

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH**  
**(VIRTUAL COURT)**

**श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य**  
**BEFORE: SHRI. N.K.SAINI, VP & SHRI R.L. NEGI, JM**

आयकर अपील सं./ ITA Nos. 02 & 03/Chd/2020  
निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

M/s Manav Mangal Society, Sector-21-C, Chandigarh.	बनाम	Dy. Commissioner of Income Tax, Circle-1, (Exemptions), Chandigarh.
स्थायी लेखा सं./PAN NO: AAAAM0564C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA Nos. 136 & 137/Chd/2020  
निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

Dy. Commissioner of Income Tax, Circle-1, (Exemptions), Chandigarh.	बनाम	M/s Manav Mangal School (Manav Mangal Society), Sector-21-C, Chandigarh.
स्थायी लेखा सं./PAN NO: AAAAM0564C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA Nos. 27, 28, 29 & 30/Chd/2020  
निर्धारण वर्ष / Assessment Years : 2013-14 to 2016-17

Dy. Commissioner of Income Tax, Circle-1, (Exemptions), Chandigarh.	बनाम	M/s Manav Mangal School (Manav Mangal Society), Sector-21-C, Chandigarh.
स्थायी लेखा सं./PAN NO: AAAAM0564C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Adv.  
राजस्व की ओर से/ Revenue by : Shri Sandeep Dahiya, CIT-DR

सुनवाई की तारीख/Date of Hearing : 30/03/2021  
उदघोषणा की तारीख/Date of Pronouncement : 27/05/2021

**आदेश/Order****PER BENCH:**

Cross appeals by the Assessee and the Department for the A.Y. 2010-11 and 2011-12 are directed against the common order dated 15/11/2019 while the departmental appeals for the A.Y. 2013-14 to 2016-17 in ITA Nos. 27 to 30/Chd/2020 are directed against the common order dated 09/10/2019 of the Ld. CIT(A)-1, Chandigarh.

2. Since common issues are involved in the assessee's as well as Departmental appeals which were heard together, so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance both the parties argued the appeal of the Department in ITA No. 27/Chd/2020 for the A.Y. 2013-14. Following grounds have been raised in this appeal:

- i. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in holding the salary payments to the specified persons under section 13(3) as reasonable and justified when the assessee had failed to provide evidence of what work these specified persons were doing and had failed to justify the salaries paid to these specified persons.*
- ii. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in holding that the onus to prove the excessiveness of the salary/remuneration paid to the specified persons lies on the Revenue Authorities contrary to the decision of the Hon'ble Supreme Court in the case of Commissioner Of Customs (Import), Mumbai vs M/S. Dilip Kumar And Company dated 30 July, 2018 in CIVIL APPEAL NO. 3327 OF 2007, wherein the Hon'ble Apex Court held that the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification, overruling its own judgment in the case of Sun Export [2002-TIOL-118-SC-CX-LB] and all the decisions which took similar view as in Sun Export Case.*
- iii. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in holding the high salary payments to the specified persons under section 13(3) as reasonable and justified when the payments to other non-specified employees was much less.*
- iv. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in holding the salary payment to Sh. G.S.Sardana as justified when the*

payment made to him in contradiction to the rules of Memorandum because he was a member of the executive committee and had the responsibility of managing the educational institutions of the assessee and, as per the clear terms of the Memorandum, he could not charge any remuneration for this function and had to work in honorary capacity.

- v. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in holding the salary payment to Sh. Sanjay Sardana and Sh. Sandeep Sardana as justified when non- specified principals of other schools under the assessee society were getting much less salary for the same work and same post.
- vi. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in holding the rent payment to the specified persons under section 13(3) for H.No. 3085, sector-21/D, Chandigarh and H.No. 3084, sector-21/D, Chandigarh as justified ignoring that this was not a genuine transaction and that the specified persons had simply made an arrangement whereby they were being paid rent for staying in their own house and all the regular upkeep of the house including whitewashing, minor repairs, etc. was borne out of the funds of the assessee.
- vii. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in holding the rent payment to the specified persons under section 13(3) for H.No. 3085, sector-21/D, Chandigarh and H.No. 3084, sector-21/D, Chandigarh as justified ignoring the fact that the assessee had wrongly claimed that the rent-free accommodation was given to the "directors" when the lease deed says that the premises was leased out to the "principal(s)" of its school and not to the directors and no other non-specified principal of the other schools of the assessee society were provided this facility.
- viii. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in holding the interest on unsecured loans paid to the specified persons @ 12% as justified when the Assessing Officer had clearly brought out that the assessee had given out funds to the specified persons under section 13(3) in the form of excessive salary, rent and this was the source of income of these specified persons and also the source of unsecured loans and therefore, it was rightly noted that the funds of the assessee were given out to the specified persons and then a part of it was taken back and interest was paid on this money.
- ix. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in holding the interest on unsecured loans paid to the specified persons @ 12% as justified without appreciating the fact that the assessee was paying interest for its own funds and had these funds not been diverted to the specified persons in the first place, there would not be any need for unsecured loans.
- x. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in holding the order of the Assessing Officer not right because the assessee had been running for the past many years and various assessments u/s 143(3) had been made for the earlier years and no such adverse view

*had been taken then completely ignoring that in the earlier assessments, the issues were not examined in detail and rather, material documents like lease deed, comparison of salaries with other employees, etc. was not asked/discussed.*

- xi. *That the appellant craves to leave, add or amend the grounds of appeal on or before the appeal heard and disposed off.*

4. Vide ground no. i to v the grievance of the Department relates to the deletion of addition made by the A.O. on account of salary payment to the specified persons by invoking the provisions of Section 13(3) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

5. Facts of the case in brief are that the assessee is registered as Society under the Society Registration Act (XXI of 1860) against the registration no. 45 dated 31/05/1969. The assessee is also registered under section 12AA of the Act with Ld. CIT, Patiala vide Registration dated 03/10/1994. The assessee filed the return of income on 30/09/2013 declaring Nil income. Later on, the case was picked up for scrutiny under CASS.

5.1. During the course of assessment proceedings, the A.O. noted that the assessee was providing some payments to its members against the services provided by them, which was not reasonable and was undue benefits for the members. He therefore issued a notice to show cause the assessee as to why the exemption under section 13(1)(c) of the Act may not be denied. In response the assessee submitted as under:

*"Kindly refer to the assessment proceedings pending in the above noted case and your notice dated 29.01.2016 regarding failure to explain justification of the payment of salary to members of the society and why the payment made on account of rent salary and increasing the same may not be disallowed under section 13(1)(c)(ii) & 13(2)(c) & (d) read with section 13(3) of IT Act.*

*In this regard it is submitted that Sh G S Sardana is the chairman of the Manav Mangal Schools. Sh. Sanjay Sardana and Sandeep Sardana are two Directors of the Manav Mangal Schools having three schools (Manav Mangal High School, Sector 21, Chandigarh, Manav Mangal School Sector 11 Panchkula and Manav Mangal Smart School Mohali.) Manav Mangal Smart School Mohali became*

operational during 2007-08 and other two schools were operational since long and are recognised with CBSE.

Salaries paid to the Sh. G S Sardana, Sanjay Sardana and Sandeep Sardana during the last three years and the current year is as below:

Financial Year	Sh G S Sardana / Per month	Sh Sanjay Sardana/ Per month	Sh Sandeep Sardana/ Per month
2010-11	120000.00	186877.00	186877.00
2011-12	156667.00	217583.00	217583.00
2012-13	201333.00	304656.00	304656.00

Sh. G S Sardana is looking after the affairs of the Manav Mangal Schools/Society as its Chairman / Manager and is responsible for the overall conduct of affairs of the Society and its schools. Sh. Sanjay Sardana & Sandeep Sardana are the two directors of four schools of the Manav Mangal Society viz. Manav Mangal Schools located in Chandigarh, Panchkula and Mohali and also of the upcoming school at Zirakpur Dist. Mohali School at Mohali became functional in the F. Y 2007-08. Other two schools as stated above were functional prior to the period 2006-07. Total receipts of the Society and the three schools for the last six years are as below:

Financial year	Society	Chandigarh	Panchkula	Mohali	Total
2006-2007	7972	17740320	28721188	2972	46472452
2007-2008	12199	19916472	33113211	28685160	81727042
2008-2009	65847	23496870	38474656	49234408	111271781
2009-2010	150084	26440280	43598375	70971463	141160202
2010-2011	188361	29857196	48607564	101336218	179989339
2011-2012	975024	37485335	60517786	127569625	226547770
2012-2013	3332508	41610004	65337980	141923785	252204277

It shall be seen that total turnover of the assessee's society has increased from 4,64,72,452/- in FY 2006-07 to Rs. 25,22,04,227/- with the sheer efforts of Sh. G S Sardana Chairman / Manager and Sh. Sanjay Sardana Director and Sh. Sandeep Sardana Director of the Manav Mangal Group of schools run by Manav Mangal Society. Increase in turnover of the Society is 542.70% over a period of six years. Excess of Income over the expenditure of the three schools and Society has also increased tremendously from Rs. 1,40,44,157/- in the year 2006-07 to Rs. 5,86,95,680/- during the period 2012-2013. Assessee Society had been utilising its Income mainly on educational facilities and infrastructure for education of children in their schools. It was the vision of these people that the schools are imparting best of the education in these schools. It is not only the studies where the children of the school are excelling but they are also excelling in the field of sports, debate and cultural programmes. The students of Manav Mangal Schools are excelling in sports even at state level and also participating at National level in Yoga, Table Tennis, Lawn Tennis, Skating Cricket and Hockey.

Sh. Sanjay Sardana is M.sc (Gold Medallist), M. Phil, M. Ed from Punjab University. Sh. Sandeep Sardana is B.E (Hons.), PGDCA (Gold medalist) from Punjab University. Sanjay Sardana joined the Manav Mangal School on 1<sup>st</sup> August, 1986 and has a total experience of 29 years as on date. Sh. Sandeep Sardana Joined Manav Mangal School on 14<sup>th</sup> Oct, 1988 and has experience of 27 years as on date. Thus both of them have experience of more than 27 years experience in the field of education and administration. Both Sh. Sanjay Sardana and Sh. Sandeep Sardana have been awarded at the Dist Level, State Level and also at

National Level. Consolidated list of the awards & appreciations received by Sh. Sanjay Sardana and also by Sh. Sandeep Sardana during the period 2002 to 2015 is enclosed for ready reference.

Sh. Sanjay Sardana and Sh. Sandeep Sardana are Principals of Manav Mangal High Schools Sector 21 C Chandigarh and Manav Mangal School Sector 11 Panchkula respectively and were drawing the following salary from the respective schools

Particulars of monthly salary	Sanjay Sardana FY 2011-12	Sanjay Sardana FY 2012-13	Increase in salary over previous year	In percentage terms
Basic Pay	51850	53410	1560	3%
Grade Pay	12000	12000	0	0
DA	28733	39246	10513	15% increase in DA
<b>Total</b>	<b>92583</b>	<b>104656</b>	<b>12043</b>	<b>13%</b>

The increase in salary of the Sanjay Sardana & Sandeep Sardana was nominal and comparable to annual increase in salary as in Government service. Increase in Dearness allowance was granted to these two persons as was granted to other employees of these schools. As such there was no abnormal enhancement in salary of the Principals of these two schools who have more than 25 years of experience in the field of education.

Besides the above salary both Sh. Sanjay Sardana & Sh. Sandeep Sardana were also the directors of the four schools. Three of the schools at Chandigarh, Panchkula and Mohali are the existing schools with a strength of around eight thousand students. During this year it was proposed to open a new state of the art school at Zirakpur. They were also drawing salary in respect of each school as director of that institute as under:

Particulars of monthly Director salary per month	Sanjay Sardana FY 2011-12	Sanjay Sardana FY 12-13	Increase as compared to LY	Increase in % terms
Manav Mangal High School Sector 21C Chandigarh	41667	50000	8333	20%
Manav Mangal School Sector 11 Panchkula	41666	50000	8334	20%
Manav Mangal Smart School Mohali	41666	50000	8334	20%
Manav Mangal Society Sector 21 Chandigarh (For opening of new school at Zirakpur)		50000		First year
<b>Total</b>	<b>125000</b>	<b>200000</b>		

Thus it shall be seen that increase in salary of the two Directors Sh. Sanjay Sardana and Sandeep Sardana as compared to last year was 13% and in that of Directors salary was of 20% as compared to last year. The increase in salary of the two Directors of these schools was granted after considering the performance of the Directors of these schools which was considered in the Board's meeting in March 2012. I have already enclosed a chart of receipts of the three schools and Society for seven years. It was the performance of the Society & its schools and efforts made by the Chairman/Manager, two Directors and other dedicated members team including the related persons that increase in salaries as Principals of schools and salary as Directors of three Schools was considered.

It may be noted that receipts of the Chandigarh school has increased from Rs.2,98,57,196/- in FY 2010-11 to Rs. 3,74,85,335/- in 2011-12. Thus there was an

*increase in receipts of Rs. 76,28,139/- which was an increase of 25.54% over the previous year.*

*In respect of Panchkula School the receipt in FY 2010-11 was of Rs. 4,86,07,564/- which increased to Rs. 6,05,17,786/- during the FY2011-12. Thus there was an increase in receipts of Rs. 1,19,10,222/- which was an increase of 24.5% over the previous year.*

*In respect of Mohali School, the receipts increased from 10,13,36,218/- in FY 2010-11 to Rs. 12,75,69,625/-. The increase in receipts was of Rs. 2,62,33,407/- which was an increase of 25.89% over the previous year.*

*It may thus be noted that Societies total receipts increased from 17,99,89,339/- in 2010-11 to 22,65,47,770/- which give an increase of Rs. 4,65,58,431/- which gave an increase of 25.96% over the previous year.*

*It was keeping in view this stellar performance of the three schools that Directors of these schools were granted an increase of salary of Rs.8334/- per month and the salary as Director increased from Rs. 41,666/- to Rs. 50,000/- per month against the demand of increase to Rs. 75,000/-per school per month.*

*Since both the Directors were further assigned the task of planning the opening of a new state of the art school at Zirakpur, they were given salary of Rs. 50,000/- each by the society for the said purpose. The efforts made by them under the able guidance of Chairman / Manager of the Society have been able to develop this project from drawing board stage and this school is ready for academic session w.e.f 1.4.2016, the admissions for which are already in progress. Had anybody else from outside been engaged for the same its cost would have been much more as compared to what has been paid to these two persons. Thus salaries paid to these persons was in no way excessive and was in commensurate with the services provided by them to the school and society.*

*The increase in salary was thus sanctioned based on the performance of the schools in March 2012, before the start of new session was based on the performance and results as compared to immediate earlier year and in no case there was an abnormal increase in salaries of the these persons.*

5.2 The A.O. however did not find merit in the submissions of the assessee and held that the amount paid to the specified persons was not reasonable and liable to be disallowed by observing in para 4.1 to 4.3 of the assessment order dated 23/02/2016 which read as under:

4.1 Assessee has made payments to their members regarding salary and other charge. These amounts are not reasonable because assessee has submitted that trust is paying charges to them against the services provided by them and they are well qualified persons. The reply of assessee duly considered but not accepted on this ground, because members of trust are well qualified cannot be a ground for the high salary. The salary paid to members is not reasonable and undue benefit for these related persons. Assessee has failed to produce or submit

any documentary evidences regarding the services provide by these persons. Only runs a charitable institution can not be a ground to pay the salary or other allowance to the members of the trust.

4.2 Assessee has submitted that increasing in the receipts of the society is very much higher compared to earlier years and that why assessee is increasing the salary of the members. This is not a valid ground for paying high salary to its members. If society receipts are increasing then there are various reasons not that members are doing excellent and they are eligible for high salary. The purpose of the society to run an educational institute and provide the better education to students, which is covered under charitable purposes u/s 2 (15) of I. T. Act. It is no where mentioned that against the charitable activities members of the society are eligible for the benefits of the society. Society is registered u/s 12 AA as charitable institution and the purpose is education only. This is not valid reason that when receipts of the society will increase then salary or other remunerations will also increase simultaneously, if it is an intention then where is charity. These facts show that the members of the society doing efforts for themselves only, not for charity. The details of individual ITR of members show that they are earning income from society through various modes of income as salary, rent, interest etc. The income details of these members are as under-

Sr. No.	Name	A.Y. 2011-12			A.Y. 2012-13			A.Y. 2013-14		
		Salary	Rent	Interest	Salary	Rent	Interest	Salary	Rent	Interest
1.	Arshi Manchanda D/o Shri G.S. Sardana, # 3085 Sector 21 -D, Chandigarh	5,17,407	4,29,000	93,441	6,53,562	4,29,00 0	93,559	7,42,699	4,53,072	1,34,533
2.	Ajay Manchanda S/o Late Shri Amir Chand Manchanda, # 3085 Sector -21 .D, Chandigarh	2,40,000		51,655	2,95,000			3,27,500		
3.	Monica Sardana D/o shri Gian Chaudhary, # 3085 Sector 21 D, Chandigarh	7,49,564	1,10,000	5,29,477	8,82,960	1,23,50 0	2,81,344	11,12,73 2	1,29,500	4,43,868
4.	Sandeep Sardana S/o Shri Gian Singh Sardana, # 3085 Sector 21 D, Chandigarh	22,42,52 4	1,10,000	5,33,559	27,88,15 7	1,23,50 0	3,94,780	39,23,86 6	1,29,500	3^8,200
5.	Anjali Sardana D/o Shri R.K. Chhabra, # 3085 Sector 21 D, Chandigarh	7,57,407	2,83,000	4,46,329	8,93,562	4,00,00 0	2,97,754	11,27,68 8	4,94,000	3,51,451
6.	Sanjay Sardana S/o Shri Gian Singh Sardana, # 3085 Sector 21 D, Chandigarh	20,59,27 8	2,83,000	4,62,572	25,66,84 4	4,00,00 0	2,97,768	39,23,86 6	4,94,000	2,88,366
7.	Usha Sardana	Salary	Rent	Interest	Salary	Rent	Interest	Salary	Rent	Interest

	D/o Shri Satya Dev Chaudhary, # 3085 Sector 21 D, Chandigarh	5,09,564		3,03,463	6,42,960		2,192	7,62,732		66,250
8.	Gian Singh Sardana S/o Sh. J.R. Sardana, Manav Mangal High School, Sector 21 C, Chandigarh	Salary 14,40,00 0	Rent	Interest 2,05,459	Salary 18,80,00 0	Rent	Interest 2,191	Salary 24,16,00 0	Rent	Interest 5,000

Particulars	A.Y. 2011-12	A.Y. 2012-13	A.Y. 2013-14	Total
Salary Paid	85,15,744/-	1,06,03,045/-	1,43,37,083/-	3,34,55,872/-
Interest Paid	26,25,955/-	13,69,588/-	16,27,668/-	56,23,211/-
Rent Paid	12,15,000/-	14,76,000/-	17,00,072/-	43,91,072/-
Total Payments	1,23,56,699/-	1,34,48,633/-	1,76,64,823/-	4,34,70,155/-
Total receipts	17,99,89,339/-	22,65,47,770/-	25,22,04,277/-	65,87,41,386/-
% of total receipts	6.86%	5.93%	7.0%	6.5%

On perusal of the above chart, it is clear that members of the society are earning income from the society only and then invested the same for their personal capital and provide the unsecured loans to the society then get the interest income against the investments and then again invested the same into the society. The chart shows that numbers of the society have diverted 7% revenue from the total receipts of the trust in their hands in this A.Y. 2013-14. This trend is continuing from last many years. This shows that increasing in the salary nothing only for capital investments into their personal hands and society. It is also a fact that salary paid to directors of the trust is high compared to other salaried employees. So reply in this regard is not accepted and payments to these persons are not reasonable and liable for disallowance u/s 13 (l)(c) r.w. 13(3) of I. T. Act, 1961 and taxed u/s 164 (2) of I. T. Act.

4.3 Assessee's reply regarding section 13 (2) and various case laws regarding this duly considered but not accepted because assessee has failed to prove that the amounts paid to specified persons are reasonable and should be allowed u/s 13 (2) of I.T.Act,1961. All these persons are not getting genuine and reasonable salary or payments against the services. The details of the salary paid is as under-

Sr. No.	Name of the Member	A.Y. 2011-12	A.Y. 2012-13	Increasing	A.Y. 2013-14	Increasing
1.	Sh. Gian Singh Sardana	14,40,00 0	18,80,00 0	4,40,000 (30.55 %)	24,16,000	5,36,000 (28.51 %)
2.	Sh. Sanjay Sardana	22,42,52 4	27,88,15 7	5,45,633 (24.33 %)	39,23,866	11,35,709 (40.73 %)
3.	Sh. Sandeep Sardana	22,42,52 4	27,88,15 7	5,45,633 (24.33 %)	39,23,866	11,35,709 (40.73 %)
4.	Smt. Usha Sardana	5,09,564	6,42,960	1,33,396 (26.17%)	7,62,732	1,19,772 (18.62%)
5.	Smt. Anjali Sardana	7,57,407	8,93,562	1,36,155 (17.97 %)	11,27,688	2,34,126 (26.20 %)

6.	Smt. Monica Sardana	7,49,564	8,82,960	1,33,396 (17.79%)	11,12,732	2,29,772 (26.02 %)
7.	Sh. Ajay Manchanda	2,40,000	2,95,000	55,000 (22.91 %)	3,27,500	32,500 (11.01 %)
8.	Smt. Arshi Manchanda	5,17,407	6,53,562	1,36,155 (26.31 %)	7,42,699	89,137 (13.63 %)
	Total	86,98,99 0/-	1,08,24, 358/-	21,25,368/- (24.44 %)	1,43,37,0 83/-	35,12,725/- (32.45 %)

The above mentioned chart clearly shows that there is huge increasing into the salary from A.Y. 2011-12 to 2012-13 and 2012-13 to 2013-14. The percentage of increasing is between 40.73 % to 11.01 %, which can not be considered as reasonable payments. It is also mentioned that this % of increase is in case of members only not in case of other employees.

6. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted that salary paid had already been allowed vide order passed under section 143(3) of the Act, therefore on account of consistency of the facts and circumstances being the same there could not be any deviation on account of principle of consistency. It was stated that the various statements were recorded during the course of survey conducted by the Department at school premises on 28<sup>th</sup> and 29<sup>th</sup> of September 2016 which had been verified that all the interested persons had been working in the school. It was further stated that the A.O. made the addition in respect of disallowance of salary though he proceeded with the fact that the salary was not commensurate with duties being performed and that up to the A.Y. 2012-13 the salary was allowed by the successive assessing officer by way of orders under section 143(3) of the Act. It was stated that even if there was violation of Section 13 of the Act then the relevant portion only was liable for addition not the entire surplus could be brought to tax. The assessee also furnished the chart and track record of salary of the related persons in the following manner:

Name of Person	Date of Joining	Designation	Qualifications	Experience
Sh.G.S. Sardana, Father [13(3)(a)]	April 01, 1968	Founder: Chairman	M.A.(English), M.A. (Hindi)	Retired After serving for approximately 50 years
Mrs. Usha Sardana, Mother (13(3)(a)]- author of the founder	April 01, 1968	Founder: Staff Welfare Officer	Hons. In Hindi (Prabhakar), Intermediate Examination in English	Retired After serving for approximately 48 years

			from Panjab University	
Mr. Sanjay Sardana [13(3)(d)]	August 01, 1986	Principal: Manav Mangal High School, Chandigarh & Director: Manav Mangal Group of Schools	M.SC(Gold Medalist), M.Phil. M.Ed	33 Years
Mr. Sandeep Sardana [13(3)(d)]	October 14, 1988	Principal: Manav Mangal High School. Chandigarh & Director: Manav Mangal Group of Schools	B.E.(Hons), PGDCA (Gold Medalist)	31 Years
Mrs. Anjali Sardana [13(3)(d)]	November 01, 1990	Vice-Principal	M.Sc, M.Phil., B.Ed	29 Years
Mrs. Monica Sardana [13(3)(d)]	September 01, 1992	Vice-Principal	B.Com, B.Ed	27 Years
Mrs. Arshi Manchanda [13(3)(d)]	July 01, 1989	Head Primary	BSc. B.Ed, Course in Fundamentals of Electronic Data Processing and Programming	30 Years
Mr. Ajay Manchanda [13(3)(d)]	April 01, 1998	Transport Manager	B.A	21 Years

**TRACK RECORD OF SALARY**

s. No.	Name of the person	Designation	DOJ	AY 2012-13	AY 2013-14	AY 2014-15	AY 2015-16	AY 2016-17
1	Sh G.S. Sardana	Founder: Chairman	April 01, 1968	160000	200000	240000	300000	400000
2	Mrs. Usha Sardana	Founder: Staff Welfare Officer	April 01, 1968	54520	61264	75000	90000	160000
3	Mr. Sanjay Sardana	Principal: Manav Mangal High School. Chandigarh	August 01. 1986	92583	104656	132125	150000	180000
4	Mr Sandeep Sardana	Principal: Manav Mangal High School. Panchkula	October 14, 1988	92583	104656	132125	150000	180000
5	Mrs. Anjali Sardana	Vice-Principal	November 01. 1990	75419	92480	110000	120000	160000
6	Mrs. Monica Sardana	Vice-Principal	September 01, 1992	74520	91264	110000	120000	160000
7	Mrs. Arshi Manchanda	Head: Primary	July 01 1989	55419	62480	80675	88556	96780
8	Mr. Ajay Machdana	Transport Manager	April 01, 1998	25000	27500	32500	36500	50000
1	Mrs. Neena Rodrigues	Principal*	July 01, 2007	37540	42328	47305	NA.	N.A.
2	Mrs. Kavita Malik	Principal*	December 01. 2014	N.A	N.A	N A	48844	53020

*'First appointment as Principal*

*Note: DA Slab of the above persons is the same as in the case of other teachers of all the schools under Manav Mangal Society*

**TRACK RECORD OF SALARY AS DIRECTOR**

s. No.	Name of the person	Designation	DOJ	AY 2012-13	AY 2013-14	AY 2014-15	AY 2015-16	AY 2016-17
1	Mr. Sanjay Sardana	Director Manav Mangal Group of Schools	April 01. 1986	125000	200000	220000	280000	320000
2	Mr. Sandeep Sardana	Director Manav Mangal Group of Schools	October 14. 1988	125000	200000	220000	280000	320000

**Schools being managed by Manav Mangal Society (Read.)**

Month year	Branch	Approximate strength	Staff Strength
April 1968	Manav Mangal School, Sector-9 Chandigarh		
May 1975	School Site allotted by UT Chandigarh		
April 1979	Manav Mangal High School, Sector -21C, Chandigarh	1530	61
December 1988	School site allotted by HUDA		
April 1993	Manav Mangal School Sector-11, Panchkula	2550	92
August 2005	School site bought from PUDA		
April 2007	Working of Manav Mangal Smart School Sector-64 SAS Nagar, Mohali begins	3700	145
February 2012	School site purchased from Shipra Estate Ltd on installment basis		
April 2012 to August 2014	(a) Payment of instalments to Shipra Estates Ltd. (b) Planning & seeking approvals from GMADA for construction of School Building		
September 2014 to March 2016	Construction of School building in Shipra Estate Ltd. Zirakpur		
April 2016	Working of Manav Mangal SMART WORLD, Nagla, Zirakpur begins	2300	97
September 2013	School site bought from DLF, New Chandigarh in installments		
September 2014 to date	Payment of installments to DLF		
	Total Strength	10080	395

6.1 It was further submitted before the Ld. CIT(A) as under:

1. Assessee society is registered since 1969 and registered under section 11 and 12AA since 01.04.1993 and its objective is to provide education.
2. No incriminating material found during survey or post-survey, salary, staff number, no. of students, unvouched bills.
3. Assessment orders for FY 2012-13 and survey proceedings points are similar as nothing new could be found.
4. Increase in Receipts/Growth/Surplus:
  - a) the increase in receipts is due to higher intake of students and a normal annual increase in fees;
  - b) higher intake of students happens on opening a new school like smart school Mohali during 2007-08;
  - c) the increase in receipts is due to the increase in demand for the High-tech quality education of our schools;
  - d) the increase in fee is only 10% which is ever, less than the inflation at that time.
5. If surplus remains, there is nothing wrong and it would be entitled for exemption provided it exists solely for the purpose of education (Pine Grove International Charitable Trust: Page 39 and Queen's Educational Society: Page 48). The Assessing Officer has never doubted that the assessee society is carrying out any activity other than education.
6. The capital expenditure is to be allowed in case of educational institution like the assessee society (Pine Grove International Charitable Trust: Page 40). In our case too the surplus is being ploughed back by the society and rather there is a deficit (Table at page 5 and 6). It thus clears the test laid down by Hon'ble Supreme Court that if the surplus is ploughed back for educational purposes, it exists solely for educational purposes. (Queen's Educational Society: Page 62)
7. The investments have been made by the society for the attainment and achievement of its objectives. The school lands have been purchased at the rates lower than the ones at which school land is made available by Chandigarh Administration, HUDA and GMADA as they have already switched over to the practice of auctioning school sites.
8. Salary
  - a) Payments are being made on reciprocal services and hence these transactions are remuneration and not benefits.
  - b) AO has not placed on record any comparison that how salary being paid is excessive. The onus lies on AO (Daulat Ram Rawatmull: Page 81)
  - c) As per us the salary is being paid as per experience, qualifications and work profile. AO is not in a position of the management to decide that what is a reasonable salary (Dalmia Cement Bharat Ltd. Page 75)

d) *On one hand AO is saying that the increase of salary is excessive and then himself disallowing the entire salary thus contradicting himself*

6.2. It was submitted that in earlier years, the assessment had been framed U/s 143(3) of the Act and the expenses incurred under the head "salary, rent and interest" had been allowed year after year by the various AO's, therefore, the principle of consistency needs to be applied and the revenue should not have taken 'U' turn all of a sudden. The assessee also relied on the observations made by the revenue/department in the assessment orders of the earlier years which have been incorporated by the Id. CIT(A) at page Nos. 17 to 20 of the impugned order, for the cost of repetition, the same are not reproduced herein. The assessee also furnished a written submission which has been incorporated in para 5.1.1 of the impugned order and read as under:

i. *There is addition on account of rent, which is paid by the society in respect of residential house, which is owned by Sarashri Sanjay Sardana and Sh. Sandeep Sardana, who are drawing salary as Principal and Director of the Society. The rent which is paid by the Society is being taken into consideration as perquisite in the hands of Sh. Sanjay Sardana and Sh. Sandeep Sardana in their income tax returns.*

ii. *For the purpose of payment of rent, being paid for the last many years, there is report of the Govt. approved Valuer about the 'fair rent' and the Assessing Officer has not raised any issue on that.*

iii. *The rent has been paid through normal banking channels and the Assessing Officer has not been able to dispute that what should be the 'fair rent' and no doubt has been raised in this regard.*

iv. *In the earlier years, such payment of rent of the members of society has been accepted in the income tax assessments of the Society in the order passed u/s143(3)/143(1).*

2. We wish to invite your kind attention to the latest judgement of Hon'ble Apex court in the case of CIT Vs. Bholaram Educational Society as reported in [2019] 101 Taxmann.com 193, in which, the issue was exactly the same in, as much as, the educational society was being run by the HUF, whose Karta was the trustee of the Trust and exemption u/s 11 was denied by the Assessing Officer as according to the Assessing Officer, such payment of rent breached section 13(1)(c). The Hon'ble High Court upheld Tribunal's order that rent paid by the assessee trust to a trustee for using land and building was not excessive and, thus, exemption could not be denied to the assessee under section 11

by invoking provisions of section 13(1)(c) and SLP filed against said order was dismissed The relevant finding of the Hon'ble Apex Court is as under:-

'Section 13, read with section 11, of the income-tax Act, 1961 - Charitable or Religious trust-Denial of exemption (sub-section (1)(c)-Assessment year 2010-11- Assessee Trust was running a school-t paid rent to HUF whose Karta was trust of assessee trust-Assessing Officer taking a view that such payment breached section 13(1)(c), denied exemption claimed by the assessee under section 11- Commissioner (Appeals) as well as Tribunal opined that having regard to fair market value of property, rent paid was not excessive-Moreover, rent had been valued as per prevailing rate fixed for purpose of stamp duty- According, disallowance made by Assessing Officer was deleted- High Court upheld order passed by Tribunal- Whether on facts, SLP filed against deduction of High Court was to be dismissed- Held, yes in favour of assessee.'

The copy of the judgement is enclosed at pages 1 to 3 of the paper book.

3. In fact, in the Assessment Year, the Assessing Officer has disallowed the entire rent being claimed as deduction and denied the exemption u/s 11, which is contrary to the facts and circumstances, when on similar facts and circumstances, the issue have been decided in favour of Assessee in the earlier years in the order u/s 143(3) and now there is a binding judgment of the Hon'ble Apex Court.

4. Your goodself's attention is invited to the judgement of 'Hon'ble Apex Court' in the case of Queen's Educational Society V/s CIT as reported in [2015] 55 taxmann.com 255 (SO, in which, it has been held as under:

'Section 10(23C) of the Income-tax Act, 1961- Educational institution (profit motive) - Assessment Years 2000-2001 and 2001-2002 - Whether where a surplus was made by educational institution which was ploughed back for educational purposes, said institution was to be held to be existed society for educational purpose and not for purpose of profit - Held, yes [Para 19] in favour of assessee/ matter remanded'.

5. While delivering the above said judgement, the Hon'ble Apex Court has approved the finding of the Hon'ble Punjab & Haryana High Court in the case of 'Pineorove International Charitable v. Union of India T20101 327 ITR 73 P&H-HC and St. Lawrence Educational Society (Regd.) Vs. CIT (2013) 353 ITR 320

6. The above said view has further been approved by the Jurisdictional High Court i.e. Punjab & Haryana High Court in the case of CIT (Exemptions) Vs. Managing Committee, Arya High School, in which, it has been held that if the excess accumulation is applied for objects of the Society, then no adverse view/ can be taken for the registration of society. In our case also, there is no dispute that the funds have been utilized for raising infrastructure of the School and by which, the objects of the society i.e. providing education is taken care off.

7. We also invite your goodself's attention to the judgement of Jurisdictional IT AT, Chandigarh Bench, Chandigarh in the case of M/s Indo Soviet Friendship

College for Pharmacy Managing Committee, in which, the vehicle running expenses and depreciation on car were disallowed u/s 13(2)(b) of the Act, since the car was being used by the Chairman of Trust. It was held by the Hon'ble IT AT that no incriminating material was found during the course of search that the cars were being used for personal purpose and for allegation of section 13(2)(c), the Assessing Officer should bring some evidence on record as to what should be reasonable amount, which should be paid for services rendered by the Chairman. Similarly in the above judgement, there was issue of salary being paid to the chairman of the society and it was contended by the assessee that the salary being paid to the Chairman was in respect of duties performed for policy planning, prescribing norms of fee and admission, faculty development recruitment construction of building etc and also in view of the fact that no incriminating material was found during the search that any excess salary was paid to the Chairman, the addition was deleted as per finding given in para-17 pages 46 to 48 of the judgement.

In view of the above said facts and circumstances, these submissions may, please be considered and oblige.

2. We have substantiated and filed a paper book before your goodself that in the similar schools, there has been Administrator, Director and Principal and other Posts as well and their justification for the same has been submitted to your goodself and, now, we are submitting herewith the following evidences of the schools at Chandigarh and adjoining areas i.e. at Mohali, where there are schools, where different persons have been appointed i.e. Chairman, Managing Director, Director, Administrator, Vice Principal and which evidences are as under:-

1. Doon International School, Chandigarh <u>There Is post of Director Education and Managing Director Apart from Principal</u>	1-4
2. Smart Wonder School, Mohali <u>There is post of Director and Principal</u>	5
3. Ashiana Public School, Chandigarh <u>There is post of Director and Principal</u>	6-7
4. Mount Carmel School, Chandigarh <u>There is post of Founder Directors apart from Principal</u>	8-9
5. Ajit Karam Singh International Public School, Chandigarh <u>There is post of Founder, Director and Principal</u>	10-13
6. Saupin's School, <u>There is post of Director and Principal</u>	14-15
7. Yadvindra Public School, Mohali <u>There is post of Director and Principal</u>	16
8. St. Kabir Public School, Chandigarh <u>There is post of Director, Chief Advisor and Principal</u>	17-20
9. Manav Rachna International School, Mohali <u>There is post of Principal, Vice Principal, Headmaster, Academic coordinator, Curriculum coordinator Estate Officer and Marketing Manager</u>	21
10. Chitkara International School Chandigarh <u>There is post of Chairperson, Principal.</u>	22-28

*Vice Principal, Director Academic Support  
Research and development Co-coordinator,  
Chief Administrative Officer, Manager Operations etc.*

11 St. Joseph's Senior Secondary School. Chandigarh  
*There is post of Principal, Director and Chairman* 29-34

12 Strawberry Fields High School  
*There is a post of Director, Principal  
and Chief Academic Officer* 35-36

3. it is submitted that because of the fact that till 2006, there were only two schools i. e. at Chandigarh and Panchkula and there was only one post of Director namely Sh.G.S. Sardana founder Member of Manav Mangal Society but as and when new schools were to be opened at Mohali and Zirakpur. the need was felt for appointment of directors and, therefore, by way of resolution in November 2005, a resolution was passed and for which, the copy has already been submitted alongwith Written submissions and by way of this, Sarvashri Sanjay Sardana and Sh.Sandeep Sardana were given additional charges of Director having charge of Principal of Chandigarh and Panchkula School respectively and, thus, the salary paid to them as director is fully justified.

4. Even otherwise, if we had to appoint some persons from outside as director, even then, the salary would have to be paid but it was thought advisable to give Sh Sanjay Sardana and Sandeep Sardana additional duties as they were found to be dependable and responsible which required their lot of time and energy in order to achieve the objects of the Society.

In view of the above said facts and circumstances and evidences of the comparable cases, our submissions may, please be accepted and oblige.

6. From the above said facts, it is very clear that starting from the school at residential premises by Sh. G.S. Sardana and Smt. Usha Sardana and due to the far sightedness and planning of both of them, coupled with the planning and execution by Sh. Sanjay Sardana and Sh. Sandeep Sardana in the later years, 'Manav Mangal Society' has built its own goodwill and reputation over the years in Chandigarh, Mohali, Panchkula and at Zirakpur and as on the date, the Society can boast of having 10080 children, 395 teachers in all the four schools put together. With this background, the following further issue-wise submissions may, please, be considered, which are in continuation of earlier submissions as made before your goodself's predecessors over a period of time:-

6.3. It was further submitted as under:

II. PAYMENT OF SALARY TO SH. SANJAY SARDANA/SANDEEP SARDANA

i. Sh. Sanjay Sardana is high 'qualified Principal', having an experience of 33 years as on the date and all the payment of salary have been paid to him, year after year through normal banking channels and there are no cash payment and all such salaries as paid to him compare favourably well with the salary paid by the other comparable schools and for that certain evidence from The Sirsa School, Sirsa', 'Star Global School', Rohtak, 'Delhi Public School', Ferozepur Surmount International School, Gorakhpur, Smart Wonders, Mohali. Salwan Public

School, Delhi and a consultancy agency of a reputed school in the tricity are being enclosed herewith.

ii. All advertisements will show that a high salary package is being given to the Principals even with a reasonable experience and in fact is more than the one being offered by manav mangal society to Sh. Sanjay Sardana and Sh. Sandeep Sardana with a much higher experience. Thus, on the basis of above documentary evidences, there is a complete justification for payment of salary and rent free accommodation.

iii. From the above said comparison of the cases, your goodself would appreciate that besides the salary, which is on much higher side of the other schools and in those schools, the Principals are also offered 'Rent Free Accommodation', conveyance and leave encashment, medical facility etc, and in our case, some of these benefits are not given, like medical and leave encashment. Therefore, from the above said documentary evidences, it stands justified about the payment of salary and 'Rent Free Accommodation', which compares favourably well with the other schools, coupled with the past history of the case, where no disallowance was called for Your goodself would also appreciate that, though, initially in the Assessment order, the Assessing Officer has mentioned that a reasonable salary has to be considered to the related persons, but then while passing the order, he has added the entire salary, which is against the facts and circumstances of the case, though, both Sh. Sanjay Sardana and Sh. Sandeep Sardana have been found to be working in the school, at the time of survey operations conducted by the Assessing Officer on 28/29.09.2016 and even no adverse material was found during the course of such survey operations, which was carried out for about two days and further all the four persons namely Sarvashi Sanjay. Sandeep, Anjali & Monika were present in the school and even the evidence of other related persons were furnished and these submissions are contained in our reply, dated May 23, 2017, page No. 12 to 14 and reply (in para-d) Point No. Hi and no adverse comments have even been given by the Assessing Officer in this regard.

iv. It is also worthwhile to mention here that in all the other schools, where the salary of Rs. 2 lacs or more to the Principal has been offered and they have experience of Rs. 10 years/7 years has been mentioned and, whereas, Sh. Sanjay Sardana and Sh. Sandeep Sardana are having experience of 33 years and 31 years respectively. Thus, in whatever way, we look whether by virtue of past history of the case or by comparable cases, there is a complete justification of salary.

III. SALARY AS DIRECTOR TO SH. SANJAY SARDANA AND SH. SANDEEP SARDANA

i. It is submitted that two schools were in existence one at Chandigarh and another at Panchkula and no director had been appointed. The Panchkula School have been in operation since 1993. Thereafter, in order to expand the cause of providing education to larger section of society, it was decided to open a 'smart school' at Mohali, going by the ever changing requirement of education and for providing quality education to the large sections of society. For this, lot of efforts and extra time was required on account of planning/ liasoning and looking after the designs, construction, employment of staff, infrastructure to be

provided in the school, for getting the electricity connection, getting the building plan approved, supervision of the construction work at various phases and for that there was need of appointment of directors and for which, a resolution was passed, dated November 5, 2005 wherein, it has been mentioned that there was need of director and instead of appointing some person from outside, it was desired that these important, additional responsibilities may be given to Sh. Sanjay Sardana and Sh. Sandeep Sardana, who had been working very hard and have enhanced the goodwill and reputation of the schools of the society, being working as teacher/ Principal for more than 15 years and, accordingly, they were given additional responsibilities of working as 'directors' and to which, all such above jobs for looking after the extension of the activities of the schools run by Manav Mangal Society, right from the selection of suitable site for the plot of new schools to be set up and finally setting up a complete school, required lot of time/ energy and which had been duly discharged by Sh. Sanjay/ Sandeep Sardana.

ii. All such payments as director salary, are being made through normal banking channels and further, both of them took charge as directors from November 2005 i.e. the date of resolution, but no payment as 'director' was made to them, from November 2005 to 31.03.2006 and it was only after that the society found their services as valuable, that they were paid 'Director salary' from 01.04.2006. All the salaries paid as director/ Principal have been allowed by the successive Assessing Officers year after year in the orders as passed u/s 143(3). There is no change of facts and circumstances and it is only on account of their sincere efforts that 'Mohali Smart School' and another 'Smart School at Zirakpur' started operations in the year 2007 & 2016 respectively.

iii. It is further submitted that this appointment of director in the school has never been a new phenomenon and, rather in the various schools, besides the post of Principal, there are posts of Vice Principal, Estate Manager and even there are different directors appointed for different fields, like Director Academic, Director Admin, Director Activities and Director HR, apart from other post like 'Estate Manager' for Managing and procuring supply of various furniture and fixture requirements or the Administrative Officers/ Managers for managing the administrative assignments and educational Advisors for curriculum designing etc. This is proved by the various documentary evidences, which are being furnished in the paper book and, therefore, in this case, if the Society had appointed other persons, then the salaries of those persons would have to be charged as expense in the expenditure account, at much higher rate, than in the present case, therefore, the Directors salary is fully justified, coupled with the fact that in the earlier years, the same has been allowed u/s 143(3) and the said salary as director has also been accepted in the hands of Sh. Sanjay Sardana and Sh. Sandeep Sardana and there has been no dispute.

iv. Further, the services being rendered by them have been recognized and lauded by way of various appreciation letters/ Awards from the different State Governments and also as a mark of appreciation by 'yeoman services' rendered by them for upliftment of education standard and which ultimately helped the 'Manav Mangal Society' in achieving its aim of rendering quality education to all the sections of the Society.

v. It is submitted that all the Teachers leave the school at stipulated time of the school but the Directors in view of numerous assignments, both Shri Sanjay Sardana and Shri Sandeep Sardana, have to work, beyond the normal school hours as under-

Nature of assignment as Directors - Mr. Sanjay Sardana & Mr. Sandeep Sardana

- \* Finalising all appointments of staff in all the branches.
- \* Dealing with Estate Office: Chandigarh, HUDA: Panchkula and PUDA: Mohali & Zirakpur
- \* Consulting Architects/ Engineers for construction/ renovation/ beautification of schools.
- \* Engaging Contractors/ Sub-contractors for construction/ renovation/ beautification of schools.
- \* Arranging material required for construction/ renovation/ beautification and supervising work at site.
- \* Arranging for outsourced parties for efficient working of schools like Transport Services/ Medical Services/ Smart Class content/ Housekeeping/ Maintenance work etc. and supervising their performance in the schools.
- \* Dealing with the concerned Government Departments like Health Department, Electricity Department, State Transport Authority, Fire Department and offices of P.F. ESI, Municipal Council/Corporation at Chandigarh, Panchkula and Mohali.]
- \* Looking after print media coverage of events/ activities organized by all schools.
- \* Dealing with Education Department of U. T. Panchkula, Mohali
- \* Dealing with C8SE, Delhi
- \* Designing of curriculum for all schools]
- \* Designing and printing of school stationery/ examination material of all schools]
- \* Arranging orientation programmes/ workshops for teachers to ensure their continuous professional growth.
- \* Co-ordinating for the conduct of outdoor educational activities common for all the schools.]
- \* Arranging supply of furniture and fixtures on demand/ as per need to all the schools.

vi. It is further submitted that Shri G.S. Sardana has been 'Founder Chairman' along with Smt. Usha Sardana since 1968 and due to their hard efforts and

planning, the Manav Mangal Society has attained goodwill and reputation in the field of education and still, they are actively associated with it and as such, the salary being paid to Sh. G.S. Sardana and Smt. Usha Sardana, being the founder members of the society, who have toiled hard over the years and, as such, the salary paid to them is fully justified. They are source of inspiration and guidance to the Principal/ Directors and of all the staff working in the four schools. It is further submitted that only Shri G.S. Sardana, is the 'Member' of the Society and they are rendering the services to the Society, for which they are receiving the salary on month to month basis as a normal employee. It is submitted that no extra benefit has been given to the related persons since, they have been found to be rendering services to the Society and, as such, the section 13(3) of the Act will not apply accordingly. We are submitting herewith a Chart showing the qualification of related person, which proves that all such persons are getting salary in view of their qualification and services rendered towards the field of education in 'Manav Mangal Society'.

vii. It is further being brought on record all the related persons are getting the salaries for the work being carried on by them and not as 'Charity' and the same kind of salary is being paid to the non-related persons, for which no doubt has been raised by the Assessing Officer. The said salary is being paid to them on account of their qualification, experience and the services being rendered by them and, thus, the whole basis of making the addition by the Assessing Officer is totally uncalled for. Besides the above, we are enclosing herewith a Chart to substantiate the fact that dearness allowance being paid to related persons and to the others is the same, which prove the fact that, no extra benefit has been given to the related persons.

viii. It is further submitted that as Directors has been paid salary in a consolidated manner and there has been increase in the salary over a period of time as Director in view of the additional responsibilities undertaken by them year after year and also on account of opening of 'new schools and the day to day planning and employment of teachers besides, other planning or construction of schools building, which we have highlighted above, had increased manifold over a period of time and the increase is, therefore, on account of additional responsibility is fully justified. Your goodself would appreciate that we have already given the facts about different schools being operational in different years.

ix. For the other assessment years i.e. A.Y. 2014-15, 2015-16 and 2016-17, it is submitted that we have filed the Paper Book and the facts remain the same and nothing has been mentioned by the Assessing Officer and neither there are any additional issues in those years. The Assessing Officer has made the addition on account of salary, interest and rent being paid to the related persons and besides the Assessing Officer has added the entire 'surplus' as reflected in the income and expenditure account and which surplus also stands utilized for infrastructure of the Society and, for which, no doubt has been raised by the Assessing Officer. Thus, the addition of surplus as made by the Assessing Officer is totally devoid of any valid reasons reliance is also being placed on the following judgements –

- i. Director of Income Tax (Exemptions) Vs. Sheth Mafatial Gagal Bhai foundation Trust (2001) 249 ITR 533, Bombay High Court
- ii. CIT Vs. Fr. Mullers Charitable Institutions (2014) 363 ITR 230, Karnataka High Court
- iii. The above said view is further fortified by the Circular No.387, dated 6<sup>th</sup> of July, 1999, in which, it has been held as under:-

Therefore, under such circumstances, taxing of entire surplus as per income and expenditure account is not proper as these circulars are binding upon all the Officers of the department.

In view of the above said facts and circumstances and case laws, the addition as made by the Assessing Officer may, please, be deleted and oblige.

### 1.1 Salary to Chairman and Directors

1.1.1. One of the members of the society, Sh. G.S. Sardana [M.A. (English) -Delhi University, M.A. (Hindi) - Punjab University] joined the society in April, 1968 (i.e. over 45 years of experience) and is currently serving as the Chairman for the society's 4 schools [located in Chandigarh, Panchkula, Mohali and Zirakpur] and overseas the following functions in his capacity as a Chairman –

- \* Overall supervision of the institutions;
- \* Policymaking and oversight for policy implementation by Principals and Directors;]
- \* Planning image - building strategy for the institution;
- \* Financial planning and budgeting;
- \* Oversight for staff recruitment and welfare;]
- \* Support for legal matters.

During the subject year, the appellant, through its members, had handled the additional responsibility of planning and executing the development of a state of art school at Zirakpur. An additional salary of Rs. 50,000/- pm each was therefore sanctioned to the two directors. This was duly approved in the meeting of the executive body of the society on March 24, 2012. The increase in salary of the two Directors of these schools was granted after considering the performance of the Directors of these schools. It was the performance of the Society & its schools and efforts made by the Chairman/ Manager, two Directors and other dedicated members including the related persons that increase in salaries as Directors of schools was considered. Their ability can be judged from the awards and appreciations they have won over a period of time from the state & other high dignitaries at the state level and all India level in appreciation of the services provided by them towards the field of education and setting up of infrastructure for imparting quality education. These certificates confirm the recognition given to their contribution in the area of education.

Had anybody else from outside been engaged for the same, its cost would have been much more as compared to what has been paid to these two persons. The efforts made by them under the able guidance of Chairman/ Manager of the Society has yielded results and they have succeeded in developing this project from drawing board stage to the state of the art school with all modern educational facilities and this Zirakpur school is already functioning w.e.f. 1.4.2016 and that too with almost 1000 students on rolls.

Particulars of monthly Director salary per month	Sanjay Sardana FY 2011-12	Sanjay Sardana FY 2012-13	Increase as compared to Last Year	Increase in % terms
Manav Mangal High School Sector-21-C Chandigarh	41667	50000	8333	20%
Manav Mangal School Sector 11 Panchkula	41666	50000	8334	20%
Manva Mangal Smart School Mohali	4166	50000	8334	20%
Manav Mangal Society Sector 21 Chandigarh (For opening of new school at Zirakpur)				
<b>Total</b>	<b>125000</b>	<b>200000</b>		
Particulars of monthly Director salary per month	Sandeep Sardana FY 2011-12	Sandeep Sardana FY 2012-13	Increase compared Last Year	Increase in % terms
Manav Mangal High School Sector 21-C, Chandigarh	41667	50000	8333	20%
Manav Mangal School Sector 11 Panchkula	41686	50000	8334	20%
Manav Mangal Smart School Mohali	41666	50000	8334	20%
Manav Mangal Society Sector 21 Chandigarh (For opening of new school at Zirakpur)	-	50000		First Year
<b>Total</b>	<b>125000</b>	<b>200000</b>		

1.1.3. The total receipts of the society during FY 2011-12 increased by 4.6 crores i.e. 25.9% approximately against receipts in FY 2010-11. Keeping in view the stellar performance of the schools under the society for the year ending March 31 2012, the directors were offered an increase in the salary of Rs.8334/- pm from each school for the subject year.

It would be pertinent to mention here that total receipts of the assessee society have increased from Rs.4,64,72,452/- in FY2006-07 to Rs.25,22,04,277/- in FY 2012-13 with the sheer efforts of Sh. G.S. Sardana, Manager of the society and Sh. Sanjay Sardana, Director and Sh.Sandeep Sardana, Director of the Manav Mangal Group of Schools run by Manav Mangal Society. Increase in turnover of the Society is 542.70% over a period of six years. Excess of income over the expenditure of the three schools and Society has also increased tremendously from Rs.1,40,44,157/- in the year 2006-07 to Rs.5,86,95,680/- during the period 2012-2013.

Appellant Society has been utilizing its income only on educational facilities and infrastructure for education of children in their schools. It is the vision of these people that the schools are imparting best of the education in the tricity. They are also the pioneers in introducing 'smart education' in the tricity during 2007 and in giving first high tech green school in Zirakpur this year.

1.1.4. In addition to their responsibility as Directors of the 4 schools, Sh. Sanjay Sardana and Sh. Sandeep Sardana were also the acting Principals for the society's school in Chandigarh and Panchkula respectively. There was an increase of 3% in Basic pay and 15% in DA during the subject year as explained below:

Particulars of monthly salary	Sanjay Sardana FY 2011-12	Sanjay Sardana FY 2012-13	Increase in salary over previous year	In percentage terms
Basic Pay	51850	53410	1560	3%
Grade Pay	12000	12000	0	0
DA	28733	39246	10513	15% increase in DA
Total	92583	104656	12043	13%
Particulars of monthly salary	Sandeep Sardana FY 2011-12	Sandeep Sardana FY 2012-13	Increase in salary over previous year	In percentage terms
Basic Pay	51850	53410	1560	3%
Grade Pay	12000	12000	0	0
DA	28733	39246	10513	15% increase in DA
Total	92583	104656	12043	13%
Basic Pay	57850	53410	1560	3%

The increase in salary of Sh. Sanjay Sardana and Sh. Sandeep Sardana as Principal of Chandigarh School & Panchkula School respectively was on the same lines as was granted to other teaching staff of the school (increase in Basic salary being at 3% and increase in DA being granted at 15%). As such there was no abnormal enhancement in salary of the Principals.

Mistake apparent from record - A very important factual mistake apparent from the order of the Learned AO is that he has alleged in the order that the above mentioned increase of 3% and 15% was only offered to the Principal. However, it is clarified before your Honor that the increase in salary was across the board offered to all the teachers in the school.

1.1.6 The Learned AO has not even discussed as to what the commensurate salary payable to persons of such experience and stature should be paid and has wholly disallowed the salary paid to members and relatives terming it as unreasonable.

1.1.7 The member and relatives, apart from their role as educators are also handling administrative functions on behalf of the schools and are therefore eligible to be reasonably remunerated for the same. The Learned AO's action of disproving the entire payment of salary to the above persons is bad in law and liable to be deleted.

## 1.2 Judicial Precedents

1.2.1 The Hon'ble Punjab & Haryana HC in the case of CIT vs. Idicula Trust Society [2014] 104 DTR 9 (P&H)

1.2.2 The Hon'ble Karnataka HC in CIT vs. CMR Jnanadhara Trust [2015] 92 CCH 396 (Kar),

1.2.3 The Pune Bench of the Hon'ble Income-tax Appellate Tribunal (ITAT) in the case of Dr.D.Y. Patil Pratisthan vs. DCIT[2013] 154 TTJ 320 (Pune ITAT).

1.2.4 The Hyderabad Bench of the Hon'ble ITAT in the case of DDIT (Exemption) - III vs. Gideon's International in India [2016] 156 ITD 666 (Hyderabad)

1.2.5 The Jurisdictional Chandigarh Bench of the Hon'ble ITAT in the case of Young Scholars Educational vs. ITO [2011] 12 ITR 640 (Chandigarh) observed as follows –

*'Salary paid to the principal, a member of the society cannot be disallowed as the payment was made to the person having qualified degrees and diplomas and salary was reasonable. Further, since the salary was allowed in the assessment made under section 143(3) in earlier years, doctrine of consistency was applicable as facts were similar.....'*

### 1. Undue benefits to related persons

1.1 The Learned AO has alleged in the impugned assessment order that –

(i) There is undue benefit for related persons

(ii) It is nowhere mentioned that against charitable activities members are eligible for benefits of the society.

1.2 Before advancing arguments against allegations of the Learned AO, it needs to be clarified that only Sh. GS Sardana is the Manager of the Society and other persons related to him as mentioned in the impugned assessment order, are not the members of the society. They are only the employees of the schools being run by the society and covered under the definition of interested persons under section (3) to section 13 of the Act.....

1.7 All payments made by the Appellant to the interested persons is against receipt of bona fide services from such persons and where the payments are made against a reciprocal service, the transaction converts from being a 'benefit' to being a 'remuneration' for services.

1.8 Since the above remuneration to the interested persons relates to the services in the nature of management, leasing of premises and provision of capital, they are covered within the ambit of section 13(2)(c) of the Act.

1.9 Relying on the ruling by the Hon'ble Andhra Pradesh HC in the case of Chirec Education Society (supra), the Appellant contends that the Learned AO has erred in making disallowance under section 13(1)(c) of the Act, especially

where in his own judgement the Learned AG has questioned 'reasonability' of the payments made by the Appellant to the interested persons.

## 2. Amount paid to related persons not reasonable

2.1 The Learned AO has alleged in the impugned assessment order that –

- (i) Amounts paid by the Appellant to its members are not reasonable;
- (ii) Qualification of person is not a valid ground for determining remuneration;
- (iii) Increase in receipts of the society is not relevant for determining remuneration;
- (iv) Salary paid to directors is higher than teachers employed by the Appellant;  
There is no increment in the salary of other employees;

(v) Providing rent free accommodation to Directors is not allowed in the Act. While the allegations of the Learned AO have been rebutted by the Appellant in the following paragraphs, it is pertinent to note that the Learned AO has failed to give any reason in his order to show that the payments made by the Appellant are not reasonable. This causes grave miscarriage of justice as the Learned AO has passed a non-speaking order, the grievances for which are further discussed in  
Para 5 later.....

It is therefore, the responsibility of revenue, to place material on record to show how the salary paid by the trust is unreasonable. Further, the Learned AO is required to mention valid reasons in the assessment order to indicate that the salary paid to interested person is not commensurate with the responsibilities/ duties performed by him.

2.3 As discussed at Para 1.4 above, the interested persons are in receipt of salary, rent and interest income from the society in relation to requisite services being provided by the members and relatives.....

## 4. Appellant has failed to provide documentary evidence for service provided

4.4.1 With respect to the above allegation of the Learned AO, your Honor's kind attention is requested to the show-cause response filed by the Appellant before the Learned AO vide submission dated February 15, 2016. (A copy of the response is enclosed as Part of the accompanying paper book for your Honor's kind reference)

4.1.2 Through the response, the Appellant had not only disclosed all the requisite data which formed the basis for the Learned AO's order but also attached the following evidence in support of the Appellant's claim –

- (i) Copy of ITR of Directors for AY 2013-14.
- (ii) Copy of Rent Deed along with rent valuation report.
- (iii) Copies of rewards and achievements of the Directors
- (iv) Proof of prevailing market interest rate for Public Sector Banks;
- (v) Resolution deeds authorizing payments to interested persons;
- (vi) Copy of revised computation of income

5. Non-speaking order of the Learned A.O.

5.1.1. The Learned AO has passed a non-speaking order wherein –

(i) The basis of arriving at the reasonableness of the payments made by the Appellant to the interested parties is not explained.

(ii) The basis of calculation of the undue benefit advances arrived at Rs. 1,83,94,823/- is not disclosed.

(iii) Payments made by the society to its members have been captured incorrectly by the Learned AO;

(iv) The relevant provisions of the Act for disallowance of gratuity payment has not been provided;

(v) The computation of tax demand arrived at Rs.91,49,290/- as per notice of demand under section 156 is not provided.

1. Deviation from consistency by the Learned AO

1.4 This action of the Learned AO, completely violates the principles of consistency, appreciated by the Hon'ble Courts in various decisions, extracts for which are discussed hereunder:-

- a) CIT Vs. Dalmia Dadri Cement Ltd. [1970] 77 ITR 410 (P&H)
- b) Berger Paints India Ltd. vs. CIT [2004] 266 ITR 99 (SC) ]
- c) DCIT V/s United Vanaspati Ltd. [2005] 275 ITR 124 (AT)(TM)
- d) Radhasoami Satsang Vs. CIT[1992] 193 ITR 321 (SC
- e) CIT V/s Arthus Andersen & Co. [2009] 318 ITR 229 (Bom)
- f) Commissioner of Income Tax V/s Leader Valves Ltd [2007] 295 ITR 273 (P&H)

2. Intervention into matters of commercial expediency by the Learned A.O.

2.1 Notwithstanding the Appellant's contention that the Learned AO's impugned action to disallow the payments made to interested persons was not supported by the provisions of the Act, we wish to highlight the judiciary's view on limiting the scope of authority given to the Learned AO in matter involving commercial expediency.

2.2 In S.A Builders Ltd. vs. CIT (Appeals) & ANR. [2007] 288 ITR 1 (SC), the Hon'ble Court had defined commercial expediency as-....

Further, the Hon'ble SC, agreeing with view taken by the Hon'ble Delhi High Court in CIT vs. Dalmia Cement (Bharat) Ltd. [2002] 254 ITR 377 (Del) opined-

2.3 Further, the Hon'ble SC in CIT vs. Delhi Safe Deposits Co. Ltd. [1982] 133 ITR 756 (SC), gave a view that-

2.4 Taking in consideration the ratio laid down by the Hon'ble SC, the appellant wishes to apply the same to its own case. The Learned AO, in the impugned order made reference to the fact that the Director/ Principal of the

*school was in receipt of a salary much higher than what was paid to any other teacher.*

*2.5 The Learned AO, by applying the above logic, has completely defied commercial prudence and the principles of equity in compensation.*

*2.6 Whereas the role of a teacher was limited to the teaching function assigned, the Directors were working beyond the regular call of duty for a teacher by not only managing and directing the strategy for 3 schools (as explained in the detailed submission) but were also overseeing the development of a 4<sup>th</sup> school.*

*2.7 The Learned AO, has completely ignored the fact that the administrative responsibility and liabilities on the Chairman and Director far exceed that of the teaching staff. It is a principle of natural justice to compare only like things which are capable of being compared.*

*3. Due compliance of section 11 by the Appellant*

*3.1 Notwithstanding the prayer of the Appellant to delete the disallowance under section 13(1)(c) of the Act, the Appellant wishes to bring to your Honor's kind notice that the appellant in its true nature maintains the status of a charitable nature.*

*3.2 The primary goal and objective of the appellant has been the development and outreach of quality education to the students of the region. In this endeavor, the society has grown exponentially over time from 1 school to now running a total of 4 schools (including 2 smart schools).*

*3.3 The Appellant has consistently maintained its expenditure (of over 85% of the total receipts) towards the advancement of its objectives and the Learned AO's remarks on bona fide expenses is without any good cause*

6.4. The Id. CIT(A) pointed out that a survey was conducted on the business premises of the assessee and the survey report was given vide letter dated 21/3/2017 for the comments. The gist of the said report has been reproduced in para 5.1.2 of the impugned order and the reply of the assessee on the said report is reproduced in para 5.1.3 of the impugned order. For the cost of repetition, the same are not reproduced herein. The Id. CIT(A) after considering the submissions of the assessee, survey report of the A.O. and the rebuttal to the said survey report by the assessee, allowed the claim of the assessee for the salary by observing in para 5.2.2 to para 5.2.9 of the impugned order which read as under:

5.2.2. As per section 2(15) of the Act "charitable purpose" includes relief of the poor, education, medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility; Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity: Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is [twenty-five lakh rupees] or less in the previous year, it is trite law that the main intent of a "Charitable Organisation" is the sustenance of its main object, or 'charitable purpose' as is defined under Section 2(15) of the Act, and any expense/expenditure pertaining to its main object and furtherance thereof is part and parcel of the non-profit activity. For this the Act provides a favorable tax treatment by way of provisions contained in Section 11 to Section 13, which provide for a tax exemption to such entities having their main object as any activity which falls under the definition of 'charitable purpose. If an entity, which has been granted an exemption, abuses the exemption for private benefit of its trustees, managers, directors, beneficiaries or related persons, Section 13 provides for an anti-abuse mechanism. The Section includes a mechanism to allow the authorities to withdraw and in some cases, cancel the exemption, in the event of abuse. With this intent to curb abuse, the legislature by way of Section 13(1)(c) of the Act includes, amongst other provisions, a provision to prevent payment of such salary or allowance to any person, out of the resources of the Charitable Organisation, where the amount so paid is in excess of what may be reasonably paid for such services. Person defined above includes; (i) the author of the trust or the founder of the institution, (ii) any person who has made a substantial contribution to the trust or institution, [that is to say, any person whose total contribution during a year exceeds Rs. 50,000/-], (iii) where such author, founder or person is a Hindu undivided family, a member of the family, (iv) any trustee of the trust or manager (by whatever name called) of the institution, (v) any relative of any such author, founder, person, [member, trustee or manager] as aforesaid, and (vi) any concern in which any of the persons referred to in clauses above has a substantial interest (voting share exceeding 20%). The definition of person seems exhaustive enough to cover the trustees, directors, promoters, their relatives and main contributors under its ambit. It is the second limb of the definition which is more relevant to the instant case wherein the scope is limited only to those cases where payment of such salary and allowance is in excess of what may be 'reasonably' paid for such services. In other words the legislature has not put restrictions on payment of salary or allowance for services rendered by 'persons' (referred above) where amounts paid are construed as 'reasonable' for such payment.

5.2.3. It is apparent that the Act has not defined or provided guidance as to what is reasonable. This gap has been filled by various judicial pronouncements. The Hon'ble ITAT, Chandigarh Bench in the case of Young Scholars Educational vs. ITO (2011) 12 ITR 640 (Chandigarh), has observed that Salary paid to the principal, a member of the society cannot be disallowed as the payment was made to the person having qualified degrees and diplomas and salary was reasonable. Further, since the salary was allowed in the assessment made under

section 143(3) in earlier years, doctrine of consistency was applicable as facts were similar. The High court of Punjab and Haryana in the matter of CIT v. Idicula Trust Society, [2014] 45 taxmann.com 158/223 Taxman 66 (P&H) gave consonance to the fact that apart from being full time teachers, the trustee members were engaged in whole time management activities of Trust and as such remuneration paid to them could not be treated as 'excessive'. The reasonableness of payment of salary or allowance to a specified person should be considered from the point of view of the trust and should not be confined to criteria laid down in section 40A(2) of the Act, as the two provisions are not in pari materia. Qualifications, experience, status, and other traits of a specified person rendering services to the trust are relevant factors to determine the reasonableness of payment of salary or allowance and not merely the market value of the services rendered by him. Further, a specified person serves in two capacities first as a trustee, hence, specified person, as such, and secondly, as an employee when he receives, salary or allowance. The benefit normally given to an employee, when he receives salary or allowance, should not be treated as excessive. Interpretation of 'reasonableness' was illuminated in the matter of PNR Society for Relief & Rehabilitation of Disabled Trust v. Dv. PIT (Exemption) (2014) 52 taxmann.com 362 (2015) 67 SOT 171 (Ahd. Trib.) (URO) wherein remuneration given to full-time secretary of the trust being about 1% of the total values of activities of the trust cannot be held as unreasonable. In arriving at the said decision the STAT took cognizance of the educational qualifications and past experience of the aforementioned beneficiary. From the above rulings, it's evident that the revenue authorities take note of the educational experience and qualification of person rendering services to arrive at a 'reasonable' remuneration rate. The onus is on the revenue authorities to prove 'unreasonableness', a view which has been affirmed by the ITAT Pune in the matter of Dr. D.Y. Patil Pratishthan v. Dy. CIT (2013) 39 taxmann.com 138(2014) 61 SOT 47 (URO). The Hon'ble Karnataka High Court in CIT vs. CMR Jnanadhara Trust [2015] 92 CCH 396 (Kar), on reasonableness of the remuneration paid to interested persons has held that the payments of the remuneration to the trustees, out of the Trust amount, is not in dispute. The Tribunal has clearly set out the services rendered by these trustees for the Trust and thereafter it has come to the conclusion that the said amount paid, are reasonable and not excessive. When the Trust is availing the services of these trustees and on account of the services rendered by them, there is a substantial growth in the Trust and its activities, then the payments made for such services rendered, it cannot be said that it contravenes Section 13(1)(c) of the Act. Consequently there is no justification for denying the benefit under Section 11 of the Act. The Hon'ble ITAT, Chandigarh Bench, in the case of M/s Indo Soviet Friendship College for Pharmacy Managing Committee, in ITA No.478 & 479/CHD/2013 dated 2.6.09.2015 has held that the vehicle running expenses and depreciation on car disallowed by the AO u/s 13(2)(b) of the Act are not sustainable, since the car was being used by the Chairman of Trust. It was held by the Hon'ble ITAT that no incriminating material was found during the course of search that the cars were being used for personal purpose and for allegation of section 13(2)(c), the Assessing Officer should bring some evidence on record as to what should be reasonable amount, which should be paid for services rendered by the Chairman. Similarly in the above judgement, there was issue of salary being paid to the chairman of the society and it was contended by the assessee that the salary being paid to the Chairman was in respect of duties performed for policy planning, prescribing norms of fee and admission, faculty development, recruitment, construction of building etc and also in view of the

fact that no incriminating material was found during the search that any excess salary was paid to the Chairman, the addition was deleted. The Hon'ble ITAT, Hyderabad Bench in the case of DDIT (Exemption)-III vs. Gideon's International in India [2016] 158 UP 655 (Hyderabad) made similar observations by holding that the AO has not mentioned any valid reason in the assessment order to indicate that the salary paid to the Executive Director is not commensurate with the responsibilities/ duties performed by him. in the absence of material on record to indicate that the salary paid is unreasonable or excessive, ITAT did not see reason to make disallowance by the AO and to interfere with the order of the Learned CIT(A). Recently, the Hon'ble Apex court in the case of CIT Vs. Bholaram Educational Society as reported in (2019) 101 Taxmann.com 193, in which, the issue was exactly the same in, as much as, the educational society was being run by the HUF, whose Karta was the trustee of the Trust and exemption u/s 11 was denied by the Assessing Officer as according to the Assessing Officer, such payment of rent breached section 13(i)(c.) The Hon'ble High Court upheld Tribunal's order that rent paid by the assessee trust to a trustee for using land and building was not excessive and, thus, exemption could not be denied to the assessee under section 11 by invoking provisions of section 13(1)(c) of the Act. All these rulings go on to state that onus to prove the excessiveness of the salary/remuneration paid to the 'persons' lies on the Revenue Authorities and where the same has not been evidenced, it cannot be held that the provisions of Section 13 of the Act have been violated. It is in this juxtaposition of provisions of Income Tax Act, 1981 and judicial pronouncements that the facts and circumstances of the instant case are to be adjudicated.

5.2.4 The Aims & Objects of Manav Mangal Society are (i) To promote the cause of national integration, (ii) To propagate higher social values, (iii) To help the younger generation to have a healthy growth; mental, physical and intellectual, (iv) To work for bringing about better standards of education, and (v) To establish a Manav Mangal School/ Schools to achieve the objects mentioned above.

5.2.5. The first and foremost aspect that needs to be appreciated is that out of the eight persons whose salary has been questioned and disallowed by the AO, only Sh. GS Sardana is the founder Chairman/Manager of the Appellant Society and all other parties are though his family members but they are the directors/ employees in the schools run by the Society Mere fact that the society has paid remuneration or interest or rent to the members/ relatives of members is not sufficient to invoke the provisions of section 13(1)(c) r.w. Section 13(3) of the Act. What therefore needs to be examined is that whether the payments being made to the members/ interested parties are commensurate with the market value of services rendered by these persons and the terms of their engagement should not be such that they are letting an undue favour being passed on to them in the garb of the compensation being paid to them.

5.2.6. In the case of the appellant, Shri G S Sardana is the founder of the Society (joined the society in April 1968) and is the Chairman of the Manav Mangal Schools being run by the Society. He has been entrusted with the task of overall supervision, management, policy making, strategy and planning for the society and is responsible for its legal matters. The society and the successful schools being run by it are the brain child of this person and it seems that due to his vision and leadership that the society is running such renowned schools. Ld. AR has

rightly claimed that his experience and guidance for the last 45 years has resulted in the rise of strength of students from 100 to 10500 as on the date & teachers from 8 to about 475 as on date, has totally been ignored by the Assessing Officer. It is totally unjust on the part of the Assessing Officer to disallow the salary being paid to the founders' of the society, with whose experience guidance and vision, Manav Mangal Society is at this position, which is envy of Assessing Officer 3s well. Similarly, Shri Sanjay Sardana and Shri Sandeep Sardana are the two directors of ah the schools being run by the Society and both these persons have over 25 years of experience. All these people who have been engaged by the society are highly qualified and are thus competent to carry out the key functions for the society and which are the back bone for any Institution to grow and prosper Shri Sanjay Sardana and Shri Sandeep Sardana are also serving as the Principal for the Manav Mangal Schools, located at Chandigarh and Panchkula respectively and in addition to their emoluments as a Director, they are being compensated by way of salary in the capacity of Principal. It is also a fact on record that during the yea?" under consideration, the society had started the development of a new School at Zirakpur for which additional burden was being undertaken by the Directors to practically handle every aspect of this new development and to ensure that the existing schools also do not suffer as a result of the division in time. Ld. AR has filed various details from where it is observed that such posts of Directors/Administrators etc are engaged by various reputed schools like Doon International School Chandigarh, Smart Wonder School, Mohali, Ashiana Public School, Chandigarh, Mount Carmel School, Chandigarh, YPS School Mohali, St. Kabir Public School, Chandigarh, Manav Rachna International School, Mohali, Chitkara International School, Chandigarh, St. Joseph's Senior Secondary School Chandigarh and Strawberry Fields High School etc. The salary has been paid to Director starting from A. Y.2007-2008 and was also being allowed by the department after due verification, because of additional responsibilities i.e. planning, designing and opening of new school one after another at Mohali and Zirakpur, which required a lot of time and energy as submitted by the appellant in its various submissions. Further, during the course of survey, nothing was found for disallowing the salary paid to the above persons or to the other related persons, however the total disallowance of salary was made in AYs 2013-2014 to 2015-16. it is found that in the AY 2016-17 Ld.AO at page 14 of the order has allowed the payment of salary to Sh. Sanjay Sardana and Sh. Sandeep Sardana at the same figures as being paid to the Principals of 'Smart School' at Mohali and Zirakpur at Rs.6,31,564/- per annum each and disallowed the balance salary, it is apparent that there has been contradictory stand of different Assessing Officers. Similarly, the other family members under question are engaged in the different roles and responsibilities as assigned to them. AO has failed to bring on record that appellant society has violated the guidelines of the CBSE. During survey proceedings one of the Coordinators of One Mohali Branch School Srnt. Tarun Bharadwaj has stated under oath that Salary is paid as per norms of AICTE [CBSE]. This was not rebutted by the AO. Even some of the parents like Mrs. Shama Shankar and Sh. Gurpreet Singh who visited the Mohali School during survey proceedings have not stated anything adverse about the quality of education or fee structure etc. DA Slab for the Chairman or Member Relatives or other staff members was on same footing i.e. @60% in AY 2013-14, @.75% in AY 2014-15, @87.5% in AY 2015-16 and @ 100% in AY 2016-17. The Annual increment is 3% of Basic Pay during AY 2012-13 DA of Staff was raised from 15% to 45% in order to introduce pay scale of Punjab 5<sup>th</sup> Pay Commission. However, Directors are getting consolidated remunerations from AY 2013-14. No incriminating material has been

brought on record by the AO to establish unreasonableness of above Salary/DA Slab/Directors remunerations. The Chairman/Directors etc are not required to mark attendance. However, the appellant has submitted attendance register of all other staff members. Appellant has also filed complete salary details of all the persons like Chairman and member relatives which have not been rebutted by the AO during assessment proceedings. It is observed that during the course of survey proceedings, Sh. Sanjay Sardana, Sh. Sandeep Sardana, Ms. Anjali Sardana and Ms. Monica Sardana were all present in the schools. On perusal of statements recorded during survey proceedings, it is furthermore observed that above persons were questioned on the various activities of the school and they responded to each and every query raised by the officials of survey team, meaning thereby that they have been found to be actively involved in day to day working of schools and for uplifting of the infrastructure and goodwill of the schools. The qualifications, experience and performance of the directors, namely Sh. Sanjay Sardana M.Sc. (Gold Medalist), M.Phil., M.Ed, and Sh. Sandeep Sardana: B.E. (Hons.), PGDCA (Gold Medalist) who have been found actively involved in day to day working of the school for the past more than 25 years is unquestionable. The two founders and advisors to the schools namely Sh. G.S. Sardana and Mrs. Usha Sardana, who are corner stone of 'Manav Mangal School' since 1968 are undisputedly highly qualified. Sh. Sanjay Sardana, the director in answer to question No.5 'Please provide attendance report of Sh. G.S. Sardana replied that 'Since Sh. G.S. Sardana is involved in policy matters of the society as manager, the policy decisions made by the executive body of the society is get implemented in all the four branches with the help of two directors. Since these three individuals, Sh. G.S. Sardana and other two directors i.e. Mr. Sanjay Sardana and Sh. Sandeep Sardana are involved in the working and growth of all the four schools, their attendance is not marked at a particular place." Even, Sh. Ajay Manchanda, who was on leave that day was recorded during post survey operations as placed at page No.66 to 71 in Paper Book No II has replied everything about the school and his working and nothing has been doubted by the Assessing Officer in the report or during assessment proceedings. The Coordinator namely Ms. Harjot Kaur and Principal of Mohali Branch of the Schools, Mrs. Kavita Malik during the course of recording their statements placed at Page No.93 and 77 of Paper Book II had stated independently as follows. When Ms. Harjot Kaur was asked a question Q6. Is Mr. Ajay Manchanda works in the school?". She has answered that "Yes, he comes to school in connection with some maintenance work, but we do not have any interaction with him.' Similarly when Ms. Kavita Malik, Principal of Manav Manga! Smart School, Mohali was put to a question like "Q8, Is Sh, Ajay Manchanda or Ms. Arshi Manchanda is working in this school?". She also stated that "Sh. Ajay Manchanda comes to the school sometimes for problems regarding transport and maintenance of generators and general maintenance. As far as I know. Ms, Arshi Manchanda is not working in this school," It is found from record that Ms. Arshi Manchanda is working in Manav Mangal High School, Chandigarh. The fact that Ms. Arshi Manchanda is on regular roils of Chandigarh Branch had been clarified by Sh. Sanjay Sardana during the course of recording his statement placed at Pages 21 & 22 of Paper Book II and he had explained the nature of duties as assigned to Ms. Arshi Manchanda, which is very much clear in answers to question Nos. 73 and 74 as follows. In a question No.73 put to Mr. Sanjay Sardana he stated that "Ans. The proof of Ms. Arshi being involved in day to day working of the school is that she takes up Maths of Class 7 apart from attending to other activities of primary block. As regards Mrs. Anjali, she was available in the school when the survey

team reached the school." Against question "Q74. Please produce any one document of their activity in school." He replied that "Ans. In case of Ms. Arshi, a copy of timetable is being produced. As regards her appointment her service book and teacher file are being provided. Same for the case of Mrs. Anjali Sardana." These were found provided to the AO. No adverse inference has been drawn by the AO during assessment proceedings by way of referring to any adverse evidence brought on record.

5.2.7. Education in the present times is one of the most competitive sectors as the teachers and the schools are expected to keep up and maintain high standards in order to ensure safety policies and constantly endeavour to create an ideal learning environment for the students. Not only this, the teachers who are being engaged in the schools have to be motivated for latest techniques and methods in education by way of organizing trainings etc. and all this requires the Management and the Head of the school to be on their toes all the time. Thus, the role of a good management in case of running educational institutions can never be over estimated. It is observed from the record that the Directors of the Schools have time and gain won various Awards and Appreciations over a period of time from the State and other high dignitaries at the state level and all India Level in appreciation of the services provided by them towards the field of education and setting up of infrastructure for imparting quality education. That befits them to be in the key roles assigned to them by the Society. To say that members of the society are earning commission income from Sushma Buildtech Ltd, Chandigarh, Mona Township Pvt.Ltd., New Delhi and GSC Estates Sector 22D, Chandigarh, it is observed that even if AO is convinced that the commission income is not genuine then he/she is at liberty to initiate action against the individuals by perusing their returns of income. The persons referred above have earned the income from a couple of builders by virtue of their capabilities. Receipt of commission income by the persons is a personal matter of the individual assessee. The statements of Sh. Devinder Singh, Sh.Harinder Pal Singh, Sh.Mohinder Singh, Sh.Vishal Raj Aggarwal no way establish that any cash has been transferred to the members or to these people or concerns and they had procured bogus commission income. No such document has been brought to my notice by the AO or Survey Report that establishes trail of transfer of cash clandestinely to the members of the society. Hence, if there is bogus commission raised by the members of the society, Ld.AO is free to initiate action against the members in their personal capacities as they have shown such commission income in their respective returns of income. These receipts shown by such individuals have no correlation to the appeal proceedings for the assessment year/years under reference.

5.2.8. Under these circumstances, the undisputed fact on record is that the schools of the assessee society are being successfully run and the revenues are consistently rising which is evident from the fact that in FY 2006-07, the society was having total receipts of Rs.4.64 Crores which has risen to Rs.25.22 Crores in the FY 2012-13 and which means an increase of 542 70% in the receipts within a span of 6 years. The role of Management, the Directors, the Principal and the other administrative heads cannot be undermined and therefore the salaries and emoluments granted to them (in the form of rent free accommodation to Directors) do not appear to be excessive vis-à-vis the services offered by these people to the assessee Society. The increments granted to these persons are also in line with the increased role and responsibility being undertaken by them and

with the multiple times growth in the number, size and strength of the schools, the increase in the salaries over the years is but natural and justified.

5.2.9. On the other hand the assertions made by the AO in his assessment order are nothing more than abstract statements. The A.O. in various parts of his order has stated that the salaries being paid to the members is excessive and beyond reasonable limits, however, he has not brought on record a single instance for comparison to prove that what could have been reasonable salary for these persons. It is not the case of the AO that these persons had not rendered any services to the Society/schools or have not worked for the benefit of the Society/schools. Moreover, the fact that these persons whose salary has been questioned and disallowed by the AO have in fact been found to be actively engaged in rendering their respective services as is proved from the fact that during the course of survey on the assessee and the post survey enquiries, all these parties have given their statements vis-a-vis the salary being drawn by them from the Society and the services being rendered to the Society and no defect/shortcoming could be pointed out by the AO even during the survey and in the assessment in previous/subsequent years. The A.O. has failed to apply his/her mind that on the one hand he himself is alleging that the salary is more than reasonable and on the other hand he has simply gone ahead to disallow the entire salary paid to the members/relatives of members which in itself is contradictory. None of the factual data furnished by the appellant during the course of assessment proceedings have been denied by the AO. Further, in the survey report of the AO, he has himself admitted that the assessee's schools are having a very impressive growth rate and this very fact goes in favour of the appellant that if it is achieving a good growth rate, the same cannot be without the active and effective efforts of the members and management of the schools. The other grounds highlighted by the AO in his survey report that the society is allegedly running as a commercial institution for profit motive etc. are firstly not relevant to the issue under consideration as the criteria for application of disallowance under section 13(1)(c) is to judge the reasonableness of the payments made to the members of the society and secondly and more importantly, there is no finding of the AO that the society is not working towards the objects of education etc. as defined in its Memorandum and Rules and Regulations. No case of siphoning off of the funds of the Society by its members has been alleged or found by the AO and furthermore the registration being granted to the Society by the CIT u/s 12A of the Act is still valid. In fact, no incriminating document has been found during survey and post survey investigations, nor such document has been emphasized by the AO during appellate proceedings. It is apparent that the Society is duly complying with the conditions laid down u/s 11 of the Act and is working as per its objectives. The reliance placed by the Ld. AR on the Judgement of the Hon'ble Supreme court in the case of Queen's Educational Society 372 ITR 899 wherein it has been held that the mere fact that the educational institution is making a profit and is having surplus cannot be ground to disentitle the institution from exemption u/s 10(23C)(vi) of the Act is quite apt. On similar lines are the Judgement of Hon'ble Punjab and Haryana High Court in the case of Pine Grove International Charitable Trust 327 ITR 0073.

7. Now the department is in appeal.

8. The Id. CIT-DR strongly supported the order passed by the A.O. and reiterated the observations made in the assessment order. It was further submitted that the payment of salary to the trustee / members and the specified persons U/s 13(3) of the Act was unreasonable for the following reasons:

\* *Sh. G.S. Sardana is founder member of the Society and was a member of the Executive Committee of the society. As per Memorandum of Association, he had the responsibility of managing the education institutions of the society and he could not charge any remuneration for this function, as he had to work in honorary capacity.*

\* *The non-specified persons as principals of other schools under the assessee society were getting much less salary for the same work as compared to Sh. Sanjay Sardana and Sh. Sandeep Sardana.*

\* *Sh. Sanjay Sardana and Sh. Sandeep Sardana had been stated to have been working as Principals of the Schools, which itself is a full time job till 5.00 pm, and on the other hand they had been paid salary as Directors simultaneously. Further, it is on record (Page 31 of the Id. CIT(A)'s order) that both these specified persons were paid salary as Director for the same work.*

\* *Furthermore if both these family members would have been employees at somewhere else, had they been allowed to do such extra job during their duty hours as Principal ? This salary as Director to both these certified persons is nothing more than diversion of funds of the society for the benefit of the certified persons.*

\* *The assessee society had made expenditure for purchase of Mercedes Benz vehicles for the Trustee and the specified persons. This was an additional perquisite for these persons, which has not been there for any other principals of the schools of the society.*

\* *Further, it has made available the rent free accommodation to Sh. Sanjay Sardana and Sh. Sandeep Sardana, was also a perquisite to these specified persons, which has not been there for any other principals of the schools of the society.*

8.1 The Id. CIT DR further submitted that the documents available on the record itself speaks that the salary paid to the trustees and the specified persons was unreasonable with a motive to divert the funds of the society to the individual. It was stated that the Id. CIT(A) allowed the salary only on the basis of the educational qualifications of the specified persons but ignored this fact that

the salary paid to the founder manager of the Trust Shri G.S. Sardana was expressly barred by the memorandum of society.

8.2 It was further submitted that the Id. CIT(A), though, had given credence to the educational qualifications but he had ignored the fact that the salary has to be paid as per the standards prescribed for private schools and that the CIT(A) has failed to consider the fact that the specified persons had been allowed perquisite in the form of rent free accommodation in posh sector of Chandigarh, apart from this exorbitant salary paid and no such facility had been provided to the members of other schools of the assessee society who are not the specified persons. It was submitted that the Id. CIT(A) had also not given any finding on the fact that the specified persons working as Principals had been given perquisite of Mercedes cars which was highly abnormal, even when the Vice Chancellors of the Universities are not allowed Mercedes cars as perquisite. The reliance was placed on the decision of ITAT Delhi Bench "D" in the case of Parivar Sewa Sanstha Vs DCIT (2005) 1 SOT 71 (Delhi).

8.3 The Id. CIT-DR also drew our attention towards back side of page No. 14 of the paper book which is the copy of the memorandum of society wherein it was mentioned that all the three office bearers namely President, Vice President and Manager would work as honorary member. He, therefore, submitted that Shri G.S. Sardana being the founder manager was not allowed to have remuneration. It was also stated that the salary paid to the Principals was excessive which attracts provisions of Section 13(2)(c) of the Act and the disallowance made by the A.O. was justified. As such, the Id. CIT(A) wrongly deleted the disallowance made by the A.O.

9. In his rival submissions, the Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the schools run by the assessee society have been making contribution in the field

of education for the last 50 years and the details of the students as well as staffs during the past few years is as under:

STUDENT AND STAFF STRENGTH (AY 2007-08 TO 2019-20)				
S.NO	ASSESSMENT YEAR	NO. OF SCHOOLS	TOTAL STRENGTH	TOTAL STAFF (Excluding Outsourced Staff)
1	2007-08	2	4446	157
2	2008-09	3	5624	209
3	2009-10	3	6102	236
4	2010-11	3	6615	270
5	2011-12	3	7234	290
6	2012-13	3	7690	313
7	2013-14	3	7839	320
8	2014-15	3	7906	328
9	2015-16	3	7925	331
10	2016-17	3	7983	335
11	2017-18	4	8861	398
12	2018-19	4	9475	421
13	2019-20	4	9818	444

It was stated that from the aforesaid chart, it would be clear that over the years, due to sincere efforts of Sh. G.S. Sardana and Smt. Usha Sardana founders of the assessee society, a rare reputation has been built in Chandigarh, Mohali, Zirakpur and Panchkula area in the field of education and the strength of the schools itself speak about the untiring efforts put in by the founders and society members. It was stated that except Sh. G. S. Sardana, the other 'specified persons' are not members of the assessee society but only related to Sh. G.S. Sardana. It was contended that over the years in the said schools, Sh. Sanjay Sardana and Sh. Sandeep Sardana sons of Sh. G.S. Sardana, who are very well qualified, joined as teachers on 1<sup>st</sup> of August 1986 and 14<sup>th</sup> of October 1988 respectively and then, over the years, they were promoted as Head of the 'Department of Science' and Head of Department of 'Computer Science' respectively. With the passage of time, Sh. Sanjay Sardana became Vice Principal of Manav Mangal School, Chandigarh, whereas, Sh. Sandeep Sardana became the Administrator of 'Panchkula School' before being appointed as Principal of their respective schools. It was stated that assessee society, in order to meet growing needs of large section of the society, purchased land from

'Greater Mohali Area Development Authority', Mohali in Phase-X for setting up the School i.e. first 'Smart School' in the region and accordingly, the work had to be assigned to someone for providing the best infrastructure, building and other facilities for setting up a "Smart School" and instead of engaging the services of some outside persons, a resolution was passed, dated November 5, 2005 to give additional charge to Sh. Sanjay Sardana and Sh. Sandeep Sardana as Directors for setting up of this region's first "Smart School" against the payment of salary. Thus, they had dual charge of being Principals as well as Directors of the schools. A reference was made to page. Nos. 521 and 523 of Paper Book Volume-II which are copies of resolution of Executive body of the society dated 05.11.2005.

9.1. Ld. Counsel for the assessee furnished a chart showing qualifications of members of the assessee society, Sh. Sanjay Sardana and Sh. Sandeep Sardana and other 'specified persons' alongwith their designation as under:

Name of the Person	Date of Joining	Designation	Qualifications	Experience
Sh. G S Sardana	April 01, 1968	Founder: Chairman	M.A (English), M.A (Hindi)	Retired After serving for approximately 50 years
Mrs. Usha Sardana	April 01, 1968	Founder: Staff Welfare Officer	Hons.in Hindi (Prabhakar), Intermediate Examination in English from Panjab University	Retired after serving for approximately 48 years
Mr. Sanjay Sardana	August 01, 1986	Principal: Manav Mangal high school, Chandigarh & Director: manav mangal group of schools	M.Sc (Gold Medalist), M.Phil., M.Ed	33 Years
Mr. Sandeep Sardana	October 14, 1988	Principal: Manav Mangal school, Panchkula & Director: Manav Mangal group of schools	B.E (Hons.), PGDCA (Gold Medalist)	31 Years
Mrs. Anjali Sardana	November 01, 1990	Vice-Principal, Manav Mangal high school, Sector 21/C, Chandigarh	M.Sc, M. Phil., B.Ed	29 Years
Mrs. Monica Sardana	September 01, 1992	Vice-Principal, Manav Mangal school, Sector 11, Panchkula	B. Com, B.Ed	27 Years

Mrs. Arshi Manchanda	July 01, 1989	Head: Primary, Manav Mangal high school, Sector 21/C, Chandigarh	B. Sc.,B.Ed, Course in Fundamentals of Electronic Processing and Programming	30 years
Mr. Ajay Manchanda	April 01, 1998	Transport Manager, Manav Mangal group of schools	B.A.	21 Years

9.2 It was emphasized that the evidences of the qualifications of all the persons are placed at page Nos. 491 to 519 of the assessee's paper book. It was submitted that all the 'specified persons' are all time devoted towards achieving the object of education for which assessee Society had been formed and they are not carrying on any other business/profession. It was also emphasized that Sarvashri Sanjay Sardana and Sandeep Sardana are working as Principals for around 25 years apart from having an additional assignment of Directors of all the schools run by the assessee society for the last 15 years and that some other specified persons had also been working in the schools and giving yeoman services to the society, all of them are the employees of the society and are being paid salary for their services. It was contended that the Directors cum Principals i.e; Sh. Sanjay Sardana and Sh. Sandeep Sardana had been provided rent free accommodation which is a normal practice in schools, for that purpose, the assessee society had taken two properties on lease belonging to Sh. Sanjay Sardana and Sh. Sandeep Sardana and rent was being paid to both of them year after year for which, a lease deed was executed and the market value of the rent was got valued from the Registered Valuer and the said rent had been included as perquisite in the hands of Sh. Sanjay Sardana and Sh. Sandeep Sardana while filing their returns of income year after year which had been accepted by the department.

9.3 Ld. Counsel for the submitted that the assessee had been maintaining regular books of accounts which were duly audited and the returns of income had been filed on the basis of such books of account, all the payments of salary to the specified persons and others had been made through normal banking

channel year after year which had been accepted by the A.O. while framing the assessment since the assessment year 1997-98 to 2012-13 U/s 143(3) of the Act after examining the issue in detail. Reference was made to the page Nos. 178 to 277 of the assessee's paper book which are the copies of the assessment orders passed U/s 143(3) of the Act for the earlier years. It was stated that the issue had been examined threadbare year after year by the A.O. after raising specific queries with regard to justification of the salary to the specified persons, the salary had been allowed as claimed, year after year and that the case for the assessment year 2010-11 had earlier been framed U/s 143(3) of the Act after examining all the issues. It was stated that for the first time in the regular proceedings for the assessment year 2013-14, the A.O. had disallowed the payment of salary to the specified persons by mentioning in para 4.1 of the assessment order that the salary to the Members and specified persons was not reasonable and undue benefit had been given to the related persons but while passing the order, the entire salary paid to the specified persons had been added back. It was contended that while giving the reply for the assessment year 2010-11 which is placed at page Nos. 142 to 159 of the assessee's paper book the assessee furnished the justification for the payment of salary to the specified persons and the educational qualification alongwith nature of duty of the specified persons had been given in page Nos. 145-146 of the assessee's paper book. It was pointed out that the Id. CIT(A) while deleting the disallowance made by the A.O. had stressed upon the fact that as the Act has not defined as to what could be the reasonable benefit that should be allowed to the specified persons and a perusal of the order of the A.O. does not in any way doubt the services/qualifications of the specified persons. It was stated that the reasonableness of payment of salary should be considered on the point of view of the Trust/society only. It was contended that all the payments had been made through banking channel from month-to-month

basis and TDS had been deducted which was deposited in time by the assessee society.

9.4 The Id. Counsel for the assessee relied upon the decisions which have been referred by the Id. CIT(A) in the impugned order and also reiterated the ratio laid down in those orders of the various Hon'ble High Courts and various Benches of the ITAT. It was stated that the Id. CIT(A) rightly held in para 5.2.5 at page No. 29 of the impugned order that Shri G.S. Sardana was the founder Member of the assessee society and acted in dual capacity first as Manager of the society for which he was not in receipt of any salary, however, he had been entrusted with the task of overall supervision, management, policy making, strategic planning, handling all legal matters relating to all the schools and due to his efforts & leadership, the society had been running schools with more than ten thousand students which could have been achieved on account of his brainchild, therefore, he was not receiving any salary as a Manager of the society but for the other services rendered by him. It was emphasized that there was no clause of non-payment of salary to Shri G.S. Sardana and otherwise also for doing this job, some other person with such a vast experience would have been appointed which could be costlier and therefore, the ground raised by the department is wholly misconceived and against the facts of the case. It was contended that the Id. CIT(A) at page 28 of the impugned order had discussed about the reasonableness of the salary and other allowances and held that when a specified person serves in two capacities first as a member and secondly as an employee and he received salary alongwith allowances as an employee, the nominal benefit given to the employee as salary or allowance should not be treated as excessive. It was stated that none of the specified persons was member of the society, they were directors/employees in the schools run by the assessee society and therefore, merely the society had paid salary and rent there could not be any disallowance automatically particularly when there had been tremendous growth of number of students only due to

continuous efforts made by the specified persons alongwith other teachers and that the schools have attained goodwill as well as reputation over the years which is evident from this fact that the strength of the students in schools had risen from 100 to 10500 which justified the payment of director's salary to Shri Sanjay Sardana and Shri Sandeep Sardana for opening of smart schools at Mohali and Zirakpur. It was stated that the Id. CIT(A) at page Nos. 29 and 30 of the impugned order had compared the salary paid to the directors in different schools in an around Chandigarh and found that there was complete justification of payment of salary to the specified persons. The Id. Counsel for the assessee relied upon the findings given by the Id. CIT(A) at page Nos. 30 to 32 of the impugned order particularly this finding that the receipts had been risen to 542.70% from the receipts in the F.Y. 2006-07 and increments granted to the persons were also in line with the increased role and responsibilities being undertaken by them and that the A.O. had not brought any material on record either during the assessment proceedings or in the survey report after completion of the assessment for the A.Y. 2013-14. It was submitted that the Id. CIT(A) categorically stated in para 5.2.9 of the impugned order that there was no finding of the A.O. that the assessee society was not working towards the cause of education or it was the case of siphoning of funds of the society by the Members. Id. Counsel for the assessee reiterated the findings of the Id. CIT(A) on the basis of report of survey given in para 5.2.9 at page Nos. 32 and 33 of the impugned order. Reliance was also placed on the following case laws:

- (i) Pine Grove International Charitable Trust 327 ITR 0073 (P&H)
- ((ii) DDIT, Exemptions Vs Gideons International in India 156 ITD 0666 (Hyd)

9.5 As regards to the submissions of the Id. CIT-DR that Mercedes cars were provided to the specified persons which were highly abnormal and not even the Vice Chancellors of the Universities were allotted Mercedes Cars as perquisite. It was stated that the assessee is running four schools which are affiliated to CBSE

and these vehicles were required for maintaining close liasioning with the CBSE officials at Chandigarh and Delhi, besides meeting various officials of Haryana Government for day-to-day effective working of schools and that both Shri Sanjay Sardana and Shri Sandeep Sardana do not own any personal vehicles. It was stated that the vehicles were owned by the assessee society and the Id. CIT(A) by following the decision of jurisdictional Bench of the ITAT in the case of Indo Soviet Society in ITA No. 478 & 279/Chd/2013 has not viewed this adversely. It was further submitted that in the case relied by the Id. CIT-DR i.e., 'Parivar Sewa Sansthan', the facts were different as in that case ex gratia payment was made to the specified persons whereas the payment had been made in the assessee's case against rendering the services, therefore, the case relied upon by the Id. CIT-DR is distinguishable on facts. Reliance was placed on the decision of ITAT Chandigarh bench dated 03/12/2020 in the case of Heritage Educational Society in ITA No. 1060 to 1071/Chd/2020, copy of the same was furnished which is placed on record. Reliance was also placed on the following case laws:

- (i) Anand Education Society Vs. Asstt. DIT(E) ITA No. 761/Del/2013 & ITA No. 1005/Del/2013 (Delhi Trib) order dated 15/07/2016.
- (ii) CIT Vs Idicula Trust Society 104 DTR 0009 P&H HC
- (iii) CIT Exemptions Vs CMR Jnanadhara Trust 55 taxmann.com 516 Kar-HC
- (iv) Young Scholars Educational Society Vs ITO 25 taxmann.com 422 Chd-Trib
- (v) Dr. D.Y. Patil Pratisthan Vs Dy.CIT 39 taxmann.com 138 ITAT Pune Bench
- (vi) CIT(Exempt) Vs Bholaram Educational Society 101 taxmann.com 193 (SC)
- (vii) Pinegrove International Charitable Trust Vs DCIT ITA No. 567/Chd/2019 dated 31/08/2020/
- (viii) CIT Vs Foundation for Social Care 94 DTR 298 All-HC
- (ix) CCIT Vs St. Peter's Educational Society 385 ITR 0066 (SC)
- (x) Pinegrove International Charitable Trust & ors. Vs Union of India & ors. 327 ITR 0073 P&H (HC)
- (xi) DDIT Vs Gideous International in India 156 ITD 666 Hyd-Trib.

10. We have considered the submissions of both the parties and perused the material available on record. In the present case, it is noticed that the A.O. disallowed the salary paid to the specified persons by invoking the provisions of Section 13(1)(c) r.w.s. 13(3) of the Act. The main reason for making the disallowance was that there was increase in the salary of the specified persons from year to year which was not reasonable since the increase was in the cases of the specified persons and not in the case of other employees. In the instant case, it is relevant to point out that the A.O. although mentioned that the salary paid was not reasonable, however, he disallowed the entire salary paid to the specified persons without pointing out excessive salary, if any. In the present case, it is noticed that the assessee society was founded by Shri G.S. Sardana and Smt. Usha Sardana in the year 1968. Shri G.S. Sardana was not claiming any salary on account of Honorary Member but claimed salary for the work done as a Principal and later on as a Director and then as a Chairman. He was involved in day to day working of the assessee society. He was having the qualification of M.A. English and M.A. Hindi and worked for the assessee society approximately for 50 years. Another member of the society i.e; Smt. Usha Sardana was also associated with the assessee society since its inception on 01/04/1968 and worked as Welfare Officer. She was having the degree of Prabhakar in Hindi and worked about 48 years. Another specified persons i.e; Shri Sanjay Sardana is having the degree of MSc. (Gold Medalist), M.Phil and M.ED, he joined the assessee society on 01/08/1986. He was working as a Principal for the last 23 years, Shri Sandeep Sardana is having the degree of BE Honors and PGDCA (Gold Medalist), he joined the assessee society on 14/10/1988 and worked about 21 years and as a Principal for the last 14 years. Another specified person Mrs. Anjali Sardana is having the degree of MSc., M.Phil and B.ED. She joined the assessee society on 01/11/1990 and worked as Vice Principal. She is having the experience of about 29 years. Similarly, Mrs. Monika Sardana joined the assessee society on 01/09/1992 having the degree of B.Com and B.ED. She is also working

as Vice Principal of the school at Panchkula. She is having total experience of about 27 years. Smt. R.C. Manchanda is also having degree of BSc., B.ED and course of Fundamentals of Electronics Data Processing and Programming. She is working as Head of the Primary school at Chandigarh. She joined on July 01<sup>st</sup> 1989 having the total experience of about 30 years. Another specified person is Mr. Ajay Manchanda who joined on April, 1998 working as Transport Manager and having the degree of B.A. From the aforesaid details, it would be clear that all the specified persons are having the educational qualifications required for the job assigned to them and they are whole time employees of the assessee society for achieving the object of education for which the assessee society had been formed and are not carrying on any other business/profession. Sarvshri Sanjay Sardana and Sandeep Sardana apart from working as Principals of the schools at Chandigarh and Panchkula respectively are also having additional assignment of Directors of all the schools. The remunerations paid to the specified persons were considered to be genuine in the preceding years however, for the first time, the disallowance was made by the A.O. for the year under consideration.

10.1 In the present case, due to joint and consistent efforts of the specified persons, the strength of the students in the schools since 2007-08 to 2019-20 has increased from 4446 to 9818, the details of the same had been given in para 9 of the former part of this order, now the assessee is having schools at Chandigarh, Mohali, Zirakpur and Panchkula area. It is also relevant to point out that only Shri G.S. Sardana and his wife Smt. Usha Sardana are the Members of the assessee society and no other specified person is the Member of the assessee society but only related to Shri G.S. Sardana. In the present case, Sarvshri Sanjay Sandana and Sandeep Sardana are the sons of Shri G.S. Sardana, they are well qualified and joined the assessee society in the beginning as teacher then over the years, they were promoted as Head of the department then Vice Principals and ultimately as Principals. The assessee

society to expand the field of education, purchased land from Greater Mohali Area Development Authority, for setting up first smart school in the region and the work was assigned to Sarvshri Sanjay Sandana and Sandeep Sardana as Directors against the payment of salary as per the resolution passed on 05/11/2005, that was the reason for increase in salary in their hands. In the instant case, the assessee society had been maintaining regular books of accounts which were duly audited and the returns of income had been filed on the basis of such books of accounts. The payments of salary to the specified persons were made through banking channel and the issue had been examined years to years since A.Y. 1997-98 U/s 143(3) of the Act till the A.Y. 2012-13. Copies of the assessment orders framed u/s 143(3) of the Act for those assessment years are placed at page Nos. 178 to 277 of the assessee's compilation. It is relevant to point out that the different Assessing Officers, after proper examination, accepted the salary paid to the specified persons in the earlier years and the first time, the disallowance was made in the assessment framed for the A.Y. 2013-14 by assigning the reason that the salary paid to the specified persons was not reasonable and undue benefit was given to those related persons. However, no material is brought on record to substantiate that how and in what manner, the salary paid to the specified persons considering their qualifications and the duty assigned to them was not reasonable since no comparable case was brought on record by the A.O. In the present case, the A.O. did not doubt the services rendered and qualifications of the specified persons, he disallowed the salary by observing that it was not reasonable, however, nothing is brought on record to suggest how and in what manner, it was not reasonable or was excessive.

10.2 On a similar issue, the ITAT Chandigarh Bench "B" in the case of Young Scholars Educational Society Vs ITO (Supra) held as under:

*" that the assessee contended that 'V was M.B.A. (Marketing) and he possessed requisite qualification in the field of advertisement. The Assessing Officer as well as*

*the Commissioner (Appeals) failed to bring any cogent and credible evidence demonstrating non-genuineness of the payment in the face of submissions filed by the assessee in the form of various evidences indicating rendering of services by "V"*

It has further been held that

*"the qualification of 'S' was indicated as M.A. B.Ed, besides other degrees and diplomas, e.g., Sangeet Visharad (Sitar), Sangeet Bhushan (Vocal), Sangeet Bhushan (Sitar) senior diploma (Vocal), Sangeet Parvewshika (Vocal) and she also held NCC 'J' certificate. A number of certificates and distinctions had also been mentioned having regard to professional qualifications of the principal 'S'. Though the payment of salary fell under the bar placed by section 13, however, having regard to her qualifications and services rendered to the assessee, the case of the assessee fell under section 13(2)(c) as the salary paid was not unreasonable. In view of this, the assessee went out of the bar placed by the provisions of section 13.*

10.3 In the present case also, as we have already discussed, the specified persons possessed the requisite qualifications and rendered the services, therefore, it cannot be held that payment of salary to the specified persons was unreasonable particularly when no comparable case was cited by the A.O.

10.4 Similarly, the Hon'ble Jurisdictional High Court in the case of CIT Vs Idicula Trust Society (Supra) held as under:

*"Payment was made to the stated persons and was confirmed by the tax-auditors as well, is not in dispute. The payments have been made and the expenditure is actually incurred by the assessee (which is a charitable society existing solely for the purpose of education). There is nothing to show that the payments made to the persons mentioned in the return as also in tax audit reports, were excessive."*

It has further been held that

*"Salaries of teachers who are also engaged in whole time management activities of Trust and were also rendering administrative functions qua running of schools for which they were not being paid any extra salary would be exempted u/s 11 of the Act."*

10.5 In the present case also, the salary had been paid to the specified persons against the services provided by them the income from salary had been shown in their individual return of income and nothing is brought on record by

the A.O. to substantiate that any extra salary was paid for the administrative function and that the salary was excessive in comparison to any similar case, therefore, the disallowance made by the A.O. was rightly deleted by the Id. CIT(A).

10.6 A similar issue has been decided by the ITAT Delhi Bench "A", New Delhi in the case of Anand Education Society Vs Asstt.DIT(E) (supra) wherein it has been held as under:

"25 In the present case, it is an admitted fact that the relatives of the trustees were appointed as Principal, Vice-Principal and Administrative Director. However, their appointments were not illegal as the same were done by following the proper procedure, an advertisement was published in the National Newspaper for the post of Principal and Vice-Principal. In response to the said advertisement, the applications were received from the eligible person and after a proper scrutiny, those persons who fulfilled the requisite qualification and having the experience, persons were called for an interview. The Selection Board who conducted the interview included, two nominees of the Education Department of the Government and selection was done on merit. The remuneration paid was in accordance with the pay scale fixed by the Directorate of Education for the similar post. It is not the case of the AO that the remuneration paid was in excess of what may be reasonably paid for such services. It is also not the case that the expenses relating to telephone etc. were not incurred for furtherance of the objectives of the assessee society. In the present case, the AO has observed that the development charges were not shown in the income and expenditure account and reopen the assessment on the said basis. This observation of the AO was factually incorrect because the assessee had shown the development charges in its books of account which is evident from the various copies of the ledger account furnished by the assessee to the AO vide letter dated 19.12.2011 which are placed at page nos. 282 to 305 of the assessee's paper book. The assessee also furnished copies of the journal vouchers in respect of tuition fees and development fees along with student wise details which are placed at page nos. 306 to 314 of the assessee's paper book. In the present case, the AO has not brought anything on record to substantiate that the expenditure on salary or facilities provided to the relatives of the trustees of the assessee society were excessive having regard to fair market value of the services provided by them. Therefore, the AO wrongly invoked the provisions of Section 13(3) of the Act and the Id. CIT(A) was not justified in confirming the action of the AO. We, therefore, set aside the impugned order and direct the AO to allow the exemption u/s 11 of the Act to the assessee. Since we have decided the Ground Nos. 6 to 11 in favour of the assessee on merits, therefore, no findings are being

*given on the issue relating to the reopening u/s 147 of the Act raised by the assessee vide Ground Nos. 1 to 5."*

10.7 In the present case also, the assessee furnished all the details relating to the payment of salary, tuition fee received from the students and nothing is brought on record to substantiate that the expenditure on salary or facilities to the relatives of the trustees of the assessee society were excessive having regard to the fair market value of the services provided by them. Therefore, the A.O. was not justified in making disallowance U/s 13(3) of the Act.

10.8 On a similar issue, the Hon'ble Karnataka High Court in the case of CIT(E) Vs CMR Jnanadhara Trust (supra) held as under:

*"When the trust is availing the services of these trustees and on account of the services rendered by them, there is a substantial growth in the Trust and its activities, when the payments are made for such services rendered, it cannot be said that it contravenes section 13(1)(c). Consequently, there is no justification for denying the benefit under section 11."*

10.9 In the present case also, as we have already pointed out in the former part of this order that the assessee trust was availing the services of the specified persons and there was substantial growth in the functioning and activities of the assessee society, therefore, it cannot be said that the payments made on account of salary to the specified persons contravene the provisions of Section 13(1)(c) of the Act, as such, the A.O. was not justified in making the disallowance and the Id. CIT(A) rightly deleted the same. We, therefore, considering the totality of the facts and the ratio laid down by the various Hon'ble High Courts as well as different Benches of the ITAT, as referred to above, are of the view that the Id. CIT(A) rightly deleted the disallowance made by the A.O. We do not see any valid ground to interfere with the findings given by the Id. CIT(A) on this issue.

11. The next issue vide grounds No. vi and vii relates to deletion of disallowance made by the A.O. on account of rent paid to the specified persons by invoking provisions of Section 13(3) of the Act.

12. The facts of the case in brief are that the A.O. during the course of assessment proceedings asked the assessee to justify the payments made to the Members. As regards to the payment of rent made to the specified persons. The assessee submitted as under:

*"With respect to Rent paid to Sanjay Sardana & Sandeep Sardana, it is submitted that both Sh. Sanjay Sardana & Shri Sandeep Sardana have been provided rent free accommodation. For the said purpose the assessee Society has taken on lease H. No. 3084 Sector 21 D which is a one Kanal House on a monthly rent of Rs.20000/- from Sh Sandeep Sardana & Mrs. Monica Sardana w.e.f 1.9.2010 to 31.8.2015. The lease rent as per the lease deed is to increase by 5% of the First year rent after completion of each year. Rent during the relevant period was thus Rs. 21000/- from 1.4.2012 to 31.8.2012 and Rs. 22000/- from 1.9.2012 to 31.3.2013. This property consists of one room set, a kitchen and toilet on Ground floor and another set of room, kitchen and Toilet on first floor. Rent of Rs. 2,59,000/- was paid by Manav Mangal School Panchkula. Rent was paid in equal share to Sandeep Sardana and Monica Sardana. The 2nd premises which was taken on lease was from Sh. Sanjay Sardana & Smt. Anjali Sardana being H. No. 3085 Sector 21 D Chandigarh at a monthly lease rent of Rs. 80000/- per month w.e.f 1.9.2011 to 31.8.2016 with annual increase of 5% of first year rent. Rent during the year 1.4.2012 to 31.8.2012 was Rs. 80000/- per month and Rs. 84000/- per month from 1.9.2012 to 31.3.2013. This house is a one Kanal house with basement, Ground floor, First Floor and second floor having 5760 Sq. Feet. Rent of this house is paid by Manav Mangal High School Sector 21 Panchkula and is paid to the co-owners in equal proportion. While filing returns of Income both Sh. Sanjay Sardana & Sh. Sandeep Sardana are showing the perquisite value of the rent free accommodation in salary income declared by them. Rental income received by them is also declared in their hands. (Copies of the lease deeds of the two properties is enclosed for ready reference).*

*Rent paid for the premises taken on rent is based on the prevailing market rent at the time of taking the premises on lease in the year 2010 & 2011 respectively. Rents otherwise in the market of such accommodation during the period under consideration was much higher.*

*It is also not out of way to mention here that Sh. Sanjay Sardana & Sh. Sandeep Sardana were using the part of the accommodation for official purposes also as they have to do a lot of work relating to the duties assigned to them as Directors of the four schools as the school premises are closed at 5.00 PM although the school timings are upto 2.30 PM only. Normally both these work upto 5.00PM in the respective schools and thereafter attend to management work of other schools, Society affairs and planning for future expansions are attended to at the*

offices they are maintaining at their residence which are provided to them by the School Administration."

12.1 It was further submitted as under:

"(a) It is submitted that H. No. 3084, Sector-21D, Chandigarh, is owned by Director Sh. Sandeep Sardana and his wife Smt. Monica Sardana. This house is partially built. The school has taken this house on rent for providing rent free accommodation to him. This is perquisite given by the society to its Director, this is not excessive payment under section 13(3), as if the director was provided rent free accommodation by hiring another house the monthly rent would have been more than Rs. 45000/- p.m. for the similar accommodation in one kanal house.

(b) H. No. 3085, Sector 21 D, Chandigarh is owned by Director Sh. Sanjay Sardana and his wife Smt. Anjali Sardana, This is a double storey duplex one kanal house. The society has taken this house on rent for providing rent free accommodation to the Director. This is perquisite given by the society to its Director, this is not excessive payment under section 13(3) as, if the director was provided rent free accommodation by hiring another house the monthly rent would have been more than Rs. 120000/- p.m. for the similar accommodation in one kanal house. In many cases the institutes, schools and colleges are providing rent free accommodations to their principals/administrators. Further it is submitted the Sh. Sandeep Sardana is working as principal of Manav Mangal School, Sector-11, Panchkula and Director of all the three running school and fourth upcoming school in Zirakpur and Sh. Sanjay Sardana is working as principal of Manav Mangal School, Sector-21, Chandigarh and director of all the three running schools of the society and fourth upcoming school at Zirakpur. (Annexure D1)."

12.2 However, the A.O. did not find merit in the submissions of the assessee and made the disallowance by observing in para 4.4 of the assessment order dated 23/02/2016 which read as under:

"4.4 Assessee is paying rent to their members against the premise letting out by the members to the assessee. And it is a interesting fact that in these premises the members are residing and they are owner of the same building against the same they are getting rent from the society. Reply of the assessee that it is requirement for the society and their directors/members, is not accepted. Because assessee is paying rent to the owners of the property in which owners of the property residing. During the assessment proceedings, it has found that trust is not providing this service to their any other employees, which shows discretion between other employees or directors of the society. It is beyond understand that why assessee is providing special treatment to their members. In the above facts, it shows that these members have used their own property for their personal use and getting the rent against the same, which is not allowable u/s 13 (1)(c) r.w. 13(3) of I. T. Act, 1961."

13. Being aggrieved, the assessee carried the matter before the Id. CIT(A) and submitted as under:

*"I. JUSTIFICATION OF RENT BEING PAID TO SH. SANJAY SARDANA/ SANDEEP SARDANA*

*As regards for the payment of rent, the following are the brief facts and all such facts have been mentioned to the Assessing Officer during the course of assessment proceedings for A. Y. 2013-14.*

*i. Sh. Sanjay Sardana, besides getting the salary was provided 'Rent Free Accommodation' and for providing the rent free accommodation, a lease agreement was entered into for the H. No. 3085, Sector-21-D @Rs. 30000/- per month in the year 2001 with a stipulation that there would be 5% increase on the basis rent in every year and the said lease agreement was for five years. The house is owned by Sh. Sanjay Sardana and Mrs. Anjali Sardana.*

*ii. This agreement was then renewed again in August 2006, for a further period of five years and the rent was agreed to the tune of Rs. 40000/- per month with 5% increase every year on the basic rent year after year.*

*iii. Again on 01.09.2011, the lease agreement was revised for 5 years and for that Fair Rental Valuation' was not made from the 'Govt. Approved Valuer' vide Valuation report, dated 07.07.2011 and lease agreement was drawn on 01.08.2011 for five years at a rental of Rs. 80,000/- per month with the increase of 5% of basic rent every year.*

*iv. Then again, another 'Lease agreement' was executed from 01.09.2016 to 31.08.2021 and for which, the rent was agreed to be paid @ Rs. 1,10,000/- on the basis of 'Approved Valuer Report', dated 28.08.2016 and it was again stipulated 5% increase every year of the basis rent.*

*v. All the payments of rent have been paid through normal banking channels to Sh. Sanjay Sardana & Mrs. Anjali Sardana and there is no cash payment and the TDS as applicable is being deducted and Sh. Sanjay Sardana and his wife Mrs. Anjali Sardana, while filing their returns of income, have disclosed such rent as received from the society in their respective returns of income year after year and beside that, while filing his (Sanjay Sardana) return of income, the perquisite value on account of such 'Rent Free Accommodation' have been included as salary in his (Sanjay Sardana) return of income for all the years. All such evidences have been submitted in writing and orally, explained to the Assessing Officer concerned while framing the assessment for A. Y. 2013-14 and the same had been discussed in the order for A. Y. 2013-14 of the Assessing Officer at pages 5 & 6, and besides the copies of all such lease agreements/ resolution/ valuer report as stated above have been enclosed in the separate paper book.*

*vi. The plot for the house No. 3085, Sector-21-D, was purchased in the year 1999 in the name of Sh. Sanjay Sardana and his wife, Smt. Anjali Sardana and, thereafter, the construction was carried out from 1999 onwards and evidence for existence of house is enclosed herewith. It is submitted that only after both Sh.*

Sanjay Sardana and Sh. Sandeep Sardana had worked as Principal for few years that the society asked them to shift to the house No. 3085, Sector- 21-D, Chandigarh, which had been taken on lease in 2001 by the Society.

vii. There is another house bearing No.3084 at Sector-21-D, Chandigarh in the name of Sh. Sandeep Sardana and his wife, Smt. Monika Sardana, for which, the plot was purchased in September 1999 and, thereafter, a small portion was constructed there, consisting of two rooms, toilet and a pantry and for this house, the lease agreement was entered into on Aug 13, 2010 at a monthly rent of Rs. 20000/- for five years with increase of 5% every year of the basic rent. Such income has been duly disclosed by Sh. Sandeep Sardana and Smt Monika Sardana in their return of income and even Sh. Sandeep Sardana had disclosed perquisite value while filing his return of income each year. Even, we are filing documentary evidences, wherein various schools are allowing 'Rent Free Accommodation' to the Principals and, thus, it is a trade practice and not a new phenomenon. Such evidences are being enclosed in the paper book in case of some schools like Ishori International School: Chirawa, Bal Bharti Public School: Gandhar, S.B. Sharma World School: Jamnagar, Salwan Public School, Ghaziabad, Dunlod Public School: Lucknow, S.D. Jain Modern School, Surat, The Sirsa School: Sirsa, The Star Global School: Rohtak, Delhi Public School: Ferozpur: Surmount International School: Gorakpur.

viii. It is submitted that said rent has already been allowed by the department previously in the various orders passed u/s 143(3) of the Society and there has been no dispute, either during all such years and even for some of the years, there have been certain disallowance of capital expenditure in respect of purchase of land and construction of building by the Society, but the matter have attained finality by the Highest Court of the country i.e. Hon'ble Supreme court, after the appeal of the assessee have been allowed by the CIT(A), ITAT, Chandigarh Bench and Hon'ble Punjab & Haryana High Court and, thereafter, the SLP of the department had been dismissed by the Hon'ble Supreme Court. Copies of ail such orders have already been filed in the separate paper book. Thus, it stands established that in all the years, the surplus having been utilized for the cause of education was never in doubt.

ix. Even otherwise, it may be stated that both the houses belonging to Sanjay Sardana and his wife and Sh. Sandeep Sardana and his wife have been pledged to the 'Karnatak Sank' for raising loan for the purposes of construction of school i.e. for providing basic infrastructure and improving the earlier infrastructure and none of such funds have been used by any of the related persons for their personal use. Copy of the Bank certificate from the Karnataka Bank have already been filed, before the Assessing Officer and copy of the same is being filed herewith again in the paper book being filed, now, just to substantiate the fact that even the personal property of Sh. Sanjay Sardana and his wife and sh. Sandeep Sardana and his wife have been used for raising the 'loan' for the purpose of society, which is engaged in providing quality education to the children of all walks of the society.

x. We have also brought to your goodself's predecessor attention about the latest judgements of hon'ble Supreme Court in the case of CIT V/s Bhola Ram for the proposition of payment of rent to the Trustees and which have been held to be allowable and besides, different judgements of Jurisdictional 'Punjab &

Haryana High Court' and IT AT, Chandigarh Bench in favour of the Assessee, wherein the salary paid to the Trustees have duly been allowed. This is brought on your record that during the course of survey, even nothing adverse was pointed out by the Assessing Officer concerned and thus, disallowance/ ignoring the past history of the case, the consistency has to be maintained and not to disregard the judgements of Hon'ble Supreme Court, Punjab and Haryana High Court and IT AT, Chandigarh Bench, Chandigarh. We rely upon the recent judgement in the case of Smt. Amarjit Kaur, which is the latest judgement on account of consistency wherein, the judgements of Hon'ble Apex Court in the case of Berger Paints and Leader Values have been followed."

13.1 The Ld. CIT(A) pointed out that there was a survey conducted U/s 133A of the Act on the business premises of the assessee society. The gist of survey report was given to the assessee for comments by the then CIT(A) which read as under:

"6. Assessee is paying rent to their members against the premise letting out by the members to the assessee. And it is an interesting fact that in these premises the members are residing and they are owner of the same building against the same they are getting rent from the society. Reply of the assessee that it is requirement for the society and their directors/ members is not accepted. Because assessee is paying rent to the owners of the property, in which the same owners of the property residing. During the assessment proceedings, it has found that trust is not providing this service to their any other employees, which shows discretion between other employees or directors of the society. It is beyond understand that why assessee is providing special treatment to their members, in the above facts, it shows that these members have used their own property for their personal use and petting the rent against the same, which is not allowable u/s 13(1) of I. T. Act. 1961.

During the survey proceedings on 28-29.12.2016, it is found that assessee is diverting society's money to personal hands of these persons. It is found that Sh. G.S. Sardana, Chairman of Manav Mangal Group and their family members are main promoters of this group. They are enjoying salary and other facilities of the society and making their own capital without providing the services to the society During the survey proceedings, it has found that these persons are taking huge salary without their services and without following the norms and conditions of the CBSE. It is found during survey that Sh. G.S. Sardana and Mrs. Usha Sardana and their family members are not coming to school and also not involved in the day to day business of the school despite the facts they are taking huge salary from the society. During the assessment proceedings, it has found that Sh. G.S. Sardana and his wife Mrs. Usha Sardana are very old and not able to do work properly despite the fact assessee is paying huge salary to them. This has been confronted to Sh. Sanjay Sardana. Director of the society in the statement recorded during the survey proceedings on 28-29.09.2016 has failed to explain the same the Chairman and their family members from the school and assessee has failed to produce these persons. Sh. G.S. Sardana, Mrs. Usha Sardana, Mrs. Anjali Sardana, Mr. Ajay Manchanda, Mr. Arshi Manchanda, Ms. Shristi Sardana, Mr. Sankalp Sardana and also failed to submit any reply or documents related with the sen/ices provided by them in schools and society. Assessee has also

failed to submit or produce appointment file in these cases. Assessee has also failed to show their official room in which they worked.

7. Assessee is paying rent to their members against the premise letting out by the members to the assessee and it is a interesting fact that in these premises the members are residing and they are owner of the same building against the same they are getting rent from the society. Reply of the assessee that it is requirement for the society and their directors/ members, is not accepted. Because assessee is paying rent to the owners of the property in which owners of the property residing. During the assessment proceedings, it has found that trust is not providing this service to their any other employees, which shows discretion between other employees or directors of the society. It is beyond understand that why assessee is providing special treatment to their members. In the above facts, it shows that these members have used their own property for their personal use and getting the rent against the same, which is not allowable u/s 13(1)(c) r.w.s. 13(3) of I.T. Act, 1961."

13.2 In response, the assessee submitted that the A.O. disregarded the accepted past history of the case wherein all the assessments of earlier years on the same issue i.e; the payment of rent had been accepted year after year in the orders passed U/s 143(3) of the Act and that the payments had been made through account payee cheques every month after deducting TDS.

13.3 The Id. CIT(A) after considering the submissions of the assessee, deleted the disallowance made by the A.O. by observing as under:

"5.2.10. Now, coming to the Issue of payment of rent to the relatives of the members, the Ld. AR has submitted that the society is providing rent free accommodation to its Directors under their respective service contract and this perquisite is being treated as a part of their salary and which is being duly declared by these Directors in their respective returns of income, it has been argued that the Directors who are consistently working for the running of the Schools of the society are also using their accommodation provided by the society for official purposes as many a times the Directors have to work beyond the normal working hours of the schools. The appellant has duly furnished the lease deeds and the valuation reports of the two properties and no defect or discrepancy out of these documents has been found by the AO. It is not the case of the AO that the rent being paid for the accommodation is higher than its normal market value. The observations of the AO that similar facility of rent free accommodation is not being provided to other employees of the society does not hold much significance as the appellant society is having only two Directors and the other Junior Employees/ Teachers of the society cannot be compared to the position of a Director considering the key role and responsibilities being entrusted upon the Directors and the comparative work load on them to manage all the schools being run by the society. Further this facility is being given to the Directors since 2001. In these circumstances, I find merit in the submissions of the appellant that the provision of rent free accommodation to the Directors

*of the Society and consequent payment of rent is reasonable and thus not hit by the provisions of Section 13(1)(c) of the Act."*

14. Now the department is in appeal.
15. The Id. CIT-DR strongly supported the order of the A.O. and reiterated the observations made in the assessment order. It was further submitted that the assessee society paid the rent of the premises/building belonging to the specified persons who were residing in the same premises for which rent was paid. It was further submitted that the similar property could have been hired on the lesser rent by the assessee society, therefore, the disallowance was rightly made by the A.O. and the Id. CIT(A) was not justified in deleting the disallowance made by the A.O.
16. In his rival submissions, the Id. Counsel for the assessee submitted that the valuation of the houses was not doubted by the A.O. and the accommodations provided to the specified persons were considered as perquisites in their individual hands which was added to their income and accepted by the department in their individual hand, therefore, there was no justification in making the disallowance. It was further submitted that a lease agreement was entered into by the assessee society with the owners of the premises, copies of which are placed at page Nos. 393 to 415 of the assessee's paper book. The rent on the basis of lease agreement was being paid regularly through banking channel which was shown by the owner in their respective returns and the specified persons had shown the value of the rent as perquisites in their hands and paid due taxes. It was further submitted that the Directors were also working from their residential premises and the A.O. had not raised any objection and stated that the rent paid was more than normal market rent, further this practice of providing rent free accommodation to the senior management employees as perquisites was being followed in other schools also. As regards to the observation of the A.O. that the similar facilities of rent free accommodation

was not being given to other employees of the assessee society, it was submitted that the assessee society has two Directors-cum-Principals and other junior employees/teachers of the assessee society cannot be compared to the position of a Director-cum-Principal considering the key role and responsibility being entrusted upon them and also the work load on them to manage all the schools being run by the society. Reliance was placed on the following case laws:

- (i) CIT(Exempt) Vs Bholaram Educational Society 101 taxmann.com 193 (SC)
- (ii) Pinegrove International Charitable Trust Vs DCIT ITA No. 567/Chd/2019 dated 31/08/2020.

17. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is not in dispute that the assessee provided accommodation to the Principals-cum-Directors of the assessee society who were also managing administrative work from the residential premises. It was not the case of the A.O. that the rent paid was excessive as compared to the similar accommodation. The contention of the Id. Counsel for the assessee that the specified persons had shown the value of the rent as perquisites in their respective hands which has been accepted by the department has not been rebutted and that in earlier years also for the similar payments, no disallowance was made by the department.

17.1 On a similar issue, the Hon'ble Apex Court in the case of CIT Vs Bholaram Educational Society (Supra) held as under:

*"4. It can be seen that the entire issue is in the realm of appreciation of materials on record. CIT (Appeals) and the Tribunal concurrently came to the conclusion that the rent was not excessive. The application under section 13(l)(c) of the Income Tax Act therefore would be ruled out. Remaining disallowances being consequential to the main one, no further discussion is necessary when we do not find any reason to interfere in connection with the main issue."*

17.2 In the present case also, the payment of rent was not doubted and the A.O. did not bring any material on record to substantiate that the rent paid was excessive and the specified persons to whom accommodation was provided had shown the valuation of the said properties as perquisites in their respective hands. Therefore, the Id. CIT(A) rightly deleted the disallowance made by the A.O. particular when the rent paid for the same accommodation has been accepted in the preceding years. We, therefore, considering the totality of the facts do not see any valid ground to interfere with the findings given by the Id. CIT(A) on this issue.

18. The next issue vide ground No. viii and ix relates to deletion of disallowance made by the A.O. on account of interest on unsecured loans paid to the specified persons.

19. Facts related to this issue in brief are that the A.O. asked the assessee to justify the payments made to the specified persons on account of interest. The assessee submitted as under:

*“With regard to the Interest paid on loans raised from the persons covered under section 13(3) it is respectfully submitted that the same has been paid @12% per annum. The interest paid to these persons is at the same rate at which interest is being paid to banks. While raising loans from banks, adequate security has been taken by banks for advancing these loans. However in the case of these persons there was not any security given by the society and such loans were unsecured loans. These loans were raised for creating infrastructure of schools run by the society. The society is forced to raise loans through these persons as the banks have their limitations in advancing whole amount of required finances. In fact, the Directors Mr. Sanjay Sardana and Mr. Sandeep Sardana came forth to help the society's cause by pledging their houses to raise bank loans for the society during the coming up of its third branch at Mohali. The Persons covered u/s 13(3) in order to strengthen the society and to meet with the required funds, have come forward to provide unsecured to the schools run by the society. These*

*funds were necessitated to meet financial of schools to raise requisite infrastructure to provide quality education to the students enrolled in the schools.*

*Sir, the interest on unsecured loans is usually higher than the interest on secured loans, as unsecured loans are not secured by any guarantee, immovable/movable. These persons who could have invested their hard earned accumulated funds in Real Estate or other Securities, for better returns, but they choose to support the said schools financially by Virtue of their passion for providing quality education in the said Schools, It is further submitted that these persons are being paid much less interest on their unsecured advances than the secured loans from Banks. The interest paid on said unsecured Loans during their in question is much less i.e. @12% PA then the interest charged by Banks on secured loans i.e. @13% during the financial year 2012-13.*

The A.O. did not find merit in the submissions of the assessee and disallowed interest paid to the specified persons.

20. Being aggrieved, the assessee carried the matter to the Id. CIT(A) and submitted that the interest was being paid to the persons who had extended their funds to the society against no security as per the requirement of the society and it was being done at a rate lower than the interest being paid by the assessee society to the banks against secured loans. The Id. CIT(A) pointed out that a survey was conducted U/s 133A of the Act on the business premises of the assessee society and the gist of survey report was given to the assessee vide letter dated 21/03/2017 for comments by the then CIT(A). The relevant portion of the report read as under:

*"8. Assessee is also paying huge interest to the chairman and their family members against the unsecured loan. During the survey and post survey proceedings it has found that there are huge amounts have received by these persons in their personal hands from the society and invested the same in properties. The details of unsecured loans are as under:-*

Sr. No.	Name of the Member	AY 2013-14 Unsecured loan given	AY 2013-14 Income shown ITR	A.Y. 2014-15 Unsecured loan given	AY 2014-15 Income shown ITR	AY 2015-16 Unsecured loan given	AY 2015-16 Income shown ITR	AY 2016-17 Unsecured loan given	AY 2016-17 Income shown ITR
1	Ms. Anjali Sardana	61,00,000/-	65,26,144/A	86,00,000/A	28,01,754/A	54,00,000/A	30,30,320/A	54,00,000/A	36,54,944/A
2	Ms. Arshi Manchanda	14,00,000/-	11,98,892/A	23,00,000/A	15,01,657/A	16,00,000/A	17,37,762/A	88,00,000/A	37,56,505/A
3	Ms. Monika Sardana	71,00,000/-	25,83,086/A	52,00,000/A	30,10,310/A	30,00,000/A	29,79,331/A	41,00,000/A	28,03,330/A
4	Ms. Usha Sardana	70,00,000/-	22,07,501/A	1,21,00,000/A	33,64,689/A	79,00,000/A	36,04,045/A	0	34,30,859/A
5	Sh. Sandeep Sardana	30,00,000/-	44,45,594/A	25,00,000/A	51,14,007/A	95,00,000/A	71,77,048/A	1,83,00,000/A	87,60,978/A
6	Sh. Sandeep Sardana, HUF	7,50,000/-	12,76,890/A	30,00,000/A	13,37,978/A	26,00,000/A	12,13,927/A	27,00,000/A	12,67,242/A
7	Sh. Sanjay Sardana	26,00,000/-	46,32,307/A	47,00,000/A	53,98,430/A	77,00,000/A	76,15,099/A	81,00,000/A	79,74,646/A
8	Sh. Sanjay Sardana, HUF	9,00,000/-	11,29,719/A	45,00,000/A	13,28,138/A	52,50,000/A	14,96,648/A	63,00,000/A	15,79,072/A
9	Sh G.S. Sardana	58,00,000/-	45,22,353/A	98,00,000/A	53,59,037/A	1,26,00,000/A	61,01,334/A	0	71,34,958/A
10	Ms. Srishti Sardana	22,00,000/-	1,94,427/A	23,00,000/A	2,73,710/A	25,00,000/A	2,92,022/A	49,00,000/A	4,49,258/A
11	Ms. Pallak Manchanda	-	1,21,037/A	10,00,000/A	2,16,168/A	-	2,94,464/A	90,00,000/A	6,48,407/A
12	Sh. Sankalp Sardana	-	1,50,968/A	21,00,000/A	1,69,168/A	31,00,000/A	3,06,253/A	31,00,000/A	3,81,665/A
	Total	3,66,50,000/-	2,89,68,381/A	5,81,00,000/A	2,98,75,596/A	6,10,50,000/A	3,58,48,253/A	7,58,00,000/A	4,18,41,864/A

On perusal of the above, it is seen that there is huge increase in the unsecured loan from A.Y. 2013-14 to A.Y. 2016-17 and the sources are from the society only. The money has diverted through society to individuals and then individuals to individuals and against to the society. Against the same then these persons are getting interest income.

## 20.1 In response, the assessee submitted as under:

6. Regarding salary, rent and interest, which according to the Assessing Officer have gone back to the School in the form of loan is not correct observation, because of the following facts:-

- i) All the payments of salary, interest or rent have been paid by account payee cheques as per due dates every month after deducting TDS and no cash payments have been made to any of the related persons.
- ii) All the persons are well qualified and most of them have an experience of more than 25 years and have rendered requisite services and for which, there is not an iota of doubt or whisper in the Assessment order that either the persons do not have requisite qualifications or have not rendered any services.
- iii) The funds as advanced by them to the society have been generated by such persons out of sale of their personal land holdings in some cases or interest income of such persons from other sources and it is totally wrong assertion on the part of the Assessing Officer to mention that salary, rent and interest received by them have come back as loan to the society.
- iv) In order to substantiate our above contention, we are submitting herewith a chart for the assessment year under consideration, which would prove the source of funds as

advanced to the Society in some cases and this itself would clarify each and everything. The chart is placed at page 01 to 03 of Paper Book V.

v) We are submitting herewith the copy of the bank statements of the related persons to prove that majority, the remuneration, rent or interest drawn from the school have been utilized for the personal needs of each person i.e. for payment of LIC, payment of 'education fee' for the children, car loan repayments, travelling, travelling (personal) and for household expenses etc. Copy is placed at page 04 to 31 of Paper Book V.

vii) There is no bar to make advances to the society on interest out of the income earned from the Society by rendering requisite services or letting out their property against which the rent is being received. This issue has thoroughly been looked into by the Assessing Officer during the course of assessment proceedings and, later on, during the course of survey, but still, the above submissions are being made to negate the contention of the Assessing Officer.

vii) It is also pertinent to mention here that the Society today has four schools having 'International Standard Infrastructure' for rendering quality education and there are about ten thousand students on rolls and all this creation of huge infrastructure, including land and building required major investments and for which, the requisite funds were required.

viii) Even funds were arranged by the Society by taking heavy loans from the banks for which, the related persons have mortgaged their personal assets and also given personal sureties and with no outsider ready to lend money to the society, the related persons had to part their personal 'taxed income' in the Society, so that the aims and objects for rendering the quality education could be achieved.

7. Had the related persons not advanced the funds to be Society, no super structure which is existing now could be created and, as such, the very purpose of formation of society for rendering quality education would have been defeated. Against such advancement of amount, a nominal rate of interest of 12% is being charged by the persons and with no guarantee from the society.

8. We are submitting further the following facts which would prove beyond any doubt that there was requirement of funds to the society for achieving the objects of the Society and members and related persons have been extending loan to the society so that its growth does not get hampered at any stage due to financial constraints. Obviously, it is Society's interest and not the interest income that has been their primary consideration.

a) Funds were required by the society for raising infrastructure and facilities in the existing schools, for paying installments of purchased school site(s) and for expansion of educational services by opening new school at Zirakpur school site. The requirement of funds by the society is enclosed (page no. 32 of Paper Book V)

b) The practice of allotment of school land in Chandigarh, Punjab & Haryana at concessional rates has been stopped since long. It is now auctioned at very high prices. Manav Mangal Society, in fact purchased the school site in Zirakpur at a much lower rate. Since the banks do not readily come forward to give loans for the purchase of land, these persons provided unsecured loans to the society at a reasonable rate of 12% per annum.

c) Rate of interest being paid by society to the banks against secured loans (OD a/c) during FY 2012-13 was 13% (page No. 33 of Paper Book V). Thus the interest paid to the said persons against unsecured loans was lower than the interest paid to banks on secured loans. Interest paid against unsecured loans is always higher than the interest paid against secured loans in the financial market as the unsecured loans are not secured against any

guarantee (18% interest against unsecured loans allowed in M/s Standard Toils Corpn - pages 108 & 109 of Paper Book IV.)

d) In the interest of working of Manav Mangal Society and its cause, these persons have been taking the risk of pledging their houses as collateral security to enable the society to avail the secured loans from the banks for construction of school buildings. (Page no. 34 & 35 of Paper Book V). Not only that: these persons have been giving their personal guarantees to help the society to raise secured loans from the banks.

e) The AO has unfortunately missed to get the fact that these persons have been bringing in the major part of their unsecured loans to society from their sources such as:

- i) Interest income from and return of investments in FDRs, debentures etc.
- ii) Sale proceeds of property
- iii) Maturity proceeds of insurance policies
- iv) recovered loans given to business houses at 12% interest

**CHART SHOWING THE SOURCES OF THE AMOUNT ADVANCED TO THE SOCIETY**

Name	Source of Income/ Savings	Amount (in Rs.)	Net loans given to society during the year
Mr. G.S. Sardana	Return of loan from Mr. Ravi Kant	5,00,000/-	
	Interest from Mr. Ravi Kant	5,000/-	
	Return of loan from Macro Linkers	40,00,000/-	
	Interest on loan to Macro Linkers	54,000/-	
	Interest from Macro Enterprises	4,88,000/-	
		<b>51,11,250/-</b>	<b>34,00,000/-</b>
Mrs. Usha Sardana	FDR Maturity	64,87,254/-	
	Interest on loan to Ram Advertising	83,250/-	
	LIC Maturity	12,22,050/-	
	Muthoot Finance: Debentures @13.25%	66,250/-	
		<b>78,58,804/-</b>	<b>60,00,000/-</b>
Mr. Sanjay Sardana	LIC Maturity	1,02,350/-	
	Muthoot Finance: Debentures @13.25%	66,250/-	
		158600	<b>NIL</b>
Mrs. Anjali Sardana	Interest from GSC Estates	3,24,000/-	
	Sale of Plot 1009/Sector 27 Panchkula	65,00,000/-	
	Muthoot Finance: Debentures @13.25%	66,250/-	
		<b>68,90,250/-</b>	<b>57,00,000/-</b>
Mr. Sandeep Sardana	Interest from GSC Estate	1,08,000/-	
	LIC Maturity	1,02,350/-	
	Dividend	10,458/-	
	Muthoot Finance: Debentures @13.25%	66,250/-	
		<b>2,87,058/-</b>	<b>8,00,000/-</b>
Mrs. Monica Sardana	Sale of Plot 1879/ Sector 28 Panchkula	3900,000/-	
	Other Sources	8,10,000	
	Muthoot Finance: Debentures @13.25	66,250/-	
		<b>47,76,250/-</b>	<b>40,50,000/-</b>
Mrs. Arshi Manchanda	Rent from TATA Tele Services	4,11,836/-	5,00,000/-
	<b>GRAND TOTAL</b>	<b>2,55,04,046/-</b>	<b>2,04,50,000/-</b>

*It is evident from the above chart that Rs.2,55,04,046/- has come to these persons from their own sources/ savings and not from salary/interest/rent paid by the Society Against, a sum of Rs.2,55,04,046/- received by these persons from their other sources/ savings, an amount of Rs.2,04,50,000/- has been advanced to the society as unsecured loans.*

f) *Investing money to earn interest is not the only option available. For lucrative return, one can invest in diversified mutual funds, debentures of companies, property, etc. Sale of property by Mrs. Anjali Sardana and Mrs. Monica Sardana during the financial year 2012-13 which gave them more than 30% return per annum after answering their income tax liability says it all (page 36 & 37 of Paper Book V)*

9. *Thus, from the above facts highlighting the requirement of funds which had to be provided to the society from the sources of the members/ related persons, as no outsider was willing to lend the funds to the society and the source from the bank had already been exhausted and, thus, it was left to the members of the society, only to provide the funds at a very reasonable rate of interest, which was lower than the rate of interest of the bank, which is to be tune of 13%. All these funds were required as already stated for achieving the aims and objects of the society, for which the society had been formed and had these funds not been made available, the very purpose of formation and working of society would have been defeated.*

10. *Last but not the least, the tremendous progress made by the schools being managed by the society speaks volumes of the dedication with which the two Directors and other related persons have been working* By introducing Smart Learning Concept for the first time in the Region, by winning trust of the parents in abundance, by taking the strength of the schools close to ten thousand by offering handsome salaries and decent retirement benefits to almost 400 employees, they have not only made Manav Mangal a highly respectable name but have also won recognition for their performance in the field of education, (pages 43 to 73 of Paper Book 1)"

20.2 The Id. CIT(A) after considering the submissions of the assessee, deleted the disallowance made by the A.O. by observing in para 5.2.11 of the impugned order as under:

*"5.2.11. The next issue is the payment of interest on unsecured loans availed by the society from its members/ their relatives The appellant has availed unsecured loans from the members/ their relatives and is paying interest @ 12%. During the course of assessment proceedings, the AO questioned the reasonableness of the payment of interest and in response to the same, the appellant duly submitted that the prevailing rate of interest on bank loans (which are secured) was 13% and even more during the year under consideration. The appellant society considered it wise and reasonable to avail unsecured loans from the members/ relatives as the funds were required for ever increasing infrastructure needs of the schools run by the society and the banks impose a lot of limitations and conditions to grant even secured loans. The persons covered u/s 13(3) of the Act came forward to provide loans to meet the funding needs of the society. It is a well known fact that the interest rate prevailing on unsecured loans are generally higher than the secured loans as the risk of loss of capital in this case is higher All the said arguments and contentions of the appellant were ignored by the AO and he disallowed the entire payment of interest on the presumption that the members of the society itself to gain interest income and he accordingly invoked the provisions of Section 13(1)(c) of the Act. During the course of appellate*

*proceedings, the Ld. AR for the appellant reiterated the submissions as made before the AO. The appellant has further submitted that the AO has wrongly alleged that rotation of the funds received by the members from the society in the form of salary etc. is being done as unsecured loans to earn interest income whereas the fact of the matter is that these parties have made advances of their own funds to the society for the purpose of the needs of the society. It is a fact on record that two houses of Shh Sanjay Sardana and Shri Sandeep Sardana (both Directors) have in fact been given as collateral security with the Karnataka Bank for the purpose of raising loans for the society. Thus, the Directors have even risked their personal assets to address the needs of the society. It is also to be seen that these people could have easily fetched similar or higher returns exceeding 12% if they would have deployed their funds elsewhere. The Ld. AR of the appellant has also brought my attention to the Chart forming part of the paper book wherein the sources of funds of the members other than the salary, interest and rent drawn from the society are tabulated and explained during assessment proceedings as well as appellate proceedings. AO has accepted these explanations as no adverse inference has been drawn on the source of such funds of the Chairman/Member relatives. Further, the requirement of the funds and their utilization by the appellant society has also been explained by way of a separate chart forming part of the paper book [Refer para 5.1 supra]. It is evident from the chart that the unsecured loans have been given to the society for it to meet its objectives and that too on terms that are favourable to the society. In view of these facts and circumstances stated above and the prevailing market conditions, it is my considered opinion that the payment of interest @ 12% on unsecured loans by the appellant is very much reasonable. This rate is in fact below the prevailing market rate of interest, hence no disallowance is called for on this issue. It is also found that the Society has purchased two Mercedes Benz cars in its own name in the month of August, 2016. No evidence has been brought on record that these cars are used for persona\* purpose of the Directors Mere absence of log book cannot establish that these are used for other than Society's purposes."*

21. Now the department is in appeal.
22. The Id. CIT-DR reiterated the observations made by the A.O. and strongly supported the assessment order dt. 23/02/2016. It was further submitted that the sufficient cash was available with the assessee then why the liability outstanding was not discharged on which interest was paid. It was stated that had the assessee repaid the loans received from the specified persons, there was no need to pay the interest but the assessee did not exercise the said option, therefore, the A.O. rightly made the disallowance.
23. In his rival submissions, the Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the

specified persons out of their own funds had advanced certain funds to the assessee society at the rate of 12% per annum as against the interest of 13% per annum charged by the different banks for which necessary evidences were furnished which are placed at page Nos. 110 to 113 of the assessee's paper book. It was further stated that the bank imposes lot of limitations and conditions for granting secured loans and in the present case, the specified persons had not insisted that any security and all the interest was being paid through normal banking channel on which TDS had been deducted and the recipient had disclosed the same in their respective returns of income. It was stated that there was no rotation of funds received by the Members of the society in the form of salary but such funds had been advanced for the reason that the society needs funds to achieve its objects of education and even Sarvshri Sanjay Sardana and Sandeep Sardana had mortgaged their properties to the bank for raising loan. Reference was made to page Nos. 110 to 113 of the assessee's paper book. It was stated that the Id. CIT(A) had very rightly hold that if the funds were payable by the specified persons to some other entity, they could have earned more interest. Therefore, the arbitrary disallowance made by the A.O. was rightly deleted by the Id. CIT(A).

24. We have considered the submissions of both the parties and perused the material available on record. In the present case, it appears that the assessee society required the funds to expand its activities and raised the loans from the banks as well as from its Members and the specified persons. The A.O. invoked the provisions of Section 13(1)(c) of the Act and made the disallowance. However, he ignored this vital fact that the rate of interest at 12% was less than the prevailing market rate of interest which was 13% from the bank. The said fact is evident from page Nos. 110 of the assessee's paper book which is a copy of credit sanction intimation given by Karnataka Bank Ltd. wherein it has been mentioned that overdraft facility with excessive limit of Rs. 2.00 crores were renewed and the rate of interest was 14% at monthly rate for a period of 18

months i.e. up to 30/06/2013. The said rate of interest was further reduced to 13% vide letter dated 16/04/2012, copy of which is placed at page No. 112 of the assessee's compilation. The said rate of interest was further reduced to 12.5% per annum i.e. concessional interest rate vide letter dated 16/6/2012. Copy of which is placed at page No. 113 of the assessee's paper book. Therefore, it is clear that the assessee was paying interest at a higher rate than the interest paid to the specified persons and Members of the assessee society. In other words, the interest paid by the assessee society to its Members and specified persons was not excessive, therefore, the disallowance made U/s 13(1)(c) of the Act was not justified and the Id. CIT(A) rightly deleted the same. We do not see any valid ground to interfere with the findings of the Id. CIT(A) on this issue.

25. Another issue agitated by the department vide Ground No. (X) relates to exemption U/s 11 of the Act for the reason that the assessee society was earning high profit year after years which was discussed by the Id. CIT(A) in para 13.2.9 to 13.2.16 of the impugned order for the A.Y. 2014-15 which read as under:

"13.2.9. AO further raised the question i.e. whether the activities carried out by assessee involves carrying on any activity in nature of trade. Business or commerce or rendering services in relation to the same as defined in section 2(15) 'Business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.'] On the perusal of activities of appellant AO has given the findings the activities of the society are for profit motive. Revenue income from various receipts is only basis of motive to maximize the profits/surplus These activities are for making huge profit, satisfies all the features of 'business' i.e. it involves reciprocal activity between two parties, large number of recurring transactions consideration and profit motive. In a view of the above, it is seen that the assessee has receipts arising out of activity in the nature of business or commerce and accordingly section 11 (4A) is applicable in this case. When there is no business activity other than imparting education by way of running four schools, then there is no question of invoking section 11 (4A) of the Act and to maintain separate books of accounts pertaining to income from the so called business. AO has no where pointed out any specific defects in the books of accounts of the appellant, nor did he reject the books of accounts of the appellant. Invoking provisions of proviso to section 2(15) is a farfetched assumption of the AO. Imparting education is itself a charitable activity u/s 2(15) of the Act. AO has to establish its premise on solid incriminating evidence that appellant is indulged in commercial activities. So far as the investment in fixed assets is concerned, on careful perusal of record and financial statements, it is observed that such assets are brought into existence in order to expand the

education facilities in the tricity. It has further been brought to my notice by the AR that the practice of allotment of school land in Chandigarh, Punjab and Haryana at concessional rates has been stepped since long. It is now auctioned at much higher price than the one paid by Manav Mangal Society All such investments are in the name of society and such assets have been used for imparting quality education, which is the only object of the society. He has further submitted that no evidence, whatsoever, has been found during the course of survey that there is siphoning of funds towards the personal head of the chairman and other directors/ connected persons of the society. It is trite-law that the AO cannot suggest that by not investing huge money in these projects by the society, this money can be invested in some charitable purpose or relaxation in fees structure of the students. Ld. AR has also rightly submitted that AO at no stage can step into the shoes of the management of the society/ board of directors of the society and cannot dictate his terms of what to do and in what way as is pronounced by the Hon'ble Delhi High Court in the case of CIT vs. Dalmia Cements (264 ITR 377) Delhi High Court. It is my considered opinion that the investment in land is a bonafide capital expenditure towards fulfilling the object(s) of the appellant society to make TECH-SMART quality education available to more and more aspirants, it is observed that agreement with M/s DLF Universal Limited was entered into by the Manav Mangal Society to buy a 5 acre school site in New Chandigarh. The said land being purchased from M/s DLF Universal Limited is approved only as a school site by GMADA and cannot be used for any other purpose. Appellant has submitted that the complete payment is to be paid in installments and some installments are still pending as on date. Manav Mangal Society will be getting the possession of school site as soon as the payments are completed. Thereafter, the school building will come up. Similar process was followed when the school site was bought by the Society from Shipra Estate Ltd in Zirakpur. The school in Shipra Estate, Zirakpur is operational now and is in its fourth year of working. About 2300 students are being imparted quality education in this region's First TechSmart Green School. Ld. AR has provided list of concession holders for the financial year 2013-14 at Chandigarh School-33 students, Panchkula School-49 students and Evening School having 188 Students placed at page no 14 to 17 of the Paper Book. AO has not rebutted these facts."

13.2.10. It is not the case of the AO that significant surplus funds are parked in the FDRs. Facts do not give credence to this premise. In AY 2011-12, the facts about FDRs is as follows: FDR (Chandigarh School)- Rs.4.5/- Lakh. FDR (Panchkula School)-Rs.5.72/- Lakh, and FDR (Mohali School)-Rs. 1.32/- Lakh only, in the AY 2013-14, FDR (Chandigarh School)-Rs.45,000/-, FDR Society-Rs.4.75 Crore. in Assessment Year 2014-15, there is No FDR. In AY 2015-16 & 2016-17, FDR (Mohali School)-Rs.5.21/- Lakh, FDR (Panchkula School)-Rs.7.55/- Lakh, and FDR (Chandigarh School)- Rs.6.44 Lakh. No adverse inference can be drawn from these facts.

13.2.11. In the year under consideration, on perusal of assessment record, it emanates that Ld. AO issued show-cause to the assessee vide letter dated 29.01.2016 without any specific defects in the books or any evidence culled out from the survey proceedings or submissions made by the ASSESSES during assessment proceedings. This show-cause is mechanics! in nature. It is found that all the relevant material has been produced by the assessee in detail on all the queries raised by the AO. Further In the AY 2014-15, it comes to fore that in the Show-cause issued on 22.12.2016 wherein AO has alleged huge payments made under the head Salary, Rent and Interest are

based on the percentage analysis of Balance Sheet figures of different assessment years He has failed to point out why and how such payments are not reasonable. Similar is the case of violation of provisions of section 11(1) R.w.s 2(15) of the Act meaning thereby that alleged violations of Section 11(1) R.w.s 2(15) are not substantiated with any adverse evidence.

13.2.12. As per section 2(15) of the Act "charitable purpose" includes relief of the poor, education, medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility; Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity: Provided further that the first proviso shall NOT apply if the aggregate value of the receipts from the activities referred to therein is [twenty-five lakh rupees] or less in the previous year. It is trite law that the main intent of a "Charitable Organisation" is the sustenance of its main object or charitable purpose' as is defined under Section 2(15) of the Act and any expense/expenditure pertaining to its main object and furtherance thereof is part and parcel of the non-profit activity for this the Act provides a favorable tax treatment by way of provisions contained in Section 11 to Section 13, which provide for a tax exemption to such entities having their main object as any activity which falls under the definition of 'charitable purpose', if an entity, which has been granted an exemption, abuses the exemption for private benefit of its trustees, managers, directors, beneficiaries or related persons, Section 13 provides for an anti-abuse mechanism. The Section includes a mechanism to allow the authorities to withdraw AND in some cases, cancel the exemption, in the event of abuse.

13.2.13. It is further rightly submitted by the appellant that the real cause of schools' growth ranging from 8 % to 43 % during the AY 2008-09 to AY 2016-17 is not being run on commercial grounds. The fact is that 'Mohali School factually started from financial year 2007-08 (AY-2008-09). Being a reputed name and the first "Tech-smart school of the Region", it proved to be a great attraction for the parents. With the result that there was a substantial increase in the number of students for FY- 2007-08. With this substantial growth of students came the substantial increase of receipts. The growth is not because of any commercial activity, as alleged by AO but on account of popularity of the schools in the areas, where they are located and confidence of the parents in getting the admissions of their wards at a very reasonable fee. The increase in receipts of the schools fees is on account of higher intake of students and a normal annual increase in fees. The appellant has further rightly argued that the only exception is for Chandigarh & Panchkula branches for AY 2012-13 and AY 2014-15. During AY 2012-13, each & every classroom was converted into Smart Class by providing It with interactive board, projector and computer to introduce Smart Education in Chandigarh & Panchkula branches exactly on lines of Manav Mangal Smart School, Mohali on request of parents. The parents were given option to pay Rs.950/- per month for a conventional classroom and Rs.1200/- for smart classes, The parents eventually decided to go for smart classes over a period of 2 months, it is observed that Students and Staff strengthen due to imparting quality

education by the society schools has increased substantially over the last ten years as given in the Table below. This has substantially increased the receipts.

STUDENT AND STAFF STRENGTH (Assessment Year 2007-08 TO 2018-19)

S.No.	Assesment Year	No. of Schools	Total strength	Total staff (Excluding Outsourced staff)
1	2007-08	2	4446	157
2	2008-09	3	5624	209
3	2009-10	3	6102	236
4	2010-11	3	6615	270
5	2011-12	3	7234	290
6	2012-13	3	7690	313
7	2013-14	3	7839	320
8	2014-15	3	7906	328
9	2015-16	3	7925	331
10	2016-17	3	7983	335
11	2017-18	4	8861	398
12	2018-19	4	9475	421

13.2.14. It is undisputed facts that since the year of Society's establishment i.e. 1968, society schools growth had risen from less than 100 students to more than 9400 during AY 2018-19 which shows that a lot of dedication has gone into making it what it is today. The substantial growth of the society schools holds testimony to the fact that every bit of its surplus has been ploughed back to make it better and bigger institution with every passing day. The table at para 13.2.13 supra placed at Page No. 83 of Paper Book-X emphatically establishes the fact that the society is meeting its aims and objectives of giving quality education to students of the tricity. During AY 2007-08, Manav Mangal Society was managing two schools and having the strength of 4446 and a staff of 157. During AY 2008-09 it came up with Regions First TECHSMART School in Mohali and gradually the society could offer services to 7983 students and had staff strength of 335 during AY 2016-17. in AY 2017-18, the society came up with yet another initiative by coming up with Region's First Green School in Zirakpur and during AY 2018-19 the society had 4 branches with 9475 students and 421 staff members. In other words, in just 12 years the number of students has more than doubled and same is true for the staff members who have been employed in the 4 branches of the school that has undisputedly increased the receipts of the society. Manav Mangal Society has, year after year ploughed back the entire surplus as is presented at para 13.2.8 supra and placed at Pages 84 to 91 of Paper Book-X. It is pertinent to mention here that the investment of surplus in capital to achieve the aims and objectives of the society have already found favour of CIT(A), Hon'ble ITAT, Chandigarh, Hon'ble High Court and Hon'ble Supreme Court in the case of the assessee during AY 2003-04. The same issue came up during AY 2006-07 and that too was in favour of the assessee before CIT (A) and Hon'ble ITAT. It is submitted by the Ld.AR that the department did not carry the matter further for this Assessment Year, since the Hon'ble High Court and Hon'ble Supreme Court had already decided the issue in favour of the assessee for AY 2003-04.

13.2.15. Last but not the least, the observations of the AO in the light of various case laws like that there should be reasonable surplus from the educational activity to qualify that it is existing solely for education purpose in the light of the Hon'ble Supreme Court in the case of Queen's Educational Society and others are misplaced. It is observed that the judgement of Hon'ble Apex Court in the case of Queen's Educational Society takes into consideration all the judgements referred on this issue and have been analysed and after discussing all the judgements, the Hon'ble Supreme Court has held in the above case of Queen's Educational Society that the law common to section 10(23C)(iiiad) and (vi) may be summoned up as follows

(i) 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,

(ii) that the predominant object test must be applied i.e. the purpose of education should not be submerged by a profit making motive, (iii) that 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, (iv) that if after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes. While delivering the above judgement, the various judgements have been analysed by the Hon'ble Supreme Court like (A) CIT v. Surat Art Silk Cloth Manufacturers' Assn. (1980) 121 ITR 1 wherein the Apex Court while construing the definition of 'charitable purpose' in section 2(15) of the Income Tax Act has held: 'But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose, merely, because some profit arises from the activity...' (B) Aditanar Educational Institution v. Additional Commissioner of Income Tax, (1977) 224 ITR 310, the Apex Court while construing the predecessor Section, namely, Section 10(22) of the Income Tax Act, held that after meeting the expenditure, if any surplus results incidentally from the activity lawfully carried on by the educational institution, it will not cease to be one existing solely for educational purposes since the object is not one to make profit. The decisive or acid test is whether on an overall view of the matter, the object is to make profit, (C) American Hotel & Lodging Assn. Educational Institute v. CBDT, (2008) 301 ITR 86, the Apex Court dealt with section 10(23C)(vi) and has held that the purpose would not lose its character merely because some profit arises from the activity. That, it is not possible to carry on educational activity in such a way that the expenditure exactly balances the income and there is no resultant profit, for, to achieve this, would not only be difficult of practical realization but would reflect unsound principles of management, in order to ascertain whether the institute is carried on with the object of making profit or not, it is the duty of the prescribed authority to ascertain whether the balance of income is applied wholly and exclusively to the objects for which the applicant is established. If after meeting expenditure, surplus remains incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes. The Hon'ble Apex court in the judgement of Queen's Educational Society has held that The final conclusion that if a surplus is made by an

educational society and ploughed back to construct its own premises would fall foul of section 10(23C) is to ignore the language of the Section and to ignore the test laid down in the Surat Art Silk Cloth case, Aditanar case and the American Hotel and Lodging case. It is clear that when a surplus is ploughed back for educational purposes, the educational institution exists solely for educational purposes and not for purposes of profit.' In this judgement, the revenue's appeal from the judgement of Hon'ble Punjab & Haryana High Court was taken into consideration alongwith the above said judgement and the Hon'ble Supreme Court approved the judgment of Hon'ble Punjab & Haryana High Court and summed up its conclusion that it is obligatory on the part of the Chief Commissioner of Income Tax or the Director, which are the prescribed authorities, to comply with proviso thirteen. Accordingly, it has to be ascertained whether the educational institution has been applying its profit wholly and exclusively to the object for which the institution is established. Merely because an institution has earned profit would not be deciding factor to conclude that the educational institution exists for profit. It has to be borne in mind that merely because profits have resulted from the activity of imparting education would not result in change of character of the institution that it exists solely for educational purpose. The reference was made to the judgement of Hon'ble Punjab & Haryana High Court followed by the Delhi High Court in the case of St. Lawrence Educational Society (Regd.) v. Commissioner of Income Tax & Anr, (2011) 53 OTR (Del) 130. Also Tolani Education Society v. Deputy Director of income Tax (Exemptions) & Ors. (2013) 351 ITR 184, the Bombay High Court has expressed a view in line with the Punjab & Haryana High Court view, following the judgements of this Court in the Surat Art Silk Manufacturers Association case and Aditanar Educational institution case as follows the fact that the Petitioner has a surplus of income over expenditure for the three years in question cannot by any stretch of logical reasoning lead to the conclusion that the Petitioner does not exist solely for educational purposes or, as that Chief Commissioner held that the Petitioner exists for profit. The test to be applied is as to whether the predominant nature of the activity is educational. In the present case, the sole and dominant nature of the activity is education and the Petitioner exists solely for the purposes of imparting education. An incidental surplus which is generated, and which has resulted in additions to the fixed assets is utilized as the balance-sheet would indicate towards upgrading the facilities of the college including for the purchase of library books and the improvement of infrastructure. With the advancement of technology, no college or institution can afford to remain stagnant. The Income-tax Act, 1961 does not condition the grant of an exemption under section 10(23C) on the requirement that a college must maintain the status-quo, as it were, in regard to its knowledge based infrastructure. Nor for that matter is an educational institution prohibited from upgrading its infrastructure on educational facilities save on the pain of losing the benefit of the exemption under section 10(23C). Imposing such a condition which is not contained in the statute would lead to a perversion of the basic purpose for which such exemptions have been taken granted to educational institutions. Knowledge in contemporary times is technology driven. Educational institutions have to modernize, upgrade and respond to the changing ethos of education. Education has to be responsive to a rapidly evolving Society. The provisions of section 10(23C) cannot be interpreted regressively to deny exemptions. So long as the institution exists solely for educational purposes and not for profit, the test is met.

13.2.16. In view of above facts and circumstances, it can be safely concluded that Ld.AO has miserably failed to establish that the appellant is running schools solely with the purpose of commercial gains. The substantial increase in receipts are on account of various factors like increase in number of schools, students and staff/teachers which is due to establishing state of the art infrastructural facilities in order to Impart quality education in the tncity. Capital investment has direct nexus with quality education and increase in receipts leading to incidental surplus of funds. These funds have been invested to create more schools with better infrastructural facilities. Eventually, the so called surplus ends up with deficit over the years. Hence: AO has no case of violations of section 11(1) r.w.s. 2(15) of the Act. AO is directed to delete the addition of Rs 7,51 68.672/-. The Grounds of Appeals Nos.2(vi) to (xiv) are allowed.

26. As regards to this issue, the Id. CIT-DR submitted that the assessee society was running various educational institution on commercial principle and earning profits from the same. The profit ratio (before capital investment) was ranging from 23% to 26% of the total receipts, this profit resulted into generation of surplus which was on account of substantial receipts through annual charges, computer, tuition fees, admission fees, quarterly fees apart from normal tuition fee which was enormously increased from students. The amounts so received were applied towards the benefit of the trustee and the specified persons in the shape of huge salary to all family members; salary as Directors to the family members; interest on the unsecured loans raised from the family members; and providing rent free accommodation to the Principals (family members). The society money was diverted to the family members and again brought into the society. With this intention, the assessee society has increased fees of the students and this increase was not with the motive to provide "education" but to generate income to diversify the same to the family members under various heads. Thus, the society was working with a profit motive and hence exemption claimed u/s 11 has to be denied. There had been increase of 10 to 11% annually in the fee per students whereas the increase in the salary as Principal was 13% and as Director 20%. Thus the increase in the students fee was with the motive to generate the funds to divert the same to the trustees and their family members which shows that the assessee society was running its

schools with the commercial intent to earn more profits and since the profit generated from educational activities was not solely for the purposes of achieving the objects of the assessee society, the exemption claimed U/s 11 of the Act has to be denied.

27. In his rival submissions, the Id. Counsel for the assessee submitted that this issue was not raised by the department in the assessment year under consideration. It was further submitted that the Id. CIT(A) has discussed the issue for the A.Y. 2014-15 and order in the Board's Circular No. 387 of CBDT, the exemption cannot be withdrawn even if there is violation of Section 13 of the Act. Reliance was placed on the following case laws:

- i. UCO bank Vs CIT (1999) 237 ITR 889 (SC)
- ii. DIT Vs Working Women's Forum 235 Taxman 516 (SC)

It was pointed out that this issue has been settled by the ITAT Chandigarh Bench in ITA No. 266/Chd/2007 for the A.Y. 2003-04 in assessee's own case vide order dated 22/11/2007, copy of which is placed at page Nos. 224 to 234 of the assessee's paper book, against the said order, the department filed an appeal before the Hon'ble Jurisdictional High Court in ITA No. 450/2008 wherein vide order dated 19/08/2009 reported at 184 Taxman 502, the view taken by the ITAT for allowing the exemption U/s 11(1)(a) of the Act has been upheld, copy of which is placed at page Nos. 235 to 238 of the assessee's paper book. Against the said order, the department filed SLP before the Hon'ble Supreme Court which was dismissed vide order dated 19/07/2010 copy of which is paced at page No. 239 of the assessee's compilation. It was accordingly, submitted that this issue has attained finality, therefore, there is no merit in the submissions made by the Id. CIT-DR.

28. We have considered the submissions of both the parties and perused the material available on record. In the present case, it is noticed that the issue

relating to the exemption U/s 11 of the Act has been settled by the ITAT Chandigarh Bench for the A.Y. 2003-04 which was affirmed by the Hon'ble Jurisdictional High Court and the SLP against the judgment of the Hon'ble Jurisdictional High Court was dismissed by the Hon'ble Apex Court, therefore, we do not see any merit in the arguments put forth by the Id. CIT-DR on the issue relating to exemption U/s 11 of the Act.

29. Ground No. xi is general in nature; therefore, it does not require any adjudication on our part.

30. In the present case, one observation was made by the A.O. that the Mercedes Cars were purchased and used by the Directors, although, no specific disallowance was made relating to the running expenses of the Mercedes cars. With regard to that observation of the A.O., the submissions of the Id. CIT-DR were that the assessee provided Mercedes cars to the Members-cum-Directors which was not even provided to the Vice Chancellors of the Universities.

31. In his rival submissions, the Id. Counsel for the assessee submitted that the Mercedes Cars provided to the Directors namely Sarvshri Sanjay Sardana and Sandeep Sardana were used for the business purposes because they were required to meet the various officials at Delhi, Chandigarh and Mohali. It was also stated that nothing was brought on record to substantiate that the cars were being used for personal purposes by the Directors and further perquisite value of the cars was being disclosed by the Directors in their individual returns as per law which was accepted by the department. Reliance was placed on the decision of ITAT Chandigarh Bench in the case of Indo Soviet in ITA Nos. 478 & 479/Chd/2013 order dated 28/09/2015.

32. We have considered the submissions of both the parties and perused the material available on record. In the present case, nothing is brought on record

by the A.O. that the Mercedes Cars given to the Directors for the administrative work relating to the assessee society were used for personal purposes. Furthermore, this contention of the Id. Counsel for the assessee that perquisite values of the cars was being disclosed by the Directors in their individual returns as per the law and accepted by the department was not rebutted. We, therefore, do not see any merit in the submissions of the Id. CIT-DR.

33. The facts related to the other appeals of the department in ITA No. 28 to 30/Chd/2020 for the A.Y. 2014-15 to 2016-17 respectively are similar to the facts involved in ITA No. 27/Chd/2020 for the A.Y. 2013-14, therefore, our findings given in the former part of this order shall apply mutatis mutandis to all the appeals of the department.

34. Now we will deal the appeal of the assessee in ITA No. 02/Chd/2020 for the A.Y. 2010-11.

35. Following grounds have been raised in this appeal.

*"1. That the Ld. CIT(A) has erred in confirming the action of the Assessing Officer in reopening the case u/s 148.*

*2. That the Ld. CIT(A) has failed to appreciate the fact that the original assessment have been completed u/s 143(3) and there was no failure on the part of the assessee to disclose fully and truly all the material facts during the original assessment proceedings and, therefore, the reopening of the case u/s 148 after the expiry of the four years from the end of relevant assessment year is bad in law.*

*3. That the Ld. CIT(A) has failed to appreciate the fact that the original assessment had been framed after thorough application of mind by the Assessing Officer by calling for various details, particularly, with regard to and justification of salary, interest and rent paid to the related persons.*

*4. That the Ld. CIT(A) has failed to appreciate the fact that the Assessing Officer has taken a conscious decision on the facts and circumstances of the case and applied her mind on the issues relating to related persons, which is evident from the details as furnished during the course of original assessment proceedings and, therefore, finding of the CIT(A) in confirming the action of the Assessing Officer with regard to reopening of the case is bad in law.*

5. That no fresh tangible material have been found or brought on record after completion of original assessment and, thus, it amounts to merely a change of opinion on the part of the Assessing Officer, which is not permitted in law.

6. That the Ld. CIT(A) has brushed aside the binding judgments of the Apex Court and others and his reliance on some of the judgments is not proper.

7. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

36. From the aforesaid grounds, it would be clear that only grievance of the assessee relates to confirmation of the action of the A.O. in reopening the case U/s 147 of the Act.

37. The facts related to this issue in brief are that the assessee society is registered under the Societies Registration Act XXI of 1860 having registration No. 45 dated 31/05/1969. The assessee was also registered U/s 12AA of the Act with the CIT, Patiala vide registration dated 03/10/1994. The assessee filed the return of income on 30/09/2010 declaring NIL income. Later on, the case was reopened U/s 147 and the notice U/s 148 of the Act was issued on 28/03/2017. The A.O. provided copy of reasons recorded on 23/06/2017 which read as under:

On perusal of the record available it reveals that the assessee had made payments of Rs. 1,09,12,261/- to its members under various heads as salary, rent, and interest. The details of the same are as under:-

S.No.	Name	A.Y. 2010.11			Total
		Salary	Rent	Interest	
1.	Arshi Manchanda D/o ShriG.S. Sardana, #3085 Sector-21D, Chandigarh	4,07,088/-		1,10,360/-	5,17,448/-
2.	Ajay Manchanda S/o Late Shri Amir Chand Manchanda, # 3085 Sector-21D,	2,40,000/-		1,13,251/-	3,53,251/-
3.	Monica Sardana, D/o Shri Gian Chaudhary, # 3085	4,67,088/-		5,66,381/-	10,33,469/-

	<i>Sector-21D, Chandigarh</i>				
4.	<i>Sandeep Sardana, S/o Shri Gian Chaudhary, # 3085 Sector-21D, Chandigarh</i>	13,68,840/-		6,42,011/-	20,10,851/-
5.	<i>Anjali Sardana D/o R.K. Chhabra, # 3085 Sector-21D, Chandigarh</i>	4,67,088/-	2,71,000/-	4,65,028/-	12,03,116/-
6.	<i>Sanjay Sardana S/o Shri Gian Sardana, # 3085 Sector-21D, Chandigarh</i>	13,68,840/-	2,71,000/-	5,64,135/-	22,03,975/-
7.	<i>Usha Sardana D/o Shri Satya Dev Chaudhary, # 3085 Sector-21D, Chandigarh</i>	4,07,088/-		5,73,299/-	9,80,987/-
8.	<i>Gain singh Sardana S/o Sh. J.R. Sardana, Manav Magal high School, # 3085 Sector-21D, Chandigarh</i>	11,70,000/-		7,43,058/-	19,13,058/-
9.	<i>Sanjay Sardana, HUF</i>	-	-	2,81,660/-	2,81,660/-
10.	<i>Sandeep Sardana</i>	-	-	2,81,811/-	2,81,811/-
11.	<i>Sanklap Sardana</i>	-	-	1,33,235/-	1,33,235/-
	<i>Total (Rs.)</i>	58,96,032/-	5,42,000/-	44,74,229/-	1,09,12,261 /-

The above payment of Rs. 1,09,12,261/- are not genuine and reasonable u/s 13(2) and clear violation of section 13(l)(c) r.w. 13(3) of I.T. Act. As per section 13(l)(c) one of the essential conditions for claiming exemption is that no part of the income should be incurred directly or indirectly for the benefit of the founder member and their family members or any other specified persons u/s 13(3) of I. T. Act. Assessee is violating the conditions of the provision of section 11(1), 13(l)(c) of I.T. Act. Assessee is diverting its receipts in the personal hands of their founder members Sh. G.S. Sardana and their family members.

It is also seen from the income and expenditure account for the under consideration year that there are huge amounts are collected from the students under the various heads & shown the same as admission fee, tuition Fee Reed., Development fund Reed., Computer Fee, Transport charges & Misc Fee, etc. Assessee is showing the fees under the heads admission & Registration fees, tuition Fees and claiming various kind of huge expenses against the receipt also show that assessee is doing activities on commercial basis and earning huge profits and also accumulate the same in its books and not fulfilling conditions of section

11(1) r.w. 2(15) of I. T. Act. Assessee has shown amount of Rs. 2,91,56,429/- as net income against the total income of Rs. 14,11,60,203/- which is 20.65% of total income. Which shows that assessee is earning huge profits and accumulates the same in banks and enjoying huge interest income. It is also mentioned here that when depreciation amount of Rs. 1,77,63,831/- as per Kerala High Court judgement in case of M/s Lissie Medical Institution Vs CIT, Kochi and disallowance of Rs. 1,09,12,261/- u/s 13(l)(c) r.w. 13(3) of I.T. Act added into net income then the total surplus will be Rs. 5,78,32,518/- which is 40.96% of total income. These all facts show that assessee has failed to spend the profits on charitable activities and also failed to fulfill the conditions of section 11(1) and 11(2) r.w. 11(5), 13(l)(c) r.w. 13(3), 2(15) of I.T. Act. In the light of above facts & discussion, you are hereby show caused as to why you exemptions u/s 12 AA may not be denied & you assessed as AOP. The surplus of Rs. 2,91,56,426 is proposed to be taxed. Further you are show caused as to why the payment made to persons covered u/s 13(3) amounting to Rs. 10,912,261/- may not be disallowed and taxed u/s 13(l)(c) r.w. 13(3) of I. T. Act, 1961. Thus a total addition of Rs. 40068687/- (Surplus 29156426/- + Disallow u/s 12(l)(c) of Rs. 10912261/-) is proposed to be made in your case."

37.1 In response to the above, the assessee furnished written submissions and objections vide letter dt. 11/10/2017 which have been reproduced by the A.O. in para 5 at page No. 2 to 10 of the assessment order. For the cost of repetition, the same is not reproduced herein. The A.O., however, did not find merit in the submissions of the assessee by observing that the assessee had made payments to its Members regarding salary, rent and interest which were not reasonable and that an undue benefit was given to the related persons.

38. Being aggrieved, the assessee carried the matter to the Id. CIT(A) and submitted that since the original assessment had been framed U/s 143(3) of the Act and there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment, therefore, the reopening of the assessment U/s 148 of the Act after expiry of four years from the end of the relevant assessment year was accordingly bad in law. The assessee also furnished the written submissions which had been incorporated in para 5.1 of the impugned order by the Ld. CIT(A) and read as under:

*"This is an appeal (tied by the assessee raising various grounds of appeal and ground No. 1 to 3 deals with the reopening of the case u/s 148 on mere change*

of opinion and also there was no tangible material worth the name for reopening of the case beyond four years by the Assessing Officer and the Assessee had disclosed all the particulars of income at the time of filing the original return of income and there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. The brief facts of the case are as under:-

1. The Assessee Society has been filing its returns of income year after year very regularly and assessments have been made either under section 143(1) or under section 143(3) of IT Act. Most of the Assessments for and from AY 1997-98 onwards have been made under section 143(3) and the assessments were framed after due application of mind on each and every issue.
2. That the assessment for the assessment year 2010-11 had been framed u/s 143(3) vide order dated 26/02/2013 by the Asstt. Commissioner of Income Tax, Circle-3 (1), Chandigarh and all payments including salary, rent, interest and capital expenditure were found to be true and genuine and the said data was accepted as correct for all intents and purposes. While passing the order, she had excluded the depreciation of Rs, 1,77,63,831/- from the application of income and also made some small disallowance of Vehicle expenses on estimate basis. (Pages 1 to 3).
3. That we had filed an appeal against the order of the Assessing Officer before the Worthy Commissioner of Income Tax (Appeals) and the Id, CIT (A) Gurgaon in appeal No.304/2/2015-16 for Asstt Year 2010\*11, vide order dated 27.03.2017 has held that the claim of depreciation is permissible for the purposes of utilization as claimed by us as per copy of the order being enclosed herewith (Pages 4 to 8).
4. The Assessing Officer has recorded the reasons u/s 148 as per copies of the reasons is being enclosed herewith.
5. At the outset it is our submission that the perusal of the reasons recorded indicates that the proceedings under Section 147 are completely without jurisdiction as there is no material indicated in the reasons recorded which could have furnished the basis for the formation of belief that there is an escapement of income. The existence of material for formation of belief that there is escapement of the income is the condition precedent for issuance of notice under Section 148 of the Income Tax Act. That in the reasons recorded as supplied to us, there is a passing reference to the survey proceeding conducted on 25-29th September, 2016 for issuing the present notice. It is relevant to point out that in the survey nothing adverse or incriminating material has been found during the course of survey which continued for 2 days, in which, the team of the Income Tax department covered, all the four schools including the office of the Society and voluminous records were scrutinized in detail. Each and everything was found in order with reference to books of accounts, number of students and staff salary.

Each and every bill/voucher was inspected and tallied with the books of accounts and no case has been made out by the Assessing Officer with regard to any extra fee charged by the Society or any bogus expenditure. That the survey proceedings were conducted on 28-29th September, 2016. It is relevant to point out that during the survey on record relating to Assessment Year 2010-11 was examined. Therefore, the observation in the reasons recorded that it was during the finding of survey proceedings that it was revealed that an amount of Rs. 10912261/- was paid to members under various heads as salary, rent and interest is completely contrary to the record of the survey proceedings itself and thus, there is no basis for the same.

6. That since there was no material for formation of belief that there is escapement of income, the said reasons recorded being based on no new material are a result of re-appreciation of material already existing on record and which has been subject matter of a detailed scrutiny U/s. 143(3) of the Income Tax Act.

7. Your good self's attention is invited to the settled law by the Hon'ble Supreme Court in various judgments, which lay down that formation of belief on the basis of escapement of income based on re-appreciation of material already on record is nothing but change of opinion and this view has been taken in the following latest judgments.-

a). Commissioner of Income Tax V /s Hindustan Zinc Ltd [2007] 393 ITR 264 -RAJ-HC. In the above judgment, the Hon'ble Rajasthan High Court has relied on the following celebrated judgments:-

i). CIT Vs Kelvinator of India Ltd. [2010] 320 ITR 561 (SC)

ii). Calcutta Discount Co. Ltd. vs. ITO [1961] 41 ITR 191 (SC).

iii). S. Narayanappa Vs CIT[1967] 63 ITR 219 (SC)

iv). ITO Vs Lakhmani Mewal Dass [1976] 103 ITR 437 (SC)

v). S. Ganga Saran and Sons P. Ltd. Vs ITO [1981] 130 ITR 1(SC)

vi). Sri Krishna P. Ltd. V. ITO [1996] 221 ITR 538 (SC).

b). The Hon'ble Delhi High Court in the case of Director of Income Tax Vs. Rolls Royce Industrial Power India Ltd. has held as under:

8. That in case proceedings under Section 147 are initiated after expiry of four years from the Assessment Year which is subject to scrutiny assessment under Section 143(3) of the Income Tax Act, then the escapement of income should result from failure of the Assessee to disclose the material facts necessary for assessment. The reasons recorded do not allege any failure on the part of the

assessee to disclose the expenditure incurred on salary, interest and rent. The original return for Assessment Year 2010-11 gives the total receipts and expenditure under various heads wherein claim of salary, Interest, rent, capital expenditure and depreciation had been made. Copy of the same is enclosed for your reference as Pages 9 to 10 with the present objection. The notice U/s. 147 thus, is completely without jurisdiction In terms of the decisions of various courts detailed as under:-

i) Navkar Share And Stock Brokers Pvt Ltd. V/s Asstt. CIT [2007] 393 ITR 362 - GUJ-HC

ii). Micro Inks P. Ld. V/s Assistant Commissioner of Income Tax [2007] 393 ITR 366 GUJ-HC

iii). Dr. Rajivraj Ranbirsingh Chaudhary V /s Assistant Commissioner of Income Tax (2017} 393 ITR 660- GUJ-HC

9 Further, reliance is being placed on the following judgments:-

i). Greater Mohali Area Development Authority V/s DCIT ITA NO.410/CHD/2013. ITAT, Chandigarh Bench. Chandigarh

ii). Pr. Commissioner of income Tax V/s Anil Nagpal 145 DTR 209 P&H-HC

iii) A P Refinery (P) Ltd. V/s Addl. Commissioner of Income Tax 174 TTJ 0041. ITAT, Chandigarh Bench, Chandigarh

iv). Karamchand Appliances Pvt. Ltd. V/s DCIT 399 ITR 323 DEL-HC

v). Ajanta Pvt. Ltd. Vs DCIT (2016) 402 ITR 72, in which, the Hon'ble High Court has held as under.....

Thus, the action of the Assessing Officer in reopening the case is against the settled law and, as such, the notice may please, be quashed.

10. Further, it is submitted that this change of opinion and which is being substantiated below:-

In the reasons so recorded by your goodself's predecessor on 14.03,2017, three grounds are there for the purposes of reopening the case u/s 148, which are as under:-

a) "The perusal of Income and Expenditure account and findings of survey proceedings (Date of Survey- 28-29-09-2016) in the case of assessee. It reveals that the assessee had made payments of Rs. 1,09,12,261/- to its members under various heads as salary, rent and interest."

Then, your goodself has observed that the above payment of salary and interest are not genuine and reasonable u/s 13 (2) and there is violation of section 13(1)(c) read with section 13(3) of the Act.

b) "It is also seen from the Income and expenditure account for the under consideration year that there are huge amounts collected from the students under

the various heads and shown the same as Admission Fee, Tuition Fee Regd., Development Fund Regd., Computer fee. Transport charges and Misc. Fee etc. The Assessee is showing fees under the heads Admission and Registration Fees, Tuitions Fees and claiming various kind of huge expenses against She receipts also show that assessee is doing activities on commercial basis and earning huge profits and also accumulated the same in its hooks and not fulfilling conditions of section 11 (1) r.w. 2(15) of I.T. Act, Assessee has shown amount of Rs. 2,91,56,426/- as net income against the total income of Rs. 14,11,60,203/- which is 20.65% of total income which shows that assessee is earning huge profits and accumulated the same in banks and enjoying huge interest income."

c) Lastly, it is also mentioned that "when depreciation amount of Rs. 1,77,63,831/- as per Kerala High Court judgment in case of M/s Lissie Medical Institution VS CIT, Kochi and disallowance of Rs. 1,09,12,261/- u/s 13(1)(c) r.w. 13(3) of I.T. Act is added into net income, then the total surplus will be Rs. 5,78,32,518/- which is 40.96% of total income These all facts show that assessee has failed to spend the profits on charitable activities and also failed to fulfill the conditions of section 11(1) and 11(2) r.w. 11(5), 13(1)(C) r.w. 13(3), 2(15) of I.T. Act"

11. It has been stated in the reasons, so recorded that from the perusal of income and expenditure account and finding of survey proceedings on 28-29.02.2016, this belief was formed by the Assessing Officer concerned after survey. This finding of the Assessing Officer at the very outset is misconceived and against the documentary evidence on record. This is proved on the basis of following facts:-

a) That we had filed the original return for the Asstt Year 2010-11 alongwith computation and audited balance sheet which gives the figures of total receipts and expenditure under various heads, wherein claim of salary, interest, rent, capital expenditure & depreciation, had been made. Copy enclosed as Pages 9 to

10. Thus every piece of information has been disclosed by the assessee.

b) That all the three reasons, which have been recorded have already been looked into by the concerned Assessing Officer at the time of framing the assessment u/s 143(3) for the AY 2010-11 and specific queries were made, to which we have replied- The case was taken up under scrutiny u/s 143(3) and we were issued questionnaire dated 13.07.2012 and in this three-page questionnaire, the detailed information was asked for with regard to the name of the Trustees, copy of the Trust deed and registration u/s 12AA/B0G. enquiries about the

activities of the society and most importantly, vide question No. 9, 6, 12 and 17 the following things were asked for-

Q No 9 of the questionnaire dated 13.07.2012 given during scrutiny u/s 143(3) of the AY 2010-11

"Details of application or use of income or property for the benefit of persons referred to in section 13(3) along with an explanatory note on its justification. Please file details of payments made to specified persons in last two years as well as in the year under consideration. Please file details of investments made and also confirm the Investment have been made in the specified assets mentioned in section 11 of the I. T. Act.

Q.No.8 of the questionnaire dated 13.07.2012 given during scrutiny u/s 143(3) of the AY 2010-11.

"Please give the details of surplus/deficit for the past five years and show as how the accumulated surplus has been utilized in subsequent years. Please certify that the accumulated income has been utilized within the time period allowed for the same and for the purpose in accordance with the provisions of section 11 of the I. T. Act. Submit a chart thereof for the last five years as under:-

<i>Year of accumulation</i>	<i>To be used up to</i>	<i>Purpose</i>	<i>Date of Utilization</i>	<i>Evidence thereof</i>
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Please also furnish copy of acknowledgement of submission of Form No. 10 to the AO with respect to each year and the copy of resolution passed for the above purpose for the last five years."

Q.No.12 of the questionnaire dated 13.07.2012 given during scrutiny u/s 143(3) of the AY 2010-11.

"Please furnish following details for the year under assessment and three previous years:

<i>Sr. No.</i>	<i>Total receipts/income as per income &amp; expenditure account</i>	<i>Revenue expenditure during the year</i>	<i>Capital expenditure during the year</i>	<i>Total expenditure (3+4)</i>	<i>% age of expenditure (5/2 x 100)</i>
<i>1.</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>

Q.No.17 of the questionnaire dated 13.07.2012 given during scrutiny u/s 143(3) of the AY 2010-11

Please give details of any loan borrowed or repaid during the last 3 years Including the year under consideration.

Copy of the questionnaire, dated 13.07.2012 is enclosed as Pages 11 to 13 end besides that so many other details were asked for, covering all the issues as stated in the reasons.

i) We had replied to each and every item as asked for with reference to various items in questionnaire particularly, with regard to Q.9, the detail was given for the last three years. The detailed list of amount of salary, rent and interest as paid to each of the person referred to section 13(3) had been given and copy of that reply is being enclosed herewith for your ready reference as Pages 14 to 16.

ii) In response to Q. no. 17, we submitted the complete ledger accounts of unsecured loans given by these persons and the interest received by them during AY 2010-11. Enclosed as Pages 17 to 28.

iii) The TDS returns in form no. 24 Q and 26 Q with all the details for all the four quarters of AY 2010-11 were submitted well before the due dates and are a part of Department's records (Pages 29 to 44), The same had been submitted along with the complete detail of TDS deposited against payment of salary, rent & interest to these specified persons in response to Q. no 14 of the questionnaire dated 13 07 2012, which is being enclosed as Pages 45 to 66.

iv) It is pertinent to mention that all the payments made to these specified persons have been through bank transfer / account payee cheques after deducting TDS. The assessee society has been filling TDS returns reflecting all these payments and the specified persons in their own turn are reflecting these payments received in their Income Tax Returns year after year by paying maximum margin rate of tax.

v) In response to Q.No. 8 & Q.No.12 of the questionnaire, the receipts and expenditure during the year under consideration and for the three previous years were asked for, utilization of accumulated surplus, copies of bank accounts and complete books of accounts were also required to be produced and the same were submitted to the department, In our detailed reply furnished in the original proceedings, we had in response to question No. 12, submitted the details of capital expenditure of Rs 336.15 Lakhs which is enclosed as Pages 67 to 68.

vi) So far as surplus is concerned, it is submitted herewith that the Assessing Officer while recording the reasons, has not considered or taken into consideration may be deliberately, the complete details of the utilization of surplus by considering the capital expenditure. In our original Income tax return and further a detailed reply furnished in the scrutiny proceedings, we had in response to question No. 12, submitted the details of capital expenditure of Rs. 336.15 Lakhs {already enclosed as Page 10}. This has completely been Ignored by the Assessing Officer at the time of recording the reasons and only surplus as per profit and loss account have been considered to the tune of Rs.2,91,56,426/-. Thus wrong facts have been mentioned in the reasons, ignoring the details already on

record, which have already been looked into and. thus, there was no tangible material found during the course of survey for resorting to reopening of the case u/s 148. Even otherwise, it may be stated that the same issue of capital expenditure was subject matter of appeal in Asstt. Year 2003-04 for the purposes of utilization and the Worthy GIT (A), Chandigarh had granted us the relief. The matter was carried to the Hon'ble ITAT, Chandigarh Bench, Chandigarh by the Department and the Hon'ble ITAT, in IT A No 266/ChoV2007 and MA. No. 84/Cnd/2010 for the Asstt Year 2003-04 decided in favour of assessee (Pages 69 to 79). The same was again decided in favour of the assessee in Hon'ble Punjab and Haryana High Court in IT Appeal No. 450 of 2008, The copy of all these orders is being enclosed herewith as Pages 80 to 83. Similarly, for Asstt. Year 2006-07, the issue of capital expenditure on the construction of Mohali School for the purposes of 85% of the utilization had been looked into and the Worthy CST (A) had granted the relief (Order enclosed as Pages 84 to 89).in an appeal by the department before the Hon'ble ITAT in ITA No. 1126/Chandi/2009 the issue was decided again in favour of the assessee and against the department. The copy of these orders is being enclosed herewith as Pages 90 to 94.

vii) The Ld. Assessing Officer while framing the assessment for Asstt. Year 2010-11, had disallowed the depreciation as claimed by us on the plea that its cost have already been debited in the books of accounts. This issue has already attained finality in view of the judgment of Hon'ble Punjab & Haryana High Court as reported in 330 ITR Page 321 and the Worthy CIT (A). Gurgaon has granted us the necessary relief in the order, dated 27th of March 2017 for the Asstt. Year 2010-11 and that judgment is already there.

Thus, this issue also stands settled in favour of the assessee in the earlier years and is part of the record of the assessee and, as such, the contention of the Assessing Officer that this information has come to the notice at the time of survey is totally wrong.

12. It is submitted that these details are, thus, already part of the record, not only for the year under consideration, but for all the years, whenever, scrutiny assessment had been made and such details were asked for and thus, it is proved beyond any iota of doubt that this information as being alleged to be stated to have come to the notice of the Assessing Officer at the time of survey is totally falsified.

That the Reassessment Proceedings are thus a result of change of opinion which is not permissible in law. Reference may be made to the following judgments:-

a) CIT Vs. Kalvinton of India Ltd. 320 ITR 561.

b). Orient News Prints Ltd. V/s Deputy Commissioner of Income Tax [2007] 393 ITR 527 - GUJ-HC

13. Besides that, we rely on the following judgments on the same issue-
- a) *BBF Industries vs JCIT of Income Tax (OSD) in ITA No. 1162/Chd/2012 Chandigarh Bench, {Pages 1-51, Relevant page 12-13 of judgment set}*
  - b) *Gujarat Lease Financing Ltd. V/s Deputy Commissioner of Income Tax 360 ITR 496 GUJ-HC (Pages 52-57, relevant page 53 of judgment set)*
  - c) *General Motors India Pvt. Ltd. V/s Deputy Commissioner of Income Tax 360 ITR 527 GUJ-HC (Pages 59-62, relevant page 59 of judgment set)*
  - d) *Jashan Textile Mills (P) Ltd. V/s Deputy Commissioner of Income Tax 284 ITR 542 BOM-HC (Pages 63-67, relevant page 64 of judgment set)*
  - e) *G N Shaw (Wine) (P) Ltd V/s Income Tax Officer 260 ITR 513 CAL-HC {Pages 68-71, relevant pages 68-69 of judgment set}*
  - f) *Haryana Acrylic Manufacturing Co. V/s Commissioner of Income Tax 308 ITR 36 DEL-HC (Pages 72-78, relevant pages 72, 75 & 76 of judgment set)*
  - g) *Sun Pharmaceutical industries Ltd, V/s Dy Commissioner of Income Tax 381 ITR 387 DEL-HC (Pages 79-82, relevant pages 79, 80 & 81 of judgment set)*
  - h) *Mahavir Spinning MHs Ltd. V/s Commissioner of Income Tax 270 ITR 290 P&H-HC (Pages 83-87, Relevant page 83 & 84 of judgment set)*
  - i) *Dull Chand Singhania V/s Assistant Commissioner of Income Tax 26\$ ITR 192 (Pages 88-91, relevant page 88 of judgment set)*
  - j) *Apeejay Education Society V/s Assistant Commissioner of Income Tax 47 ITR (Trib) 33 ASR-TRIB (Pages 92-96, relevant page 92 & 93 of judgment set)*
  - k) *Commissioner of Income Tax V/s Former France 264 ITR 566 (SC) (Pages 114-115, relevant page 115 of judgment set)*
  - l) *Berger Paints India Ltd, V/s Joint Commissioner of Income Tax 245 ITR 645 CAL-HC (Pages 116-122, relevant page 116 of judgment set)*
  - m) *Shri Abhay Singh Chautalavs ACIT in ITA No. 522/Chd/2015 dated 06.03.2017 (Pages 130-141, relevant pages 140 & 141 of judgment set)*
  - n) *ACIT vs Tata Chemicals Ltd, In ITA No. 6647/Mum/2013 order dated 23 12.2016 (Pages 185-213, Relevant page 185,202 & 2017 of judgment set)*
  - o) *ACIT vs ICICI Securities Primary Dealership Ltd. 348 ITR 299 (SC)*
  - p) *CIT Vs Kelvinator of India Ltd. (SC) as reported in (2010) 320 ITR 561*

*Keeping in view the details and facts given above, it is dear that complete details were submitted by the assessee society at the time of filing of Income Tax return and than during the assessment proceedings for the AY 2010-11 u/s 143(3) and thus nothing has been left undisclosed. Further neither any incriminating data nor any fresh data has been found during survey. All the findings of the survey given in the reasons exactly match details already submitted to the department at the time of filing the return and during the assessment of the case u/s 143 (3) for this assessment year 2010-11. Thus assessee has disclosed truly and fully all the material facts relating to its income. No fresh material or facts have been found or pointed out and as such no violation u/s 11(1) and 11(2) r.w. 11(5), 13(1), 2(15) of I. T. Act has been made.*

*In view of above said position of law and the factual facts and circumstances, the basis of reopening of our case for the AY 2010-11 u/s 148, both on facts and on legal position as enumerated in different Judgments of Hon'ble Supreme Court and others is totally devoid of any valid reasoning. It is requested that the reopening being bad in law and the same is deserved to be quashed."*

38.1 The Id. CIT(A) after considering the submissions of the assessee, observed that the A.O. had duly recorded the reasons for reopening the assessment U/s 148 of the Act which were provided to the assessee who raised objections and the same were duly disposed off by a speaking order passed by the A.O. He further observed that the A.O. had right to reopen a completed assessment in two situations, firstly, a completed assessment can be reopened either if there was omission of failure on the part of the assessee to disclose fully and truly all material and relevant facts and the A.O. must have in his possession before he issues notice some material on which he can reasonably form a belief that there has been escapement of income due to some failure or omission on the part of the assessee to disclose fully or truly all relevant material facts. In the second situation, the A.O. has right under Explanation-2 to sub-clause (c) of Section 147 of the Act which empowers the A.O. to reopen a completed assessment. He also observed that the A.O. can resort to reopening under clause (c) of Section 147 of the Act notwithstanding the fact that there was no omission or failure on the part of the assessee either to make a return or to disclose fully or truly all material facts but the A.O. in consequence of information in his possession subsequent to the first assessment has reason to believe that the income

chargeable to tax has been under assessed and consequently has escaped assessment.

38.2 The Id. CIT(A) pointed out that in the instant case a survey was conducted on 28-29/09/2016 and the A.O. has noticed that the assessee had made payments of Rs. 1,09,12,261/- to the related persons under various heads like salary, rent and interest which were not reasonable U/s 13(2) of the Act and there was violation of Section 13(1)(c) r.w.s. 13(3) of the Act and also claimed that the assessee had created surplus after charging hefty fee from the students and creating capital assets meaning thereby that the assessee was indulging into commercial activities. The Id. CIT(A) was of the view that once the reason to believe was formed by the A.O. on the basis of material with him showing under assessment of the income of the assessee, he was well within his powers to issue notice U/s 148 of the Act. The Id. CIT(A) also observed that under assessment of income was a tangible material which gave the A.O. reason to believe that the income of the assessee had escaped assessment and at the time of formation of belief by the A.O. regarding escapement or under assessment of income was sufficiency of the reasons for reopening of the assessment and not its accuracy. Therefore, the objection of the assessee to the reopening of the case and stating the same as bad in law, could not be accepted. The reliance was placed on the following case laws:

- (i) S. Naarayanappa vs CIT (1967) 63 ITR 219 (SC)
- (ii) Praful Chunilal Patel Vs ACIT (1998) 148 CTR 62 (Guj)

38.3 The Id. CIT(A) also observed that the action U/s 147 of the Act is permissible even if the A.O. gathers his reason to believe from a very same record which had been the subject matter of the completed assessment proceedings. The argument that the production of the account books and other documentary evidence relevant for assessment must imply a full and true

disclosure of all material facts, must be rejected out of hand in the light of provisions of Explanation (i) to Section 147 of the Act, according to which the mere production of books of account or other evidence from which the A.O. could have with due diligence, discovered the material evidence, does not necessarily amount to disclosure within the meaning of the proviso. According to the Id. CIT(A), the submission that even when the order of the assessment does not record any explicit opinion on the aspect sought to be examined in reassessment, it must be presumed that those aspects were present in the mind of the A.O. and had been held in the favour of the assessee, could not be accepted and that the principle that a mere change of opinion cannot be a basis for reopening completed assessments would be applicable only to the situation where the A.O. had applied his mind and taken a conscious decision on a particular matter in issue and it would have no application where the order of assessment did not address itself to the aspect which was the basis for reopening of the assessment. The reliance was placed on the following case laws:

- (i) Consolidated Phot & Finvest Ltd. Vs Asst.CIT (2006) 151 taxman 41 (Delhi).
- (ii) Indo Aden Salt Mfg. & Trading Co. (P) Ltd. Vs CIT (1996) 159 ITR 624 (SC)
- (iii) M/s Greater Mohali Area Development Authority Vs DCIT, Circle 6(1), Chandigarh, dated 27/04/2018 (2018) 93 taxmann.com 441 (P&H).
- (iv) Sonia Gandhi Vs ACIT, Circle-52(1) order dated 10/09/2018 (2018) 97 taxmann.com 150 (Delhi).

38.4 According to the Id. CIT(A) what was necessary at the time of issuance of notice U/s 148 of the Act was the reason to believe by the A.O. that the income had escaped assessment and the actual discovery of escapement was not essential, therefore, there was no strength in the argument of the assessee that since it had at the time of original scrutiny assessment, submitted all the documents and explanations required by the A.O, in respect of payments to interest persons under various heads and creation of assets by indulging into

commercial activities, the A.O. after applying his mind accepted his point of view and moreover a survey was conducted on the premises of the assessee in August, 2016. The Id. CIT(A) held that the violation of expressed provisions of the Act by the assessee constitute sufficient material in the possession of the A.O. to form the reason to believe regarding escapement of income at the time of reopening of assessment which escaped in the original assessment order. He, accordingly, rejected the grounds raised by the assessee relating to the reopening of the case.

39. Now the assessee is in appeal.

40. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee had been imparting education to all the sections of the society through four schools located at Chandigarh, Mohali, Zirakpur and Panchkula, having the registration U/s 12AA of the Act since 01/04/1993. It was further stated that the assessee had been filing returns of income regularly year after year on the basis of audited books of accounts and the assessments for the earlier years as well as the later years had been framed majorly U/s 143(3) of the Act. Reference was made to page Nos. 178 to 277 of the assessee's paper book-II which are copies of the assessment orders U/s 143(3) of the Act for the various assessment years. It was stated that the department after raising specific queries with regard to payment of salary, rent and interest to the specified persons had accepted the fact that such payments were being made on the basis of services being offered by the specified persons. It was further stated that there was no tangible material on record which came into the possession of the assessee after completion of the assessment U/s 143(3) of the Act and further the assessee had disclosed all primary facts before the department with regard to salary, rent and interest as such made full and true disclosure. It was reiterated that the issue had specifically been enquired into by the A.O. by way of questionnaire which was

replied in different years by the assessee, thus, it was merely a change of opinion which is not permitted by law. It was submitted that for the year under consideration, the original assessment had been framed U/s 143(3) of the Act vide order dated 26/02/2013, there was no failure on the part of the assessee to disclose full & true particulars of income and that there was no tangible material on record to justify reopening of the assessment particularly when the same very issue had been examined during the course of original assessment proceedings as well as during the assessment proceedings of the earlier years, therefore, the reopening of the assessment was not justified after expiry of four years from the end of the assessment year under consideration. It was submitted that the original return for the year under consideration was filed within time alongwith computation of income (copy of which is placed at page Nos. 1 to 4 of the assessee's paper book-I) alongwith tax audit report wherein the particulars of payments made to the specified persons had been mentioned as per Annexure-(iii), copies of which are placed at page No. 24 & 25 of the assessee's paper book and all the details relating to the specified persons are mentioned at page No. 27 of the said paper book. It was further stated that the A.O. vide detailed questionnaire dated 13/07/2012 (copy of which is placed at page Nos. 46 to 49 of the assessee's paper book) asked the relevant questions No. 9, 12, 17 & 18 and the assessee replied to the same by informing the details of payment of salary, rent and interest to the specified persons (copy of which is placed at page No 50 of the assessee's paper book), similar details for the assessment years 2009-10 and 2008-09 had been placed at page Nos. 51 & 52 of the assessee's paper book. It was further stated that the copies of the accounts of unsecured loans from the specified persons had been given at page Nos. 53 to 64 of the assessee's paper book alongwith Form No. 27 and other TDS details are placed at page Nos. 65 to 80 of the assessee's paper book. It was submitted that the A.O. after examining all those details, accepted the same and no adverse view had been taken for the deduction of salary, rent and interest. It

was pointed out that for the A.Y. 1998-99, the A.O. while framing the assessment U/s 143(3) of the Act vide order dated 20/02/2001 had given an office note (copy is placed at page no. 194 of the assessee's paper book) as under:

- “2. *Payment of salary to persons as defined to Sec. 40A(2)(a) of the I.T. Act, the salary has been given keeping in view the experience and educational qualification of the person(s), which appears to be reasonable and calls for no action.*
3. *Loans and advances have satisfactorily been explained.”*

Copies of the aforesaid assessment order dated 20/02/2001 is placed at page Nos. 193 to 195 of the assessee's paper book-II.

40.1 It was also stated that there was another note with regard to fact that the assessee had spent requisite amount for achieving all the objects of the assessee society and no funds had been diverted for personal use. Reference was made to page No. 194 of the assessee's paper book. It was contended that even for the later assessment year 2012-13, the claim of the assessee for payment of salary, rent and interest to the specified persons was allowed while framing the assessment U/s 143(3) of the Act which clearly shows that there was a complete application of mind by the A.O. on the issue which had been made the basis for reopening the proceedings U/s 148 of the Act. It was further stated that in the reasons recorded (copy of which is placed at page Nos. 120 to 122 of the assessee's paper book) it had been mentioned that “perusal of record” and then it had been mentioned about the survey proceedings on 28 & 29/09/2016 in the case of the assessee, without pointing out any adverse material found during the course of survey and no addition had been made on account of any issue found during the course of survey. Thus, it had wrongly been mentioned that the survey proceedings revealed about payment of salary, rent and interest to the specified persons, on the contrary earlier years assessment records bear testimony that the said issue pertaining to payment of salary, rent and interest was examined thoroughly by the then A.O.'s particularly

the office note given for the A.Y. 1998-99 copy of which is placed at page No. 194 of the assessee's paper book proved this fact. It was stated that the assessee filed detailed objections before the A.O. with regard to reopening of the case under section 148 of the Act, contending therein that there was no failure on the part of the assessee to disclose complete and true particulars of income and that the salary, rent and interest were paid to the specified persons for the last over 10 years and all such persons had requisite qualifications, experience, had been rendering the services to the assessee society and no tangible material had come into possession of the A.O. after completion of the assessment to substantiate that the income of the assessee had escaped assessment and it had wrongly been mentioned in the reasons recorded that from survey it came to the notice of the department that the specified persons were receiving salary, rent and interest from the assessee. It was stated that after raising a specific query for the A.Y. 2010-11 regarding salary, rent and interest paid to specified persons any by considering the reply filed by the assessee, the A.O. had allowed salary, rent and interest by passing the assessment order U/s 143(3) of the Act. Thus, it amounts to a change of opinion on the part of the A.O. on the basis of same facts, which is not permitted in law. Therefore, the A.O. was not justified in reopening the assessment under section 147 of the Act and the Id. CIT(A) wrongly sustained the action of the A.O.

40.2 It was further submitted that the Id. CIT(A) himself observed that in two situations, the case can be reopened U/s 148 of the Act i.e.

*"a. One where there is omission/failure on the part of the assessee to disclose fully and truly all material facts.*

*Or*

*b. The Assessing Officer has in his possession some material for formation of belief that the income of the assessee has escaped assessment."*

It was stated that none of the above conditions applies to the assessee's case as neither there was information nor any material in possession of the A.O., although, there was survey conducted on the assessee on 28/29<sup>th</sup> September, 2016 but this fact of payment of salary, rent and interest was in the knowledge of the A.O. for the past 10 years especially for this year as the questionnaire was raised and the reply was furnished by the assessee during the course of assessment proceedings, therefore, the finding of the Id. CIT(A) in para 5.1.2 at page No. 13 of the impugned order that the A.O. noticed the payment of salary, rent and interest to the tune of Rs. 1,09,12,261/- during the course of survey was totally against the factual facts and circumstances of the case. A reference was made to the orders for different assessment years copies of which are placed at page No. 178 to 277 of the assessee's paper book. It was further stated that the facts of the case relied by the Id. CIT(A) i.e. the case of S. Narayanappa reported in 263 ITR 219 were not applicable to the facts of the assessee's case as there was no fresh material with the A.O. as was in the said case. It was further submitted that the findings of the Id. CIT(A) in para 5.1.4 are again misplaced since the formation of belief was void ab initio as there was no such tangible material on record and the issue relating to payment of salary, rent and interest was well within the knowledge of the A.O. during the course of original assessment proceedings for the year under consideration as well as of the earlier years. It was submitted that the observation of the Id. CIT(A) in para 5.1.6 are in favour of the assessee because in the present case, not only the books of account/records were produced but there was a specific query with regard to payment of salary, rent and interest and the A.O. had taken a conscious decision about the deduction of such salary, rent and interest which had been allowed in the earlier years as well as in the year under consideration, therefore, the judgement in the case of Praful Chunilal Patel (supra) relied by the Id. CIT(A) was in favour of the assessee. It was submitted that the case laws relied upon by the Id. CIT(A) were on different facts and not applicable in the

facts of the assessee's case particularly when no tangible material was in possession of the A.O. who made the specific query and examined the reply given by the assessee then accepted the claim of the assessee, therefore, the reopening on the basis of change of opinion was not justified. Reliance was placed on the judgment of Hon'ble Delhi High Court in the case of Orient Craft Ltd. reported in 354 ITR 536.

40.3 It was submitted that there was no violation of material facts in the assessee's case as the A.O. himself mentioned in the reasons recorded about the perusal of record and no new tangible material having come into the possession of the A.O. who had already enquired and accepted the claim of the assessee relating to payment of salary, rent and interest, therefore, reopening was bad in law and the Id. CIT(A) was not justified in confirming the action of the A.O.. Reliance was placed on the following case laws:

1. Assistant Commissioner of Income Tax V/s Marico Ltd, 117 taxmann.com 244 (SC)
2. New Delhi Television Ltd V/s DCIT, 116 taxmann.com 151 (SC)
3. Greater Mohali Area Development Authority v/s DCIT, ITA NO.410/CHD/2013 CHD-TRIB
4. Tropex Promotion and Trading Ltd V/s CIT, 423 ITR510 (DEL)
5. PCIT V/s Zee Media Corporation Ltd., 423 ITR 304 (BOM)
6. Prasad Multi Services Pvt. Ltd V/s DCIT, 423 ITR 542 (GUJ)
7. Kapadia Money Changers Pvt. Ltd. Vs. Asstt. CIT, 423 ITR 633 (GUJ)
8. Niranjani Chimanlal Jani Vs. Deputy CIT, 425 ITR 162 (GUJ)
9. B. Kasi Viswanath Vs. ITO, 425 ITR 538 (MAD)
10. Arun Munshaw HUF Vs. ITO, 425 ITR 79 (GUJ)
11. Asian Tubes Pvt. Ltd. Vs. Deputy CIT, 425 ITR 613 (GUJ)
12. R. Kantilal and Co. Vs. ITO, 424 ITR 92 (GUJ)
13. CIT Vs. India Cements Ltd., 424 ITR 410 (MAD)
14. Dr. Rajivraj Ranbir Singh Chaudhary Vs. Assistant CIT, [2017] 79 taxmann.com 152 (GUJ)

15. Blue Coast Infrastructure Development P. Ltd. Vs. Deputy CIT, 81 ITR (Tribunal) 419 (CHD- TRIB)
16. Skyview Consultant Pvt. Ltd V/s ITO and Another, 423 ITR 645 (DLEHI)
17. Mitsubishi Electric Automotive India (P.) Ltd V/s Union of India, 377 ITR 266 (P&H)
18. State Bank of Patiala V/s Commissioner of Income Tax, 375 ITR 109 (P&H)
19. Commissioner of Income Tax V/s ITW India Ltd., 377 ITR 195 (P&H)
20. Commissioner of Income Tax V/s Kelvinator of India Ltd, 320 ITR 561 (SC)
21. Pr. Commissioner Of Income Tax V/s Meenakshi Overseas P Ltd 82 taxmann.com, 300(Del)
22. M/s Holy Faith International Pvt. Ltd V/s DCIT, ITA No.181/ASR./2017 (ASR)
23. M/s Indo Global Techno Trade Ltd V/s Income Tax Officer, ITA No 1616/CHD/2018 CHD-TRIB
24. Mahavir Spinning. Mills Ltd V/s Commissioner of Income Tax , 270 ITR 290 (P&H)
25. Commissioner of Income Tax V/s Hindustan Zinc Ltd., 393 ITR 264 (RAJ)
26. PCIT V/s Baldev Singh Prop M/s Nankana Sahib Road Lines, ITA No. 283 of 2016 (O&M) order dated. 12.02.2018 (P&H)
27. Jivraj Tea Limited V/s Assistant Commissioner of Income Tax, 426 ITR 146 (GUJ)
28. Madurai Power Corporation Private Limited Vs. DCIT(2020) 428 ITR 117 (A.P)

41. In his rival submissions, the Id. CIT-DR strongly supported the orders of the authorities below and further submitted that after conducting the survey, the relevant information came to the knowledge of the assessee that the payments were made to the specified persons so the A.O. was having a bonafide belief that the income has escaped assessment and was justified in reopening the assessments for the A.Y. 2010-11 and 2011-12. It was further submitted that the A.O. disposed off the objections raised by the assessee and there was no formation of opinion during the course of regular assessment as such the reopening of the assessments by the A.O. by invoking provisions of Section 147 r.w.s. 148 of the Act was justified and the Ld. CIT(A) rightly confirmed the action of the A.O.

42. We have considered the submissions of both the parties and perused the material available on record. In the present case, it is an admitted fact that the A.O. framed original assessment U/s 143(3) of the Act and before completing the original assessment, the A.O. asked the assessee about the payment of salary, rent and interest by issuing questionnaire, copy of which is placed at page Nos. 46 to 49 which reads as under:

"To  
M/s. Manav Mangal Society,  
Sector 21, Chandigarh.

Sir,  
Sub: Assessment proceeding for A. Y. 2010-11 regarding-

\*\*\*\*\*

Please refer to your return of income for the A. Y. 2010-11 filed in this office. In this connection, you are requested to please furnish the following information:-

(The information should be complete and filed systematically in the same Sequence.)

Q1. Please file copy of trust Deed/instruments/memorandum of association with which the trust/society was created and subsequent modification to the deed/instrument/memorandum of association.

Q2. Please file a readable copy of registration u/s 12A duly attested by the person authorized to sign the return. You are also requested to produce original certificate for verification.

Q3. Whether the trust/society is notified u/s 80G of the I. T. Act or is notified u/s 10(23c). If, yes, please file a certified copy by the person authorized to sign the return.

Q4. If any assessment u/s 143(3)/144/147 have been framed in your cases in earlier years, please furnish a copy of latest assessment order.

Q5. Please furnish name, complete address and assessment particulars along with PAN of each trustee.

Q6. Please furnish a note of the activities of your institution/trust. Whether there are any activities which are not as per trust deed.

Q7. Please furnish copies of any resolution passed by the trust/institution in the year under consideration.

Q8. Please give the details of surplus/deficit for the past five years and show as to how the accumulated surplus has been utilized in subsequent years. Please certify that the accumulated income has been utilized within the time period allowed for the same and for the purpose in accordance with the provisions of section 11 of the I. T. Act. Submit a chart thereof for the last five years as under:-

Year of accumulation	To be used up to	Purpose	Date of utilization	Evidence thereof
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Please also furnish copy of acknowledgement of submission of Form No. 10 to the AO with respect to each year and the copy of resolution passed for the above purpose for the last five years

Q9. Details of application or use of income or property for the benefit of persons referred to in section 13(3) along with an explanatory note on its justification. Please file details of payments made to specified persons in last two years as well as in the year under consideration. Please file details of investments made and also confirm the investment have been made in the specified assets mentioned in section 11 of the I. T. Act.

Q10. Please give addresses with ownership details of all the premises used by the trust.

Q11. Please state the bank accounts of the trust/society, also file confirmation of bank balances as on 31.3.2010 along with bank reconciliation statement.

Q.12 Please furnish following details for the year under assessment and three previous years:

Sr. No.	Total receipts/income as per Income & Expenditure account	Revenue expenditure during the year	Capital expenditure during the year	Total expenditure (3+4)	% age of expenditure (5/2x100)
1	2	3	4	5	6

Q13. Furnish detailed break up the amounts received as corpus/donations/other gross receipts in the following format along with relevant documents executed by the donor in this regard.

Sr. No.	Source	Amount

Q14. Please state whether you were liable to deduct tax at source during the year as provided in chapter XVII-B of the Income-tax Act. If so, whether tax has been duly deducted and paid within time. Please give details thereof.

Q15. Please produce complete books of accounts alongwith supporting vouchers.

Q16. Details of vehicle held by the trust/society/institution in following format:-

Registration No.	Make	Model No.	Utilization

Q17. Please give details of any loan borrowed or repaid during the last three years including the year under consideration.

Q18. Also produce ITR statements of the trustees

Please note that the above information has been called for u/s 142(1) of the Income Tax Act, 1961 which should be furnished duly verified and as provided in Rule 14 of the Income Tax Rules and each page should be signed by the person authorized to sign the return.

Notice u/s 142(1) is enclosed herewith and your case is fixed for hearing on 06.08.2012.

Yours faithfully

Sd/-  
(Kanika Aggarwal)  
Asstt. Commissioner of Income Tax  
Circle 3(1), Chandigarh."

From the aforesaid reason, it would be clear that the A.O. vide question No. 9 specifically asked the assessee to furnish the details of payments made to the specified persons and vide question No. 12, the details were asked relating to the total receipts as well as the expenditures. The A.O. vide Q.No. 17 also asked the details of loans borrowed or repaid, therefore, it is clear that the A.O. asked the assessee specific informations.

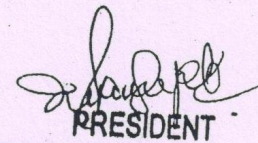
42.1 In response, the assessee furnished the reply and gave the details which are placed at page Nos. 50 to 52 of the assessee's paper book which read as under:

## Manav Mangal Society

Financial Year 2009-10 : Assessment Year 2010-11

(9) Details of application or use of income or property for the benefit of persons referred to in section 13(3) in the last three years are as under:

Assessment Year	Nature of Payments	Payment from	Name of the Person	Amount (Rs.)
2010-11				
1	Salary	Chandigarh School	Mrs. Arshi Manchanda	4,07,088.00
			Sh. Sanjay Sardana	13,68,840.00
			Mrs. Anjali Sardana	4,67,088.00
		Panchkula School	Mrs. Usha Sardana	4,07,088.00
			Sh. Sandeep Sardana	13,68,840.00
			Mrs. Monica Sardana	4,67,088.00
		Mohali School	Sh. G.S. Sardana	11,70,000.00
			Sh. Ajay Manchanda	2,40,000.00
2	Rent	Society	Sh. Sanjay Sardana	2,71,000.00
			Mrs. Anjali Sardana	2,71,000.00
3	Interest to Relatives On Unsecured Loans	Society	Sh. Ajay Manchanda	1,13,251.00
			Mrs. Anjali Sardana	4,65,028.00
			Mrs. Arshi Manchanda	1,10,360.00
			Sh. G.S. Sardana	7,43,058.00
			Mrs. Monica Sardana	5,66,381.00
			Sh. Sandeep Sardana	6,42,011.00
			Sandeep Sardana HUF	2,81,811.00
			Sh. Sanjay Sardana	5,64,135.00
			Sanjay Sardana HUF	2,81,660.00
			Mr. Sankalp Sardana	1,33,235.00
			Mrs. Usha Sardana	5,73,299.00



PRESIDENT

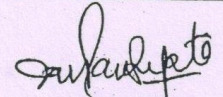
MANAV MANGAL SOCIETY  
SECTOR 21-C CHANDIGARH

## Manav Mangal Society

Financial Year 2009-10 : Assessment Year 2010-11

- (9) Details of application or use of income or property for the benefit of persons referred to in section 13(3) in the last three years are as under:

Assessment Year	Nature of Payments	Payment from	Name of the Person	Amount (Rs.)
2009-10				
1	Salary	Chandigarh School	Sh. G.S. Sardana	8,64,000.00
			Sh. Sanjay Sardana	9,97,860.00
			Mrs. Anjali Sardana	3,34,800.00
		Panchkula School	Mrs. Usha Sardana	3,34,800.00
			Sh. Sandeep Sardana	9,97,860.00
			Mrs. Monica Sardana	3,34,800.00
2	Rent	Society	Sh. Sanjay Sardana	2,59,000.00
			Mrs. Anjali Sardana	2,59,000.00
3	Interest to Relatives On Unsecured Loans	Society	Sh. G.S. Sardana	11,69,604.00
			Sanjay Sardana HUF	2,25,005.00
			Sandeep Sardana HUF	2,25,005.00
			Mrs. Usha Sardana	6,84,576.00
			Sh. Sanjay Sardana	4,66,695.00
			Sh. Sandeep Sardana	6,67,559.00
			Mrs. Monica Sardana	5,46,303.00
			Mrs. Anjali Sardana	3,87,168.00



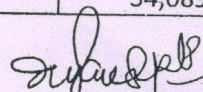
PRESIDENT

MANAV MANGAL SOCIETY  
SECTOR 21-C, CHANDIGARH

**Manav Mangal Society****Financial Year 2009-10 : Assessment Year 2010-11**

- (9) Details of application or use of income or property for the benefit of persons referred to in section 13(3) in the last three years are as under:

Assessment Year	Nature of Payments	Payment from	Name of the Person	Amount (Rs.)
2008-09				
1	Salary	Chandigarh School	Sh. G.S. Sardana	7,68,000.00
			Sh. Sanjay Sardana	7,50,240.00
			Mrs. Anjali Sardana	2,89,920.00
		Panchkula School	Mrs. Usha Sardana	2,95,695.00
			Sh. Sandeep Sardana	7,50,240.00
			Mrs. Monica Sardana	2,89,920.00
2	Rent	Society	Sh. Sanjay Sardana	2,47,000.00
			Mrs. Anjali Sardana	2,47,000.00
3	Interest to Relatives On Unsecured Loans	Society	Sh. G.S. Sardana	9,96,376.00
			Sanjay Sardana HUF	1,72,086.00
			Sandeep Sardana HUF	1,71,864.00
			Mrs. Usha Sardana	3,17,860.00
			Sh. Sanjay Sardana	4,07,630.00
			Sh. Sandeep Sardana	5,10,128.00
			Mrs. Monica Sardana	2,90,955.00
			Mrs. Anjali Sardana	34,089.00



**PRESIDENT**  
**MANAV MANGAL SOCIETY**  
**SECTOR 21-C, CHANDIGARH**

From the aforesaid details, it would be clear the assessee furnished the details for the A.Y's 2008-09 to 2010-11, relating to salary, rent and interest paid to the specified persons which were asked by the A.O., therefore, the observations of the Id. CIT(A) that on the basis of documents or details found during the course

of survey, the A.O. came to know about the payments made to the specified persons. On the contrary, those details were examined by the A.O. during the course of original assessment proceedings which is evident from the aforesaid questionnaire issued by the A.O. and the details furnished by the assessee. Thereafter the A.O. framed the assessment U/s 143(3) of the Act and observed in para 3 of the assessment order dated 26/02/2013 as under:

*"3. In response to the notice the counsel Sh. Ramesh Kumar Malhotra attended the assessment proceedings. Requisite documents, books of accounts were called for, to verify the expenses claimed. From the perusal of the relevant information, is the following issues were identified."*

42.2 However, after examining the books of accounts and the details furnished by the assessee, the A.O. disallowed 20% of the expenses relating to travel and vehicles as has been mentioned in para 4 of the aforesaid assessment order which read as under:

*"4. Vide order sheet entry dated 23.10.2012, the counsel mentioned that no log books have been maintained by the assessee/society regarding travel & vehicles (cars). Also, no separate cars are being maintained for personal use. Hence, the use of these vehicles by the assessee & his family members for personal uses can't be ruled out. Thus, a disallowance to the tune of 20% is being made on the, expenses claimed on vehicles."*

Sr. No.	School	Vehicle Running & Maintenance
1.	Chandigarh	156755/-
2.	Panchkula	1692098/-
3.	Mohali	123440/-
4.	Society	173569/-
	Total	21,45,862/-

*Thus Rs. 4,29,172/- is being disallowed & added back to the income of the assessee."*

42.3 From the aforesaid narrated facts, it is clear that the A.O. properly examined all the details furnished by the assessee and made disallowance also for those expenses which in his view were personal in nature. The A.O. after framing the assessment U/s 143(3) of the Act, reopened the assessment by recording the following reasons:

**Reasons for Re-opening u/s 147 of I.T. Act in case of M/s Manav Mangal Society, Sector 21C, Chandigarh, PAN – AAAAM0564C for the A.Y. 2010-11**

Return of income was filed on 30.09.2010 showing NIL Income. The assessee has filed Return of Income in ITR-5, in which there is no claim of exemptions. The case was assessed u/s 143 (3) of I.T. Act on 26.02.2013. During the assessment proceedings assessee has claimed exemption u/s 11 of the I.T Act. Then AO has assessed the case at Rs. NIL after disallowance of depreciations. The assessee is running various schools in the name of Manav Mangal Schools at Chandigarh, Mohali and Panchkula. The perusal of Income and Expenditure Account and findings of survey proceedings (Date of Survey- 28-29-09-2016) in the case of assessee, it is reveals that the assessee had made payments of Rs. 1,09,12,261/- to its members under various heads as salary, rent and interest. The details of the same are as under –

S.No	Name	A.Y 2010-11			Total
		Salary	Rent	Interest	
1	Arshi Manchanda D/o Sh. G.S Sardana # 3085, Sector-21D Chandigarh	4,07,088/-	-	1,10,360/-	5,17,448/-
2	Ajay Manchanda S/o Late Sh. Amir Chand Manchanda # 3085, Sector -21 D, Chandigarh	2,40,000/-	-	1,13,251/-	3,53,251
3	Monica Sardana D/o Sh. Gian Chaudhary # 3085, Sector-21 D Chandigarh	4,67,088/-	-	5,66,381/-	10,33,469/-
4	Sandeep Sardana S/o Sh. Gian Singh Sardana # 3085, Sector- 21/D, Chandigarh	13,68,840/-	-	6,42,011/-	20,10,851/-
5	Anjali Sardana D/o Sh. R K Chhabra # 3085, Sector-21 D Chandigarh	4,67,088/-	2,71,000/-	4,65,028/-	12,03,116/-
6	Sanjay Sardana S/o Sh. Gian Singh Sardana # 3085, Sector- 21/D, Chandigarh	13,68,840/-	2,71,000/-	5,64,135/-	22,03,975/-
7	Usha Sardana D/o Sh. Satya Dev	4,07,088/-	-	5,73,299/-	9,80,387/-

	Chaudhary # 3085, Sector- 21 D, Chandigarh				
8	Gian Singh Sardana, S/O Sh. J R Sardana, Manav Mangal High School, Sector-21 C, Chandigarh	11,70,000/-	-	7,43,058/-	19,13,058/-
9	Sajnay Sardana HUF	-	-	2,81,660/-	2,81,660/-
10	Sandeep Sardana HUF	-	-	2,81,811/-	2,81,811/-
11	Sanklap Sardana	-	-	1,33,235/-	1,33,235/-
	<b>Total</b>	<b>Rs. 58,96,032/-</b>	<b>Rs. 5,42,000/-</b>	<b>Rs. 44,74,229/-</b>	<b>Rs. 1,09,12,261/-</b>

The above payment of Rs. 1, 09, 12,261/- are not genuine and reasonable u/s 13(2) and clear violation of section 13(1) (c) r.w. 13(3) of the I.T. Act. As per section 13(1)(c) one of the essential conditions for claiming exemption is that no part of the income should be incurred directly or indirectly for the benefit of the founder member and their family members or any other specified persons u/s 13(3) of I.T. Act. Assessee is violating the conditions of the provisions of section 11(1), 13(1)(c) of I.T. Act. Assessee is diverting its receipts in the personal hands of their founder member Sh. G. S. Sardana and their family members.

It is also seen from the income and expenditure account for the under consideration year that there are huge amounts are collected from the students under the various heads & shown the same as Admission Fee, Tuition Fee Recd., Development Fund Recd., Computer Fee, Transport Charges & Misc. Fee etc. Assessee is showing fees under the heads Admission & Registration Fees, Tuition Fees and claiming various kind of huge expenses against the receipts also show that assessee is doing activities on commercial basis and earning huge profits and also accumulated the same in its books and not fulfilling conditions of Section 11(1) r.w.2(15) of I.T. Act. Assessee has shown amount of Rs. 2, 91, 56,426/- as net income against the total income of Rs. 14, 11, 60,203/- which is 20.65% of total income. Which shows that the assessee is earning huge profits and accumulated the same in banks and enjoying huge interest income. It is also mentioned here that when depreciation amount of Rs. 1,77,63,831/- as per Kerla High Court judgement in case of M/s Lissie Medical Institution Vs CIT, Kochi and disallowance of Rs. 1,09,12,261/- u/s 13(1)(c) r.w. 13(3) of I.T. Act added into net income then the total surplus will be Rs. 5,78,32,518/-, which is 40.96% of total income. These all facts show

that assessee has failed to spend the profits on charitable activities and also failed to fulfill the conditions of section 11(1) and 11(2) r.w. 11(5), 13(1)(c), r.w. 13(3), 2(15) of I.T. Act.

In view of the above facts, I have reason to believe that the income tune of Rs. 4,00,68,687/- (Net income of Rs. 2,91,56,426/- + Disallowance u/s 13(1)(c) of Rs. 1,09,12,261/-) is escaped and escapement of income was due to failure of the assessee to disclose truly and fully all material facts relating to its income

**SURENDRA MEENA**  
Dy. Commissioner of Income Tax (Exemptions)  
Circle-1, Chandigarh

42.4 From the aforesaid reasons recorded by the A.O., it is clear that the A.O. considered the expenses relating to the salary to the specified persons amounting to Rs. 1,09,12,261/- as non-genuine. However, the same were considered to be genuine while framing the assessment U/s 143(3) of the Act, so it was a change of opinion. Similar was the position with regard to the rent and the interest. Now the question arises as to whether the assessment can be reopened on the basis of change of opinion.

42.5 On the same issue, the Hon'ble Apex Court in the case of NDTV Vs DCIT (supra) held that "*there being no failure on part of the assessee to disclose all material facts, notice issued to assessee after a period of four years was to be quashed and set aside.*" In the present case also, there was no new material which came to the knowledge of the A.O. after framing the original assessment U/s 143(3) of the Act, therefore, the reopening was not valid.

42.6 Similarly in the case of ACIT Vs Marico Ltd. (supra), the Hon'ble Apex Court dismissed the SLP against the order of the Hon'ble High Court wherein it was held that *"non-rejection of explanation in assessment order would amount to A.O. accepting view of the assessee, thus forming an opinion and that the reason in support of reassessment notice was on account of a mere change of opinion and hence the same was completely without jurisdiction."* In the present case also, the A.O. accepted the claim of the assessee while framing the original assessment and considered the expenses claimed by the assessee as genuine, the same expenses were considered to be non-genuine while issuing the notice U/s 148 of the Act. Therefore, it was a mere change of opinion and on the basis of change of opinion, the assessment reopened was not valid. Furthermore, the A.O. accepted the claim of the assessee, not only in the earlier years but also in the later years and considered the expenses on account of salary, rent and interest paid to the specified persons as genuine. Moreover, the A.O. for the year under consideration did not bring any material on record to substantiate that the expenses incurred for the specified persons by the assessee were excessive in comparison to the expenses incurred by another comparable cases.

42.7 A similar view has been taken by the Hon'ble Gujarat High Court in the case of Jivraj Tea Co. Vs ACIT (supra) wherein it has been held that:

*" the reopening of the assessment under section 147 for the assessment year 2011-12 was on a change of opinion. There was nothing on record to indicate that there was failure on the part of the assessee to disclose truly and fully all the material facts. There was no tangible material available for the purpose of issuing the notice under section 148 for reopening the assessment beyond the period of four years and was unsustainable."*

42.8 In a similar case, the Hon'ble Jurisdictional High Court in the case of Mitsubishi Electric Automotive India (P) Ltd. Vs Union of India 377 ITR 266 (supra) held as under:

*"that the Assessing Officer and the Transfer Pricing Officer were not only aware of the payment of royalty but had taken the payment of royalty into consideration at every stage. The Assessing Officer had in fact expressly called for the information. It could not be held,*

*therefore, that the Assessing Officer was not aware of the royalty and had not taken the royalty payment into consideration before passing the assessment order under section 143. Proceedings were initiated under section 154 before the issuance of a notice under sections 147 and 148 but the proceedings were dropped holding that it was a debatable issue. Therefore, the notice under sections 147 and 148 were clearly based only on a mere change of opinion which was not permissible."*

42.9 In the present case also, the A.O. not only asked the assessee to furnish the details relating to the payment made to the specified persons on account of salary, rent and interest but also examined those and thereafter framed the assessment U/s 143(3) of the Act, therefore, the issuance of the notice U/s 148 r.w.s. 147 of the Act, on the basis of the same issue was a mere change of opinion which was not permissible.

42.10 Similarly, the Hon'ble Jurisdictional High Court in the case of State Bank of Patiala Vs CIT (2015) 375 ITR 109 (P&H) held as under:

*"that the reasons for reopening the assessments which had already been concluded did not show that there was any failure on the part of the assessee to disclose fully and truly all the material facts and thus, it was merely a change of opinion and in view of the settled position of law, the assessee would be entitled to setting aside of the notices issued. The additional factor regarding the change of opinion by the Assessing Officer would also be a valid ground for setting aside the notice issued for the assessment year 2007-08. Further, the reason for reopening was merely a change of opinion on account of the assessment being made for the subsequent years would not give the Assessing Officer the jurisdiction to reopen as he would, thus, be reviewing his earlier decision which has been held not to be permissible. Thus, the notices and the orders were accordingly, quashed."*

42.11 On a similar issue the Hon'ble Andhra Pradesh High Court in the case of Madurai Power Corporation Pvt. Ltd. Vs. DCIT [2020] reported at 428 ITR 117 held as under:

*the admitted facts were that (i) the assessee had disclosed all the facts before the Assessing Officer in one form or the other; (ii) the assessment was reopened four years after its acceptance sans fresh material emanating subsequently, (iii) it was not the case of the Assessing Officer that the assessee had suppressed any income or any material facts; (iv) the assessment was not reopened on the basis of any new material fact which came to light after the passing of the assessment order; (v) a reply came to be given to the audit objection by the Assessing Officer for dropping the objections raised. The notice of reassessment was not valid.*

42.12 As we have already pointed out in the former part of this order that the reason for reopening of the assessment by the A.O. on the basis of the issue which was examined and accepted by him while framing the original

assessment was merely a change of opinion which would not give the A.O. the jurisdiction to reopen the same as he would be reviewing his earlier decision which is not permissible. Accordingly, the reopening by the A.O. in the present case deserves to be quashed. We, therefore, by keeping in view the totality of the facts as discussed hereinabove and by respectfully following the ratio laid down by the Hon'ble Supreme Court as well as various Hon'ble High Courts in the aforesaid referred to cases, are of the view that the Id. CIT(A) was not justified in confirming the action of the A.O. in reopening the assessment, therefore, the reassessment framed by the A.O. is quashed.

43. The facts for the A.Y. 2011-12 in ITA No. 03/Chd/2020 are identical to the facts involved for the A.Y. 2010-11 in ITA No. 02/Chd/2020(supra), therefore, our findings given for the A.Y. 2010-11 shall apply mutatis mutandis for the A.Y. 2011-12.

44. In the result, all the appeals of the assessee are allowed and all the appeals of the department are dismissed.

(Order pronounced in the court on 27/05/2021).

Sd/-

आर.एल. नेगी  
(R.L. NEGI)

न्यायिक सदस्य/ Judicial Member

Date: 27/05/2021

\*Ranjan / AG

Sd/-

एन.के.सैनी,  
(N.K. SAINI)

उपाध्यक्ष / VICE PRESIDENT

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File