes as well. We therefore deem it fit and proper to extract as follows:-

"The objects of the Trust are :-

- 1. To open, run, continue an educational and vocational institutions in healthy surroundings.*
- 2. To encourage Teachers, Professors, Instructors, Exports of good moral character and conduct and able to impart efficiently up-to-date instruction to students in modern sciences, industrial avocations, research work, intellectual projects, health projects and other useful pursuits.*
- 3. To develop a healthy as well as critical attitude towards the development of mental, physical and moral uplift of the students and all those connected with the institution so as to make them good citizens.*
- 4. To establish and run a boarding house and a residential institution for the students and those connected with the institution.*
- 5. To invest, dispose of, transfer and otherwise deal with the subject-matter of the Trust in such manner as the Trustees should deem fit so as to enable the institution to carry on the objects of the Trust efficiently.*
- 6. To accept donations, grants, presentations and other offerings and to deal with the same for the purpose of the Trust.*

7. *To charge tuition fees and other fees to recoup expenditure incurred in the upkeep and maintenance of the institution established and to be established under this Deed.*
8. *To train and equip the pupils so as to be self-supporting in an honourable and decent way of life so as to develop into good citizens.*
9. *To develop disciplinary conduct and a habit to observe the rule of law and self restraint.*
10. *To bring out, encourage and develop the inventive and research facilities to the students and teachers and to provide an opportunity for research work in Arts, Science, Industry and other fields.*
11. *To contribute towards human resource development in the country.*
12. *To establish, maintain or grant aid to homes for the aged, orphanages or other establishments for the relief and help to the poor, needy and destitute people, orphans, widows and aged persons.*
13. *To sell dispose of, alienate or otherwise deal with any property comprising the Trust Fund.*
14. *To let out, demise any immovable property comprised in the trust fund for such period and at such rent and on such terms and conditions as the Trustees in their discretion may think fit.*
15. *To make, vary, alter or modify schemes, rules and regulations for carrying out the objects of the Trust and for the management of the affairs thereof and/or running any institution in furtherance of the objects of the Trust and otherwise for giving effect to the objects of the Trust.*
16. *To apply to the Government, Public Bodies, Urban, Local, Municipal, District and other bodies, Corporations etc. for and accept grant of money and of aid, donation gifts, subscriptions and other assistance with a view to promoting the objects of the Trust and to discuss and negotiate with the Government Department, Public and*

other bodies, corporations, persons scheme and other work and matters within the frame work of the objects of the Trust and to confirm to any proper condition upon which such grants and other payments may be made.

17. *To take over, acquire manage, control, organise or maintain or to assist in establishing, promoting, managing, organising or maintaining any branch of the Trust or any other Trust or its branch with objects similar to those of this Trust and to promote or carry on with affiliation or amalgamation of such other Trust with this Trust.*

7.2 There is further no issue that as per the learned coordinate bench's discussion that assessee had in fact set up educational institutions in the years 1998-99 imparting education in various recognized colleges, namely, Roland Institute of Computer and Management Studies, Roland Supriya Junior college, Roland Junior College and Roland Institute of Technology. Coming to assessment years before i.e. AYs 2005-06 and 2007-08 to 2012-12, the assessee has placed on record its corresponding income and expenditure accounts indicating figures; after application of income (assessment year wise, surplus application) of Rs. (-) 1,59,34,478/-, (-)1,84,63,954/-, (-)79,41,522, (-) 71,97,091, (-) 1,04,33,615/-, (-) 16,71,912/-, (+) 5,00,504/-, (-) 82,76,269/-; respectively. In other words, all these assessment years except AY 2011-12 have seen more application than receipts since there is nothing left after considering accumulation, revenue expenditure and development heads in assessee's case. Relevant records indicate that AY 2011-12's positive figure of Rs. 5,00,504/-

is indeed less than the permissible 15% limit of gross receipts of Rs. 8,20,08,082/-; coming to Rs. 12,30,121/-. We thus observe that the assessee has applied and has utilized its gross receipts only for educational purposes as per the detailed evidence forming part of the case file.

7.3 Learned CIT-DR at this stage sought to reiterate that the CCIT's order has already gone by assessee's objects in the trust deed that same contains some alleged non-educational purposes as well. The assessee in turn submitted that it has not undertaken any other activity than educational purpose since 1997 onwards. It is, inter-alia stated that the assessee had been granted section 12A registration with effect from 01/04/2002 as well. This tribunal yet another coordinate bench order its case dated 28/07/2005 involving Revenue's appeal IT(SS)A No. 44/CTK/2004 has also treated it as a charitable institution in the block period 01/04/1989 to 22/12/1998 and entitled for section 11 exemption relief. Learned AR took us through assessee's expenses details pertaining to various institutions along with corresponding receipts and payments made, comprising of tuition fee, hostel fee etc. The assessee's fixed assets in all these assessment years; at pages 113, 144, 168, 193, 224, 253 and 284 reveal that the nature of the said fixed assets is nothing but computers, furniture, lab equipment, specialized laboratory for carrying out educational activities only. An institution wise

chart also forms part of the case files to this effect. We sought to know from the Revenue side during the course of hearing as to whether there is any material suggesting that this taxpayer has ever undertaken other than educational activity till date. The reply coming from the departmental side is in negative only. It emphasizes that the assessee trust deed's object clauses have seen amendment much later (supra) and therefore, it would not be held that the said amendment would apply from retrospective effect. Mr. Goutham has placed reliance on various case law quoted in CCIT's order as well (supra).

7.4 The issue therefore arises for our adjudication in view of the foregoing pleadings is as to whether the clinching statutory expression employed in section 10(23C)(vi) "existing solely for educational purposes" has to be read in isolation or in complete sense i.e. " any university or college existing solely for educational purposes and not for purposes of profit". In our considered opinion, we ought to read this statutory provision as a whole only than in piecemeal. This is for the reason that the legislature has itself made it clear that the institution concerned has to exist only for educational and not for profit purposes. We wish to repeat that the department; in such a cases has to pin point the material against taxpayer before us which could suggest even an iota of material that it has ever existed for

deriving profits or the object clauses reveal such an element therein.

7.5 Case law Additional CIT Vs. Surat Art Silk Cloth Manufacturers Association, [1980] 121 ITR 0001(SC) held long back in case of an assessee having multiple objects that the test that needs to be applied in such an instance is as to whether the object non-charitable is the main or the preliminary one of the trust or the institution or it is ancillary or incidental to the dominant object which is charitable. We observe at the cost of the repetition that this taxpayer objects; although are multiple in number, but, the predominant one amongst many and only activity carried out since 1997 (supra) is in education only running for a period of almost 25 years as on date and 15 years upto last AY before us i.e. 2012-13.

7.6 Their lordships other decision(s) in DIT Vs. Bharat Diamond Bourse, [2003] 179 CTR 225 (SC), American Hotel case (supra), Queens Educational Society Vs. CIT, 2015 372 ITR 699 (SC) also applied "purpose" test i.e. as to whether educational institutions existed only for educational purpose and not for earning profits. Yet another decision law HARF Charitable Trust Vs. CCIT [2015], 376 ITR 1100 (P&H) also dealt with an identical issue wherein the said assessee already enjoys section 12A registration and its

trust deed also comprises of multiple clauses of carrying other than educational activity, their lordships hold that merely because one of the said clauses stipulated that the said assessee might also carry other business would not per se make it not entitled for getting section 10(23C) approval. Next case law Allahabad Young Men's Christian Association 2015 371 ITR 23 (All.) and CP Vidya Niketan Inter College Vs. Union of India dated 16/10/2012 has also adopted the very reasoning for deciding this section 10(23C)(vi) issue in assessee's favour.

7.7 Mr. Goutham's next vehement contention is that assessee has been running its educational institutions in the pursuit of deriving profit only as evident from the alleged excess fee(s) collected from the students in the nature of library fees, certificates fees, duplicate Identity card fees and attendance fines etc. We see no substance forthcoming in Revenue's foregoing argument. We notice that assessee's educational institutions are duly affiliated under the corresponding regulators like education board and council of technical education etc. getting renewals from them after due disclosure of all the fee(s) collected from its students. Furthermore, none of the above items have been found to be in the nature of capitation fees as is the Revenue's stand going by the case law Mohini Jain Vs. State of Karnataka and P.A. Inamdar Vs. State of Maharashtra, Civil Appeal No. 5041 of 2005 (supra). We

thus reverse the CCIT's findings as well as Revenue's argument on the latter account as well.

7.8 Lastly comes the Revenue's concluding argument that the CCIT has rightly held that assessee's trustees had unbridled powers and they had also received payments from the former. We make it clear that there is no such condition in section 10(23C)(vi) of the Act qua the internal day to day running of an institution set up solely for carrying out educational activities. Hon'ble apex court's decision Commissioner of Customs (Imports) Vs. M/s Dilip Kumar and Company, [2018] 9 SCC 1 (FB)(SC) has settled the law that only stricter interpretation needs to be applied both in taxing as well as a deduction provision. Coupled with this, Mr. Tulsian pointed out that it was only in the AY 2001-02 that both of its trustees (supra) had sold lands to the assessee a collector rate(s) only i.e. as per the fair valuation adopted by the SRO Ganjam District in Odisha. No benefit or advantage accrued therefore in favour of the said two trustees which could disentitle the impugned claim of section 10(23C)(vi) approval. The very factual position continues regarding interest paid to the said trustees as well in AY 2007-08, 2009-10, 2011-12 and 2012-13 @ 11%, 8%, 11% and 9.5% only as against that paid to State Bank of India for the period from 27/02/2007 to 22/07/2013 (page 875 of the paper book).

7.9 Mr. Goutham's concluding argument sought to highlight the fact that the assessee's have paid rent as well to its twin trustees in the impugned AYs which deserves to be taken as an undue benefit. The said rental payments are found @ Rs. 1.87 per sq.ft. and much less than that paid to unrelated party i.e. Shri Sushil Kumar @ Rs. 2.20 in AY 2005-06 and Rs. 2 per sq.ft in AY 2006-07. We thus decline all these Revenue's arguments alleging that assessee's twin trustees have derived undue benefit from the educational activities carried out in all these AYs. The CCIT's all impugned orders under challenge in first set of 14 appeals (except ITAs No 469-471/CTK/2019) are held as not sustainable in the eyes of law. The same stand reversed therefore. These two assessee's' corresponding appeals seeking section 10(23C)(vi) approval are allowed as necessary corollary ordered accordingly.

8. In view of the foregoing discussion as well as taking into consideration learned coordinate bench's decision in AY 2014-15 (supra) we allow the assessee's' claim of section 10(23C)(vi) relief approval raised in the appeals in ITA Nos. 368/H/2019, 258/H/2019, 259/H/2019, 260/H/2019, 261/H/2019, 262/H/2019, 263/H/2019, 264/H/2019, 265/H/2019, 266/H/2019, 267/H/2019, 268/H/2019, 269/H/2019, and 270/H/2019. All the aforesaid appeals are allowed therefore.

9. Coming to the remaining three appeals ITA nos. 469-471/CTK/2019, the assessee M/s Roland Educational & Charitable Trust has raised the following grounds of appeal in AY 2005-06, which are common in AYs 2006-07 & 2007-08 as well:-

"1. That, the Ld. Dy Commissioner erred in initiating proceedings u/s 148 and completing the assessment u/s 143(3)/147 and the Ld. CTT(A)-I, Bhubaneswar confirming the same is in clear violation of the settled law laid down by the Hon'ble Supreme court in case of GKN Driveshaft (India) Ltd. Vs. ITO [2003] 252 ITR 19 (SC).

2. That, the Ld. Dy Commissioner erred in law and facts by passing the assessment order on 26.03.2013 and the Ld. CTT(A)-I, Bhubaneswar confirming the same is in clear violation of the order dated 15.12.2009 by the Hon'ble High Court of Odisha and hence, the assessment made on 26.03.2013 is barred by limitation.

3. That, the Ld. Dy Commissioner and the Ld. CIT(A) - I Bhubaneswar confirming the same failed to appreciate that the fact I that the Statute u/s 153 of the IT Act categorically states that 'immediately after period of stay order if the time available is less than sixty days then such remaining period shall be extended to sixty days, but the order was passed on 26.03.2013 and hence, the assessment made on 26.03.2013 is barred by limitation.

4. That, the Ld. Dy Commissioner erred in not having considered that registration u/s. 12AA of the Act was granted to the appellant-trust vide order dated 15.01.2003 w.e.f. 0 1.04.2002 and the same is I

continuing and in such circumstances adding back the Excess of income over Expenditure amounting Rs. 26,29,697, denying exemption and without treating the appellant as existing solely for the purpose of education and the Ld. CIT(A) 1, Bhubaneswar confirming the same is bad in law.

5. That, the action of the Dy Commissioner and the Id. CIT(A) 1, Bhubaneswar in having denied exemption u/s 10(23C)(vi) is against the settled law decided by the Hon 'ble Apex Court in the cases of American Hotel and Lodging Association Educational Institute vs. CBDT (2008) 301 ITR 86 (SC) and Queen's Educational Society (2015) 372 ITR 699 (SC) and the Hon'ble Tribunal by following the said decisions allowed exemption u/s 10(23C)(vi) to the assessee for AY 2014-15.

6. That the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

10. The Assessing Officer thereafter has finalized the assessment(s) on 26.03.2013 u/s 143(3)/147 in which he has denied the exemption u/s 11 of the Act and has determined the total income of the trust at Rs. 64,50,460/- and tax payable thereon including interest at Rs. 41,98,424/-. He has denied the exemption on the same grounds on which the Ld. CCIT has rejected the same u/s 10(23C)(vi) in proceedings of the Income-tax Act, 1961 (forming subject matter of adjudication in preceding paras). While doing so, the Assessing Officer observed in his order passed u/s 143(3)/147 dated 26/03/2013, as under:

“6. Roland Educational & Charitable Trust is a Trust, registered under Indian Trust Act vide registration No

409 of 1997 dated 19.11.1997. On perusal of the Trust Deed, it is seen that the objects of the Trust contain both educational as well as noneducational clauses. A plain reading of the objects of the Trust shows the following non-educational and mixed purposes:

"Clause 8: To train the pupils so as to self supporting in an honourable and decent way of life so as to develop into good citizens.

Clause 9: To develop disciplinary conduct and a hit to observe the rule of law and self resistant.

Clause 11: To contribute towards human resource development in the country.

Clause 12: To establish, maintain or grant aid to homes for aged, orphanages or other establishments of the relief and help to the poor, needy and destitute people, orphans, widows and aged persons. "

7. Such objects are clearly not connected with education. Section 10(23C)(vi) of the I.T. Act, 1961 stipulates that in order to qualify for approval of exemption, the following basic conditions should be satisfied:

(i) It has to be a University or other educational Institution.

(ii) It has to exist solely for educational purposes.

(iii) It should not be for purposes of profit.

7.1 One of the basic pre-requisites for considering claim of exemption u/s.10(23C)(vi) is that the educational institution must exist 'solely' for educational purposes. The expression 'solely' came up for consideration before the Rajasthan High Court in the case of Maharaja Sawai Mansinghji Museum Trust (169 ITR 379). The Hon'ble

Court had held that the expression 'solely' means exclusively and not primarily. This case was decided in the context of erstwhile provisions of section 10(22) of the Income tax Act, 1961. Since the provisions of section 10(23C)(vi) are similar, the same interpretation will hold good in the context of provisions of section 10(23C)(vi).

7.2 The above clauses as per the Trust Deed are clearly either non-educational or mixed in nature. As already held by the Hon'ble Supreme Court in the case of Loka Shiksha Trust (101 ITR, 234)(SC), the sense in which the word 'education' has been used in section 2(15) is systematic instruction, schooling or training given to the young for preparation for the work of life. The word 'education' has not been used in wide and extended sense according to which every acquisition of knowledge would constitute education. This decision makes it very clear that the term education means only formal education aimed at preparing the students and citizens of the work of life and it does not include non-formal type of education.

7.3 In this context, it will be relevant to point out that in its instruction dated 29.10.1977, the Central Board of Direct Taxes, had also clarified that if the Trust has the option to apply its surplus for non-educational purposes, it cannot be said to exist 'solely' for educational purposes and such institutions will not qualify for exemption u/s. 10(22) of the Income tax Act, 1961. Since the provisions of Section 10(23C)(vi) are similar, the same view will hold good in the context of the aforesaid provisions. The interpretations contained in the Board's instruction find support from the decision of Reliance Motor Co. Pvt. Ltd. reported in (213 ITR 733)(Madras). In the aforesaid case, the Hon'ble Court had categorically held that it is not the actual user but the likelihood of the user and the capacity of the Trust to undertake a particular activity, which relevant. Though this case law was decided in the

context of grant of exemption u/s.80G of the Income tax Act, : 961, but the interpretations will hold good in the context of the provisions of Section 10(23C)(vi) of the Income tax Act, 1961 also. In the present case, the objects of the Trust very clearly show that the Trustees have the power and authority to undertake activities other than educational activities and therefore, it cannot be said that the Trust exists 'solely' for educational purposes.

There are also various other clauses in the Trust Deed which give sweeping powers to the Permanent Trustees to have absolute control over the management of the Trust and utilize the property of the Trust for their own advantage. Some of such clauses 2:C reproduced below:

"Clause 18: The funds of the Trust shall be kept in a Scheduled Bank and shall be operated by either of the permanent trustees.

Clause 20: The Permanent Trustees may appoint THREE more Trustees of their choice £0 function as co-trustees and their tenure of office shall be not more than two 'ears from the date of appointment unless they are re-nominated for further period

Clause 21: The temporary Co-managing Trustee will exercise their duties as co-trustees subject to the control and supervision of the permanent trustees and in case of any mal-feasance or mis-feasance or negligence in discharging their duties in the management of the educational institution The said temporary managing co-trustees may be dismissed by The Permanent Trustees prior to the expiry of the stipulated period of two years.

Clause 23: That the Permanent Trustees shall have the power to nominate their successors to be Permanent Trustees, failing which two of their heirs shall become

Permanent Trustees. The said procedure of line or succession shall be adopted in future also.

Clause 24: The Permanent Trustees may appoint other staff members required for the institution and remove them whenever it is considered necessary in the interest of the institution.

Clause 27: The Permanent Trustees shall have the power to add, alter amend any of the clauses mentioned herein for the advantage/benefit of the society. “

8. Moreover, as per the Trust Deed dated 19.11.1997, Dr. J. Surya Rao and his wife Smt. 1. Jayalakshmi have appointed themselves as the "Permanent Trustees" of the Trust. From the details furnished by the assessee, it is seen that the permanent trustees and their relatives i.e. daughters have received the financial benefits from the Trust as under:

i) Interest of Rs.2,32,384/- received by Sri J. Surya Rao, permanent trustee, on loan advanced to the assessee-trust.

ii) Interest of Rs.6,83,8891- received by Smt. 1. Jayalakshmi, permanent trustee and W/o. Sri J. Surdya Rao on loan advanced to the assessee-trust.

iii) Interest of Rs.91,710/- received by Miss J. Sruti, D/o. Sri J. Surya Rao, permanent trustee on loan advanced to the assessee trust.

iv) Interest of Rs.91,710/- received by Miss. J. Soumya, D/o. Sri J. Surya Rao, permanent trustee on loan advanced to the assessee trust.

Further, the assessee-trust has also paid a sum of Rs. 1,50,000/- and Rs.5,00,000/-to Sri J. Surya Rao and Smt. J. Jayalakshrni, Permanent Trustees and the

Founders respectively towards repayment of loan during the year.

9. From the above, it is apparent that the Trust has been created by the Permanent "trustees" for reaping various personal financial benefits rather than making it a public Trust for educational purposes only. The income of the Trust is apparently being systematically siphoned off by the Permanent Trustees. Thus, it is clear from the above discussion that the Trust is in the nature of family concern of the Permanent Trustees Dr. Surya Rao and Smt. 1. Jayalakshmi. The Permanent Trustees have the extra-ordinary powers in the matter of management of the Trust and its property and have absolute powers :0 take financial decisions best suited to their own welfare.

10. Further as discussed in Para – 1 the assessee-trust is running four educational institutions namely (i) Roland Supriya Public School; (ii) Roland Institute of Computer & Management Studies; (iii) Roland Supriya Junior College and (iv) Roland Institute of Technology. During the course of assessment proceedings, it is found that the assessee-trust has collected development fees from the students of +2 Commerce and Science. As per the fee structure, the development fees charged per student is as under:

<i>Class</i>	<i>1st Year (Fee per student)</i>	<i>2nd Year (Fee per student)</i>
<i>+2 Commerce</i>	<i>Rs. 2,000/-</i>	<i>Rs.1,900/-</i>
<i>+2 Science</i>	<i>Rs. 2,000/-</i>	<i>Rs. 1,900/-</i>

From the above, it can be seen that the assessee-trust has collected the development fees over and above the normal fees collectible from the students which is not in accordance with the aims and objectives of the trust as it does not come within the meaning of 'charitable purposes' as per the provisions of Section 2(15) of the

Income tax Act, 1961. Further, it is also pertinent to mention here that the development fees charged by the assessee-trust from the students are much higher than the other fees collected. Thus, as per the decision of the Hon'ble ITAT, Hyderabad in the case of Vodithala Educational Society Vs. Assistant Director of Income-tax (Exemption)-I. Hyderabad (2008) 020 SOT 0353, which has been decided after referring to the judgments of Hon'ble Supreme Court in TMA. Pai Foundation V State of Karnataka (2002) 8 SCC 481 & Islamic Academy of Education V State of Karnataka (2003) 6 SCC 697, the assessee is not eligible for exemption either u/s.11 or 10(23C)(vi) of the Income tax Act, 1961.

Further, the Permanent Trustees as well as their daughters have also substantial interest so far as the advancement of loan to the Trust and receipt of interest therefrom are concerned, as discussed above. It is also seen from the records of earlier years that Smt. J. Jayalakshmi and Dr. J. Surya Rao, both Permanent Trustees, have received a sum of Rs.53,03,400/- and Rs.13,74,260/- on sale of lands to the Trust measuring 13.176 acres and 3.280 acres respectively in the year 2001~02.

11. In view of the findings discussed above, the assessee-trust is not eligible for exemption u/s. 11 of the Income tax Act, 1961. Therefore, the Status of the assessee-trust is treated as Association of Persons (AOP) and the excess of income over expenditure is taxed accordingly as per the provisions of the Income tax Act, 1961."

10.1 Accordingly, made disallowances u/s 40(a)(ia) of the Act of Rs. 10,99,693/-, 70,200/- and Rs. 22,54,379/-, totalling to Rs. 34,24,272/- and also disallowed excess claim of depreciation on laboratory equipments of Rs.

2,58,180/-, furniture of Rs. 23,734/- and computers of Rs. 1,34,580/- totalling to Rs. 3,94,494/-

11. Aggrieved, the assessee preferred appeal(s) before the CIT(A) and the CIT(A) partly allowed the appeal of the assessee by restricting the disallowance made u/s 40(a)(ia) to Rs. 1,83,420/- against Rs. 10,99,693/-.

12. Aggrieved by the order of CIT(A), the assessee is in appeal before the Tribunal.

13. Before us, the ld. counsel for the assessee filed written synopsis, which is as under:

"It is pertinent to mention that the application for claim of exemption u/s 10(23C)(vi) & (via) for the assessment year 2006-07 was rejected by the CCIT, Orissa vide order dated, 30.05.2008 as stated in the 'reasons recorded' is factually incorrect as the order of rejection by CCIT dated 30.05.2008 is pertaining to Assessment Year 2007-08 and not Assessment Year 2006-07. The same shall also be clearly evident from para 2 of the respective Assessment Orders for the A.Ys. 2005-06, 2006-07 and 2007-08.

Further from the 'reasons recorded' reproduced, it is clear that the appellant's respective assessments for the captioned A.Y.s have been reopened on the alleged premise that in the absence of approval u/s 10(23C)(vi) of the LT. Act, 1961 to the appellant for the A.Y. 2007-08 (incorrectly mentioned in the reasons recorded as A.Y. 200607) and also in earlier A.Y.s., the appellant's income over expenditure in all the captioned A.Y.s have

not been applied or accumulated by it for application, wholly and exclusively to the objects for which it is established.

In other words, the Ld. AO has impliedly alleged that in the absence of approval u/s 10(23C)(vi) of the I.T. Act, 1961 the appellant's income over expenditure to the extent of Rs.26,29,697/-, Rs.53,74,823/- and Rs.35,07,429/- for the captioned A.Y.s have escaped assessment u/s 147 of the LT. Act, 1961 as the same have not been applied or accumulated by it for application. However there is no express allegation of escapement of income by the Ld. AO in the reasons recorded.

The appellant would like to quote section 147 of the Income Tax Act, 1961 which reads as follows:

[Income escaping assessment.

147. If the [Assessing) Officer [has reason to believe) that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

..... Relevant extract reproduced

A bare reading of the foregoing provision suggests that reason to believe and escapement of income are the jurisdictional requirements for invoking section 147 of the I.T. Act, 1961.

In light of the above the appellant would like to submit that it is registered u/s 12AA of the I.T. Act, 1961 by the CIT, Bhubaneswar vide Order dated 15/01/2003 (copy at page 02 of the paper book) with effect from 01/04/2002. Thus the appellant is eligible for claiming exemption u/s II of the I.T. Act, 1961 w.e.f. 01/04/2002 (A.Y. 2003-04 onwards).

Also this Hon'ble Tribunal in the appellant's own case for the Block Assessment Year 01.04.89 to 22.12.98 in I.T. (SS) A. No. 44 (CTK) of 2004 and CO. No, 69 (CTK) of 2004 (supra) held that the appellant's income is exempt u/s 11 of the I. T. Act, 1961.

The above decision of this Hon'ble Bench has again been referred to and acknowledged by this Hon'ble Bench in the appellant's own case for the A.Y. 2014-15 in Roland Educational and Charitable Trust vs. PCIT, [2017]157 ITR (Trib) 655 (ITAT [Ctk]).

From the above it is crystal clear that the appellant's income has been exempted U/S 11 of the I.T. Act, 1961 since inception in 1997.

Thus the appellant's income being exempted u/s 11 of the I.T. Act, 1961, it is an alternate relief available to the appellant in the absence of exemption U/S 10(23C)(vi) of the I.T. Act, 1961 which the AO and the CIT(A) have ignored in considering.

Therefore even if exemption U/S 10(23C)(vi) of the I. T. Act, 1961 is not available to the appellant it would not make a difference to its income being exempt U/S 11 of the L T. Act, 1961, if the conditions under this section are satisfied. Reliance in this regard is placed on the following judicial pronouncements:

- The Hon'ble Supreme Court of India in the case of CIT vs. Bar Council of Maharashtra, [1981]130 ITR 28 (SC).*

- *The Hon'ble Punjab & Haryana High Court in the case of CIT vs, Mahasabha Gurukul Vidyapeeth Haryana, [2010] 326 ITR 25 (P&R).*

Having submitted the above, the appellant would like to reproduce section 11(1)(a) of the I.T. Act, 1961: [Income from property held for charitable or religious purposes.

11. (1) Subject to the provisions of section 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income-

(1)(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India, and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of [fifteen] per cent of the income of the property;

(b) .•••..... (d)J• Relevant extracts reproduced.

A bare reading of the foregoing provision states that income/gross receipts derived from the property held under trust for charitable and religious purposes, shall be exempt-

1. to the extent such income is applied in India for such purposes; and

2. where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of 15% of the income from such property.

In other words for the appellant's income for being exempt u/s 11(I)(a) of the I.T. Act, 1961 the appellant

is permitted to set aside/accumulate 15% of its gross receipts/income and it has to mandatorily apply 85% of its gross receipts/income to the charitable objects in India, for which it is established.

In connection to the above the appellant would like to invite Your Honours' attention to the following chart made in reference to the appellant's Audited Annual Accounts for the A.Ys. 2005-06, 2006-07 and 2007-08:

<i>Sl.No.</i>	<i>Particulars</i>	<i>AY 2005-06 (in Rs.)</i>	<i>AY 2006-07 (in Rs.)</i>	<i>AY 2007-08 (in Rs.)</i>
<i>A</i>	<i>Gross Receipts</i>	<i>2,54,75,199</i>	<i>3,41,53,897</i>	<i>4,03,99,767</i>
<i>B</i>	<i>Less: Application Revenue exp. Development exp.</i>	<i>2,25,54,602 1,8855,075</i>	<i>3,01,35,769 2,24,82,082</i>	<i>3,69,39,968 1,14,01,321</i>
<i>C</i>	<i>Total application</i>	<i>4,14,09,677</i>	<i>5,26,17,851</i>	<i>4,83,41,522</i>
<i>D</i>	<i>Surplus/Deficit (A-C)</i>	<i>(1,59,34,478)</i>	<i>(1,84,63,954)</i>	<i>(79,41,522)</i>
<i>E</i>	<i>Accumulation of 15% (A*15%)</i>	<i>-</i>	<i>-</i>	<i>-</i>
<i>F</i>	<i>Taxable income (D-E)</i>	<i>(1,59,34,478)</i>	<i>(1,84,63,954)</i>	<i>(79,41,522)</i>

From the above details it can be clearly seen that during the captioned AY.s the appellant has applied its gross receipts entirely for its charitable objects in India. In fact the appellant has made excess expenditure over income.

Thus the appellant has made application of its gross receipts more than statutorily required as per section 11(1)(a) of the LT. Act, 1961 leaving no portion of it which could be accumulated as statutorily permitted, let alone giving rise to any surplus or 'income over expenditure' which could have escaped assessment U/S 147 of the LT. Act, 1961 as alleged by the Ld. AO and confirmed by the Ld. CTT(A).

Hence the appellant's income during the A.V.s. 2005-06, 2006-07 & 2007-08 is exempt u/s 11 of the LT. Act, 1961. Escapement of income from chargeability to tax being the jurisdictional requirement for invoking section 147 of the LT. Act, 1961, the same being absent in the present case for the A.V.s. 2005-06, 2006-07 and 2007-08. the impugned Assessment Orders for the captioned AY.s passed by the Ld. AO u/s 147/143(3) of the I.T. Act, 1961 (and further confirmed by the Ld. CIT(A) is without jurisdiction. void ab initio and hence should be quashed.

Having submitted the above the appellant would further like to submit that the Ld. AO has denied exemption u/s 11 of the LT. Act, 1961 to the appellant during the captioned A.V.s (2005-06,2006-07 and 2007-08) and treated it as an AOP alleging certain violations including some in the nature of sections 13(1) and 13(2) of the LT. Act, 1961.

Such denial of exemption U/S 11 of the LT. Act, 1961 has been made by the Ld. AO in spite of the fact that the appellant's registration U/S 12AA of the LT. Act, 1961 has always been valid (including the captioned AY.s) and has never been withdrawn till date. The said action of the Ld. AO has been confirmed by the Ld. CIT(A).

These allegations of violation of section 13(1) or 13(2) of the Income Tax Act. 1961 by the appellant is incorrect and baseless and has been explained at length in the later paragraphs in this submission.

However without prejudice to the fact that the allegations of violation of section 13(1) or 13(2) of the Income Tax Act. 1961 by the appellant is incorrect and baseless, it is submitted that even if such violations had occurred as alleged by the Ld. AO and confirmed by the Ld. CIT(A), it would not lead to denial of exemption u/s 11 of the LT. Act, 1961. Only the non-exempt income, in view of the violations as per section 13(1)/13(2) of the

LT. Act, 196\ would fall in the tax-net and the other income of the appellant trust would remain exempt as per the provisions of section 11 of the LT. Act, 1961.

Having submitted the above the appellant would like to rebut the allegations of the Ld. AO for denying exemption u/s 11 of the Income Tax Act, 1961, in seriatim."

13.1 Further, the ld. counsel for the assessee submitted that the assessment order dated 26.03.2013 passed u/s 143(3)/147 of the Act is barred by limitation and hence, deserves to be annulled. The assessment order was to be passed on or before 31st May, 2010 as per the directions of the High Court's order dated 15.12.2009. Even under the provisions of section 153 of the Act, the assessment was required to be made within one year from the end of the financial year in which notice u/s 148 was served. In this case, notice u/s 148 was issued on 25.02.2009. Therefore, the assessment made on 30.03.2013 is clearly barred by limitation and hence, deserves to be annulled. As per the direction of Hon'ble High Court, the order should be passed within two months preferably, which the AO has not done.

13.2 On the issue of illegality at notice u/s 148, the ld. counsel submitted that the Ld. AO has stated that there is nothing found on the face of the record as well as order sheet regarding passing of any speaking order in response

to such objections raised by the assessee with regard to reasons recorded for reopening at assessment u/s 147. The ld. counsel stated that in the absence of any tangible material regarding the escapement of income, the notice issued u/s 148 is bad in law and consequently, the assessment order made u/s .147/143 is also bad in law.

14. On the other hand, the ld. DR relied on the orders of revenue authorities. The ld. CIT-DR submitted that the order has been passed by the ld. AO within the stipulated time. In this regard, he referred to the provisions of section 153 of the IT Act for time limit for passing the order. He further submitted that there is no proof for filing the objections for reopening u/s 143(3)/147 by the assessee. The ld. CIT-DR also submitted that the reopening of assessment made by the AO is not on change of opinion.

15. We have considered the rival submissions and perused the material on record. The main contention of the assessee is that the order(s) passed by the AO u/s 143(3)/147 are in clear violation of the order passed by the Hon'ble High Court of Odisha dated 15/12/2009 wherein the Hon'ble Court directed the department to pass the order within two months from the date of their order, whereas the AO passed the reassessment order u/s 147 on 26/03/2013, which is barred by limitation, as contended by

the assessee. Referring to the Written Synopsis, the Id. AR stated that once 12AA granted and it has not been withdrawn, not granting the approval u/s 10(23C)(vi) does not amount to escapement of income. The reasons recorded for reopening of assessment are as under:

"The application for claim of exemption u/s. 10(23C)(vi) & (via) for the assessment year 2006-07 was rejected by the CCIT, Orissa vide order dated, 30.05.2008. For earlier years also, no such application has been entertained and admitted nor any exemption u/s 10(23C)(vi) & (via) has been allowed by the CCIT, Orissa. In view of this, there is reason to believe that income over expenditure to the extent of Rs.26,29,697/-, Rs.53, 74,823/- and Rs. 35, 07,429/- for the assessment years 2005-06, 200607 and 2007-08 respectively, have not been applied or accumulated it for application, wholly and exclusively to the objects for which it is established. Consequently, the case has been reopened u/s 147 of the I. T. Act, 1961."

15.1 From the written synopsis as quoted supra and the case law relied upon by the Id. AR, the assessee demonstrated that there is no escapement of income, as the assessee followed the provision for accumulation of income u/s 11 of the Act. We also observe that once registration granted by the revenue department to the assessee u/s 12AA on 15/01/2003 BY CIT, Bhubneswar and it has not been withdrawn, then if the assessee is complying the other provisions of the Act, it cannot be held as there is any escapement of income . In this case, merely not granting the approval u/s 10(23C)(vi) does not amount to

escapement of income as per the decision cited by the assessee as quoted supra. Respectfully following the above judgement we therefore, hold that the reopening merely on the basis of that the assessee has not got approval u/s 10(23C)(vi) is not justified. Another contention of the assessee is that there is no new material brought on record by the AO to reopen the assessment. He also contended that the objections were filed before the AO for the reasons recorded for reopening of the case which have not been disposed off, which is against the ratio laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd., Vs. ITO [259 ITR 19] (SC). After careful consideration of the submissions from both the sides, we are of the view that the AO has not followed direction of the Hon'ble Jurisdictional High Court for passing the order within the stipulated time. In this regard, we find substance in the submission of the ld. AR that the orders passed by the AO is time barred. Further, we also note that in the remand proceedings the AO has categorically stated as under in regard to not disposing off the objections raised by the assessee's, which read as under:

"II) AO has not passed any order in respect of objections filed by the appellant against the reasons recorded for reopening:

The assessee has filed a written submission on 26.08.2009 in which it has objected to the reasons recorded for reopening of the assessment for the Asst. Yr.20065-06 and requested to drop the proceedings. But there is nothing found on the face of the record as well

as order sheet regarding passing of any speaking order in response to such objection raised by the assessee with regard to reasons recorded (or reopening of the assessment u/s.147.” (emphasis provided).

15.2 It is clear from the above that the ld. AO has not disposed off the objections filed by the assessee as per the ratio laid down by the Hon’ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (supra). Therefore, we conclude on the basis of material available on record that the AO has not passed the order as per the provisions of the law and not followed the law laid in this regard; therefore, the Hon’ble Supreme Court as quoted supra the order passed is not valid and accordingly, we annul the assessment orders passed by the AO in all the three years under consideration. In the case of in the case of GKN Driveshafts (India) Ltd. (supra)., the Hon’ble Supreme Court held as under:

“....., we clarify that when a notice under [Section 148](#) of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking Order before proceeding with the assessment in respect of the abovesaid five assessment years.”

15.3 Therefore, the reopening of assessments in AYs 2005-06 to 2007-08 are held as not sustainable in law and

the same are hereby quashed. Since we have quashed the reopening of assessments u/s 147 of the Act, the additions made on such assessment cannot withstand and, therefore, the grounds raised on merit become academic.

16. This latter batch of 3 cases in ITA Nos. 469 to 471/CTK/2019 are allowed in above terms.

17. These twin assessee's' seventeen appeals are allowed in above terms. A copy of this common order be placed in the respective files.

Pronounced in the open court on 15th February, 2021.

Sd/-
(LAXMI PRASAD SAHU)
JUDICIAL MEMBER

Sd/-
(S.S. GODARA)
ACCOUNTANT MEMBER

Hyderabad, Dated: 15th February, 2021

Kv

copy to :

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<i>3</i>	<i>DCIT, Berhampur Circle, Berhampur.</i>
<i>4</i>	<i>CIT(A) – 1, Bhubaneswar</i>
<i>5</i>	<i>CIT (Exemptions), Hyderabad</i>
<i>6</i>	<i>ITAT, DR, Cuttack</i>
<i>7</i>	<i>Guard File.</i>