

**IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH,
JODHPUR
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL ACCOUNTANT MEMBER**

**ITA Nos. 87 & 88/JODH/2020
(Assessment Years 2013-14 & 2014-15)**

M/s Indira Education Institute & Health Society, 6, Opp. Community Centre, Sector-4, Hiran Magri, Girwa, Udaipur (Raj).	Vs.	I.T.O. (Exemption) Udaipur.
PAN No. AAATI 2532 B		

Assessee by	Shri S.C. Ajmera, CA
Revenue by	Shri A.S. Yadav, JCIT-DR
Date of Hearing	03.11.2020
Date of Pronouncement	01/02/2021

ORDER

PER: BENCH

Both are the appeals filed by the assessee against the separate orders of the Id. CIT(A)-1, Udaipur dated 22/01/2020 and 23/01/2020 for the A.Y. 2013-14 & 2014-15 respectively in the matter of order passed u/s 143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act', for short].

2. The hearing of the appeals was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. In both these appeals, the assessee has raised certain common grounds of appeal, thus both the appeals were clubbed together, heard and are decided by a common order for avoiding the conflicting decision.

4. Firstly, we decide ITA No. 87/Jodh/2020 for the A.Y. 2013-14. In this appeal, the assessee has raised following grounds of appeal:

- "1. On the facts and circumstances of the case, Id. CIT(A) has erred in law as well as in facts by denying the exemption u/s 11 by holding that the case of appellant is hit by Section 13(1)(c) read with Section 13(2) and Section 13(1)(d) of the Act on the ground that there has been violation of Mode of Investment in terms of Section 11(5) by advancing loan to Specified Person u/s 13(3) and has further erred in giving direction to Ld. AO to rework the taxable income of the Appellant to which the Assessee does not agree.*
- 2. The appellant hereby craves leave for addition, alteration, modification or deletion in the above grounds of appeal on or before it is finally heard."*

5. The facts of the case in brief are that the assessee is registered as a society under the Rajasthan Society Registration Act, 1958 and also registered U/s 12AA of the Act. The society is engaged in providing education by running Nursing Institute in the name of GNM Nursing College at Udaipur. The assessee filed its return of income on 04/10/2013 declared NIL income. The case of the assessee was selected for scrutiny and notice U/s 143(2) of the Act was issued on 25/09/2014. After hearing the assessee, the A.O. completed the assessment U/s 143(3) of the Act on 02/03/2016 assessing the total income at Rs. 34,90,590/- by making various additions/disallowances.

6. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of both the parties as well as material placed on record, enhanced the additions

made by the A.O., against which, the assessee, is in further appeal before the ITAT.

7. In this appeal, the assessee is basically aggrieved by the order of the Id. CIT(A) in denying the exemption U/s 11 of the Act by holding that the case of assessee is hit by Section 13(1)(c) read with Section 13(2) and Section 13(1)(d) of the Act on the ground that there has been violation of Mode of Investment in terms of Section 11(5) by advancing loan to 'Specified Person' u/s 13(3) and has given direction to the AO to rework the taxable income of the assessee. In this regard, the Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied on the written submissions filed before the Bench and the same is reproduced below:

"The Ld. CIT(A), Udaipur has revised the order of Ld. AO by making following additions:

<i>S. No.</i>	<i>Particular</i>	<i>Amount (Rs)</i>
<i>1.</i>	<i>Advance/Deposit of Dr. R.S. Nagar</i>	<i>18,72,255</i>
<i>2.</i>	<i>Advance/Deposit of Dr. Rajkumari Nagar</i>	<i>13,62,213</i>
	<i>Total (A)</i>	<i>32,34,468</i>
<i>3</i>	<i>Advance of Sagar B-.Ed College, Society registered u/s 12A/12AA</i>	<i>6,00,000</i>
<i>4.</i>	<i>Advance to Welcome Aviation for Aviation Education Training</i>	<i>6,00,000</i>
	<i>Total(B)</i>	<i>12,00,000</i>
	<i>Total (A+B)</i>	<i>44,34,468</i>

In the aforesaid hearing on dated 03.11.2020, the Hon'ble Bench has asked us to furnish copy of detailed Assessment Order completed u/s 143(3) of the Income Tax Act, 1961 of preceding

years also along with Audited Balance Sheet and Schedule for which Scrutiny Assessment was completed.

The Assessee submits that apart from the current Assessment Year, one more assessment was completed u/s 143(3) pertaining to AY 2010-11. Copy of the Assessment Order along with Audited Balance Sheet, Income & Expenditure Account and relevant Schedule of Advances for FY 2012-13 (AY 2013-14) is enclosed as per Annexure- 1 and for FY 2009-10 (AY 2010-11) is also enclosed as per Annexure - 2.

From the Audited Balance Sheet of FY 2009-10 (AY 2010-11) and current FY 2012-13 (AY 2013-14) (under present appeal). In both the years, Advance/ Deposit in the name of (1) Dr. R S Nagar (2) Dr. Rajkumari Nagar (3) Sagar Education Institute and Health Society (Sagar B.Ed. College) and (4) Welcome Aviation are appearing in the audited Balance Sheet. Both the above years were under scrutiny u/s 143(3) and no addition was made on this ground. Both the Ld. AOs have rightly understood the facts by treating them Advance/ Deposits. They have not treated them as investment u/s 11(5) of the IT Act, 1961

1. From the above Balance Sheet, the Hon'ble Bench (ITAT) will kindly observe that Security Deposit existed in FY 2009-10 as well as FY 2012-13 and no such addition on account of Security Deposit (Guaranteed Advance) was made in scrutiny assessment completed u/s 143(3) by the Ld. AO for AY 2010-11 completed on dated 11.03.2013 as well as for AY 2013-14 completed on dated 02.03.2016.

We are also submitting herewith copy of Lease Deed (Annexure 3), which was entered on dated 30.09.2006 (FY 2006-07) between the 1. Dr. R S Nagar 2. Dr. Rajkumari Nagar (Joint owners of the premises situated at 5, Opposite Community Centre, Hiran Magri, Sector - 4, Udaipur) with the Indira Education Institute and Health

Society. The society will use premises for carrying out the objects of the society on the following terms:

(1) That the Rent of the Lease Property will be Rs. 60,000 per month, which will be paid Rs. 30,000 each to both the Promoters. Furthermore, Rs. 30,00,000 will be given as Advance/ Deposit towards Guaranteed Advance. As against Guaranteed Advances following amount was lying in the accounts with :

<i>(i) Dr. RS Nagar</i>	<i>Rs. 18,72,255</i>
<i>(ii) Dr. Rajkumari Nagar</i>	<i>Rs. 13,62,213</i>
<i>Total</i>	<i>Rs. 32,34,468</i>

Since, rent has increased from initial lease deed, the Advance/ Deposit amount has also increased marginally. This total amount Rs. 32,34,468 have been wrongly increased by the Ld. CIT (Appeals) in the hands of the assessee by revising the order of Ld. AO.

Therefore, the Advance/ Deposit by the Society was given to the Owners of the premises in compliance of the terms and conditions of the Lease Deed. The society does not own its own land and building but has taken it on lease.

2. Similarly, Advance to Sagar B.Ed. College Rs. 6,00,000 (the Society is registered u/s 12A/ 12AA of the Income Tax Act) and Welcome Aviation Rs. 6,00,000 (for Aviation education training) were also appearing in preceding audited Balance Sheets. No additions were made by the Ld. AOs in the Scrutiny assessments on this ground.

In the preceding financial years, the summary assessments were completed u/s 143(1) except two assessment years mentioned above. Copy is enclosed as per Annexure - 4. The assessee has also shown Advance/ Deposit in the preceding years also.

The above Advance/ Deposit does not fall as investment u/s 11(5). Therefore, the Ld. CIT (Appeals) has wrongly treated the Security Deposit as investment u/s 11(5) and enhanced/ revised the order of the Ld. AO.

The addition made by the Ld. CIT (Appeals) by revising the detailed scrutiny assessment order of Ld. AO for AY 2013-14 dated 02.03.2016 (Annexure - 1). Similarly, the same view was taken by the different Ld. AO for preceding AY 2010-11 in the detailed Scrutiny conducted u/s 143(3) (Annexure-2).

Relief be granted to the assessee

The assessee humbly requests to the Hon'ble Bench of ITAT to kindly quash the order of Ld. CIT (Appeals) dated 22.01.2020 in this regard by deleting the suo moto additions made of Rs. 44,34,468.

The Id. AR has further submitted as under:

In the matter of Appeal decided against the assessee by the Ld. CIT (Appeals), Udaipur by denying the exemption u/s 11 by holding that the case of assessee is hit by :

1. Section 13(1)(c) read with Section 13(2) reproduced below:

13. (1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—

(i) if-----, or

(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in sub-section (3) :

Provisions of section 13(2) of the Act.

In the present context, section 13(2) of the Act is also relevant. For the sake of ready reference, section 13(2) of the Act, is reproduced as follows:

"13. Section 11 not to apply in certain cases.

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

- (a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3) for any period during the previous year without either adequate security or adequate interest or both;*
- (b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation.*
- (c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;*
- (d) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;*
- (e) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;*
- (f) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate;*
- (g) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3): Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed one thousand rupees;*
- (h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January 1971), in any concern in which any person referred to in sub-section (3) has a substantial interest."*

Ld. CIT (A), Udaipur has used power u/s 263 of the Income Tax Act, 1961 by revising order of Ld. ITO (Exemption), Udaipur and enhancing the income assessed by Ld. AO by making addition in respect of Security Deposits given to the Trustees, who have lent/given on rent their properties to the Trust for carrying out the Educational objects of the Trust, which are as under:

TABLE 'A'

<i>S.No.</i>	<i>Particular</i>	<i>Amount (Rs.)</i>
<i>1</i>	<i>Security Deposit to Dr. R S Nagar</i>	<i>18,72,255</i>
<i>2</i>	<i>Security Deposit to Dr. Rajkumari Nagar</i>	<i>13,62,213</i>
	<i>Total (A)</i>	<i>32,34,468</i>
<i>3</i>	<i>Advance to Sagar B.Ed. College, Society registered u/s 12A</i>	<i>6,00,000</i>
<i>4</i>	<i>Advance to Welcome Aviation Pvt. Ltd. Education Training</i>	<i>6,00,000</i>
	<i>Total (B)</i>	<i>12,00,000</i>
	<i>Total (A+B)</i>	<i>44,34,468</i>

Both the persons are Promoter members of the Society. They are owing following properties, which has been let out to the assessee Society for carrying out Educational Objects :

(i) Land and Building at Plot No. 5, Opposite UIT Community Centre, Sector-4, Hiran Magri, Udaipur in joint name of Dr. R S Nagar and Dr. Rajkumari Nagar

Land and Buildings have been let out to the assessee viz. Indira Education Institute and Health Society, Udaipur right from the very beginning, way back in the year 2006 for carrying out Educational Activity by the assessee Society.

During the course of hearing of appeal against the order of Ld. ITO, (Exemption), Udaipur dated 02.03.2016, the Ld. CIT has come to the notice that aforementioned amount of Rs. 44,34,468 have been given

to the persons specified under 13(3) of the Act and therefore made additions of Rs. 44,34,468 by invoking provision of section 13(1)(c) read with Section 13(2) by revising the order of the Ld. AO.

2. The Ld. CIT (A) on the same opinion has also has not treated the above Security Deposits as investment specified u/s 11(5) and made additions of Rs. 44,34,468 by revising the order of Ld. AO.

The Ld. CIT (A) has not understood properly the facts of the case. The facts is that the Founder Promoters viz. Dr. R S Nagar and Dr. Rajkumari Nagar formed the assessee Society in the name of Indira Education Institute and Health Society and registered with the Registrar of Societies, Rajasthan, Udaipur with the object to commence Educational Activities/ Health Education. There was no asset or property available in the name of the society. In view of this fact, the founder promoters have offered to let out their own personal property to the Society so that it can carry out the activities on a reasonable rent and Security Deposit. The Society has entered into Rent Agreement i.e. Lease Deed on dated 30.09.2006 (Annexure -1) for a period of 30 years, the main terms are as under :

(i) Rent Rs. 60,000 per month (Rs. 30,000 each), which shall be revised from time to time.

(ii) Rs. 30 Lacs Security Deposit as Guaranteed Advance.

(iii) If any further construction is required by the society, the above rent/ Security Deposit shall be suitably enhanced.

The Security Deposit of Rs. 30 lacs Plus Advance rent given from time to time has been debited to personal account of the Founder Promoters. Therefore, deposit amount has increased from 30,00,000 to Rs. 32,34,468.

The additional amount is part and partial of advance rent. There is no element of undue profit or advantage driven by the Promoters (Specified Persons u/s 13(3) directly or indirectly.

As per the certificate given by Architect and Approved Valuer (Annexure-2), the Annual Rent and Security Deposits are below the fair market value.

It may kindly be noted that without providing Land and Building by the Promoters to the Society it was not possible to carry out the objects of the society. Therefore, both elements i.e. Security Deposits and Payment of Rent were essential part and therefore, provision of Section 13(1)(c) read with section 13(2) should not have been invoked.

Therefore, addition of Rs. 32,34,468 (18,72,255 + 13,62,213) at Serial No. 1 85 2 of above table made by the Ld. CIT (A) was wrong in law as well as in facts and same is liable to be deleted.

As regards to addition made at Serial No. 3 & 4 by Ld. CIT (A), it is submitted that advancement of interest free loan to other charitable organization, which were registered under section 12A/ 12AA was outside the purview/ scope of section 13(1)(c) as well as section 13(1)(d) read with section 11(5)

Therefore, addition of Rs. 12,00,000 (6,00,000 + 6,00,000) at Serial No. 3 & 4 of above table made by the Ld. CIT (A) was wrong in law as well as in facts and same is liable to be deleted.

Ld. CIT Version

Security Deposits not treated as investment under section 11(5)

The Ld. CIT (A) has stated that during the course of appeal proceedings, it was noticed that Appellant Society has given loans and advances to Dr. Ram Sagar Nagar Rs. 18,72,355 and Dr. Rajkumari Nagar Rs. 13,62,213, who are the President and Secretary of the Society. The Ld. CIT has further noticed that these loans and

advances were in violation of provision of section 11(5) of the Income Tax Act and therefore added as taxable income of the Appellant Society. The Ld. CIT has further noted that as the Ld. AO did not add these amounts to the Total Income as both these persons are specified person u/s 13(3) of the Act. How these loan and advances were justified for achieving the objects of the society. It is seen that these loans and advances are in violation of provision of section 11(5) of the Act and therefore has been added as taxable income of Appellant Trust.

In support of their justification, the Ld. CIT(A) has cited few case laws, however they are not relevant to the present case.

Assessee's Submission in respect of additions made section 11(5)

The Ld. CIT (A) has erred in law as well as in facts by stating that these advances do not fall under the category of investment specified u/s 11(5) on the following reasons:

- (i) The assessee Society has at the very beginning stated that these amounts are not investments and therefore they do not fall under the purview of section 11(5). The Ld. AO has not treated these amounts as investments specified u/s 11(5) as these are not really investments. However, the Ld. CIT (A) has mis-interpreted that these Security Deposits do not fall under the category of investments and therefore denied the exemption u/s 11 and enhanced the taxable income computed by Ld. AO.*
- (ii) Amount mentioned at Serial No. 1 & 2 of Table 'A' are "Security Deposits" against Letting of the Property by the Promoter to the Society. This property is being used by the society to carry out the objects of the society. These Security Deposits have been given as per the terms and condition of the Lease Agreement dated 30.09.2006 (Annexure- 1)*

- (iii) *These Security Deposits were lower than the fair market value as determined by the Architect/ Approved Valuer (Annexure- 2)*
- (iv) *If this Land and Building was taken on lease as well as Security Deposit was given to the Owner, the society could not carry out its objects. It was essential to have proper land and building to achieve its objects.*
- (v) *The Ld. AO has rightly treated them as essential part to attain the objective of the society. Hence, Ld. AO did not make any addition of this amount.*
- (vi) *The Ld. CIT (A) has wrongly interpreted the Security Deposit and as investment and tried to cover u/s 11(5), which is factually not correct.*

In proof of assessee's contention, we have provide cop of Lease Agreement, Architect/ Approved Valuer Certificate to the Ld. CIT(A). However, the Ld. CIT (A) has not considered these evidences.

Since, the aforesaid Security Deposit/ Advances does not fall under the category of specified investment u/s 11(5), therefore, aforesaid addition of Rs. 44,34,468 mentioned in "Table A" above made by the Ld. CIT (A) was wrong in law as well as in facts and same is liable to be deleted.

He relied on the following judicial pronouncements:

- (i) *CIT(E) Vs Bholaram Educational Society (2019) 101 taxmann.com 193 (SC)*
- (ii) *Shree Kamdar Education Trust Vs ITO (2016) 74 taxmann.com 253 (Guj)*
- (iii) *High Court of Delhi Vs Director of Income Tax (Exemption) Vs Charanjiv Charitable Trust (2014) 267 CTR 305 (Delhi)*
- (iv) *DIT(E) Vs Acme Educational Society (2010) 326 ITR 146 (Delhi)*

(v) *Kanpur Subhash Shiksha Samiti Vs DCIT (2011) 10 taxmann.com 100 (Luck)*

(vi) *JCIT (OSD) (Exemptions) Vs Bhaktavatsalam Memorial Trust (2014) 30 ITR 264 (Chennai Trib)*

(vii) *CIT Vs Shri Eklingji Trust (2001) 119 Taxman 527 (Raj)*

Relief Demanded

1. *U/s 13(1)(c)*

On the facts and circumstances of the case, Ld. CIT(A) has erred in law as well as in facts by denying the exemption u/s 11 and by holding that the case of Appellant is hit by Section 13(1)(c) read with Section 13(2), which is not correct on the ground that these deposits/ advance given to Specified Person u/s 13(3) were given as Building Security Deposits to achieve the objects of the Trust as it was necessary to attain the objects of the Trust . These advances do not fall under 13(1)(c) read with section 13(2) i.e. any part of such income or any property of the trust or the institution during the previous year has not been used or applied directly or indirectly for the benefit of any person referred to in sub-section (3) :

2. *U/s Section 13(1)(d) read with section 11(5)*

As these advances/ deposit are Security Deposit as part of Lease Agreement, they are not investments as specified u/s 11(5). These provisions are not applicable in the present case.

Therefore, addition of Rs. 44,34,468 is wrong in law as well as in facts and liable to be deleted."

8. On the other hand, the Id DR has relied on the orders of the authorities below.

9. We have considered the rival contentions and carefully gone through the material placed on record. We have also deliberated upon the judicial

pronouncements referred by both the parties. We have also carefully perused the orders of the revenue authorities. From perusal of the record, we noticed that the assessee is a registered society under the Rajasthan Society Registration Act, 1958 and also registered U/s 12AA of the Act. It means that, there is no dispute to the fact that the assessee society is a registered society. During the appellate proceedings, the Id. CIT(A) held that the assessee society had given loan and advances to the President and Secretary of the society. Both the persons are Promoter members of the Society. They are owing following properties, which has been let out to the assessee Society for carrying out Educational Objects:

(i) Land and Building at Plot No. 5, Opposite UIT Community Centre, Sector-4, Hiran Magri, Udaipur in joint name of Dr. R S Nagar and Dr. Rajkumari Nagar.

Land and Buildings have been let out to the assessee viz. Indira Education Institute and Health Society, Udaipur right from the very beginning, way back in the year 2006 for carrying out Educational Activity by the assessee Society. The Ld. CIT (A) has not understood properly the facts of the case. The facts are that the Founder Promoters viz. Dr. R S Nagar and Dr. Rajkumari Nagar formed the assessee Society in the name of Indira Education Institute and Health Society and registered with the Registrar of Societies, Rajasthan, Udaipur with the object to commence Educational Activities/ Health

Education. There was no asset or property available in the name of the society. In view of this fact, the founder promoters have offered to let out their own personal property to the Society so that it can carry out the activities on a reasonable rent and Security Deposit. The Society has entered into Rent Agreement i.e. Lease Deed on dated 30.09.2006 (Annexure -1) for a period of 30 years, the main terms are as under:

- (i) Rent Rs. 60,000 per month (Rs. 30,000 each), which shall be revised from time to time.
- (ii) Rs. 30 Lacs Security Deposit as Guaranteed Advance.
- (iii) If any further construction is required by the society, the above rent/ Security Deposit shall be suitably enhanced.

The Security Deposit of Rs. 30 lacs Plus Advance rent given from time to time has been debited to personal account of the Founder Promoters. Therefore, deposit amount has increased from 30,00,000 to Rs. 32,34,468. The additional amount is part and partial of advance rent. There is no element of undue profit or advantage driven by the Promoters (Specified Persons u/s 13(3) directly or indirectly. For ready reference, we reproduce Section 13(1)(c) r.w.s. 13(2) of the Act:

- 13.** (1) Nothing contained in [section 11](#) or [section 12](#) shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—
- (c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—

- (i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or
- (ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3) :

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

- (a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3) for any period during the previous year without either adequate security or adequate interest or both;
- (b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;
- (c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;
- (d) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;
- (e) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;
- (f) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate;
- (g) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3):
Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed one thousand rupees;
- (h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971), in any concern in which any person referred to in sub-section (3) has a substantial interest.

10. We also noticed that as per the certificate given by Architect and Approved Valuer (Annexure-2), the Annual Rent and Security Deposits are below the fair market value and without providing Land and Building by the Promoters to the Society it was not possible to carry out the

objects of the society. Therefore, both elements i.e. Security Deposits and Payment of Rent were essential part and therefore, provision of Section 13(1)(c) read with section 13(2) would not be attracted.

11. We observe that apart from the current assessment year, one more assessment was completed u/s 143(3) pertaining to AY 2010-11. Copy of the Assessment Order along with Audited Balance Sheet, Income & Expenditure Account and relevant Schedule of Advances for FY 2012-13 (AY 2013-14) are on record as Annexure- 1 and for FY 2009-10 (AY 2010-11) as Annexure - 2. From the Audited Balance Sheet of FY 2009-10 (AY 2010-11) and current FY 2012-13 (AY 2013-14) (under present appeal). In both the years, Advance/ Deposit in the name of (1) Dr. R S Nagar (2) Dr. Rajkumari Nagar (3) Sagar Education Institute and Health Society (Sagar B.Ed. College) and (4) Welcome Aviation are appearing in the audited Balance Sheet. Both the above years were under scrutiny u/s 143(3) and no addition was made on this ground. Both the AOs have rightly understood the facts by treating them Advance/ Deposits. They have not treated them as investment u/s 11(5) of the Act. From perusal of the Balance Sheet, we observe that Security Deposit existed in FY 2009-10 as well as FY 2012-13 and no such addition on account of Security Deposit (Guaranteed Advance) was made in scrutiny assessment completed u/s 143(3) by the AO for AY 2010-11 which was

completed on 11.03.2013 as well as for AY 2013-14 completed on 02.03.2016.

12. We also observe that copy of Lease Deed (Annexure 3), which was entered on dated 30.09.2006 (FY 2006-07) between the 1. Dr. R S Nagar 2. Dr. Rajkumari Nagar (Joint owners of the premises situated at 5, Opposite Community Centre, Hiran Magri, Sector - 4, Udaipur) with the Indira Education Institute and Health Society. The society will use premises for carrying out the objects of the society on the following terms:

(1) That the Rent of the Lease Property will be Rs. 60,000 per month, which will be paid Rs. 30,000 each to both the Promoters. Furthermore, Rs. 30,00,000 will be given as Advance/ Deposit towards Guaranteed Advance. As against Guaranteed Advances following amount was lying in the accounts with :

(i) Dr. R S Nagar	Rs. 18,72,255
(ii) Dr. Rajkumari Nagar	Rs. 13,62,213
Total	Rs. 32,34,468

Similarly, advance to Sagar B.Ed. College Rs. 6,00,000 (the Society is registered u/s 12A/ 12AA of the Income Tax Act) and Welcome Aviation Rs. 6,00,000 (for Aviation education training) were also appearing in preceding audited Balance Sheets. No additions were made by the AOs in the Scrutiny assessments on this ground. In the preceding financial years, the summary assessments were completed u/s 143(1) except two assessment years mentioned

above, copy of which is annexed as Annexure-4. The Advance/ Deposit does not fall as investment u/s 11(5) of the Act, therefore, the Ld. CIT (A) has wrongly treated the Security Deposit as investment u/s 11(5) and enhanced/ revised the order of the AO. The addition made by the Ld. CIT (A) by revising the detailed scrutiny assessment order of AO for AY 2013-14 dated 02.03.2016 (Annexure - 1). Similarly, the same view was taken by the different AO for preceding AY 2010-11 in the detailed Scrutiny conducted u/s 143(3) of the Act as (Annexure-2).

13. We also observe from perusal of the record that the Ld. CIT (A) has stated that assessee Society has given loans and advances to Dr. Ram Sagar Nagar Rs. 18,72,355 and Dr. Rajkumari Nagar Rs. 13,62,213, who are the President and Secretary of the Society. The Ld. CIT (A) has further noticed that these loans and advances were in violation of provision of section 11(5) of the Act and therefore added as taxable income of the assessee Society. The Ld. CIT has further noted that as the AO did not add these amounts to the total income as both these persons are specified person u/s 13(3) of the Act and these loans and advances are in violation of provision of section 11(5) of the Act. In this regard, we observe that the assessee Society has at the very beginning stated that these amounts are not investments and therefore they do not fall under the purview of section 11(5). The AO has not treated these

amounts as investments specified u/s 11(5) as these are not really investments. However, the Ld. CIT (A) has mis-interpreted that these Security Deposits do not fall under the category of investments and therefore denied the exemption u/s 11 and enhanced the taxable income computed by the AO. This property is being used by the society to carry out the objects of the society. These Security Deposits have been given as per the terms and condition of the Lease Agreement dated 30.09.2006 (Annexure- 1). These Security Deposits were lower than the fair market value as determined by the Architect/ Approved Valuer (Annexure- 2). If this Land and Building was taken on lease as well as Security Deposit was given to the Owner, the society could not carry out its objects. It was essential to have proper land and building to achieve its objects. The AO has rightly treated them as essential part to attain the objective of the society. The assessee has provided copies of Lease Agreement, Architect/ Approved Valuer Certificate to the Ld. CIT(A) but he had not considered these documents. The Id AR has relied on various decisions. The Hon'ble Supreme Court in the case of **CIT(E) Vs Bholaram Educational Society (2019) 101 taxmann.com 193 (SC)** has held 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 - It paid rent to HUF whose karta was trustee of assessee-trust - Assessing Officer taking a view that such payment breached section 13(1)(c), denied

exemption claimed by 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 - Accordingly, disallowance made by Assessing Officer was deleted - High Court upheld order passed by Tribunal - Whether, on facts, SLP filed against decision of High Court was to be dismissed Held, yes [Para 2][In favour of assessee]”

The Hon’ble Gujarat High Court in the case of **Shree Kamdar Education Trust Vs ITO (2016) 74 taxmann.com 253 (Guj)**, wherein the Hon’ble High Court has held as under:

“Section 13, read with section 11 of the Income-tax Act, 1961 - Charitable or religious trust -Denial of exemption (Sub-section (1)(D) - Assessment year 2003-04 - Whether mere payment of lease rent or interest on borrowed funds to trustees without there being any element of such payments being excessive or unreasonable, would not fall within mischief of section 13(1)(c) - Held, yes - Assessee-trust had taken a large part of land belonging to trustees or relatives on lease for which trust paid lease rent at rate of Rs. 1 per sq. ft per annum while third party was paying five times more i.e., at rate of Rs. 5 per sq ft Whether since there was no excessive or unreasonable payments to trustees, exemption could not be denied to assessee-trust - Held, yes [Para 13] [In favour of assessee]

Section 13(1)(c) does not prohibit normal transactions between the trust and the persons referred to in sub-section (3). What is relevant is the use or application of any part of the income of the trust directly or indirectly for the benefits of any such person referred to in subsection (3). Mere payment of lease rent or interest on borrowed funds, without there being any element of such payments being excessive or unreasonable compared to the normal rates prevailing, would not fall within the mischief of section 13(1)© [Para 13]”

The Hon’ble Delhi High Court in the case of High Court of Delhi Vs Director of Income Tax (Exemption) Vs Charanjiv Charitable Trust (2014) 267 CTR 305 (Delhi) has held as under:

“Section 13, read with section 11, of the Income-tax Act, 1961 - Charitable or religious trust Denial of exemption (Benefit to prohibited persons - Sub-section (1)(c)) - Assessment years 2006-07 and 2007-08 - Whether where in case of a charitable trust, it is found that provisions of section 13(1)(c)(ii) read with section 13(3) are not followed, trust would lose its exemption in entirety, with result that assessment of its income will be made according to provisions of Act - Held, yes - Assessee, a charitable trust, was granted registration under section 12A - Assessee filed its return declaring nil income - Assessing Officer noted that assessee in furtherance of its objects to open a school, entered into agreements with APIL for purchase of land and paid 95 per cent of price as advance money - However, even after lapse of more than one year from date of agreement to sell, sale was not completed and no registered document was executed - Assessing Officer took a view that real motive of assessee was to advance its surplus monies to APIL without charging any interest and since APIL was a prohibited person within meaning of section 13(3), provisions of section 13(1)(c)(ii) were attracted with result that assessee could not be allowed exemption under section 11 - Whether, on facts, and in absence of any explanation as to why sale agreement was cancelled after a long time of paying advance money, impugned finding recorded by Assessing Officer was to be upheld - Held, yes - [Paras 24 and 27] [In favour of revenue]

Section 32, read with section 11, of the Income-tax Act, 1961 - Depreciation - Allowance/ rate of (In case of trust) - Assessment years 2006-07 and 2007-08 - Whether where in case of a trust cost of asset has been allowed as deduction by way of application of income, then depreciation on same asset cannot be allowed in computation of income of trust - Held, yes [Para 30] [In favour of revenue]

The view taken by the Tribunal - thus, denial of the exemption u/ s 11 on the ground that by advancing monies to Charanjiv Educational Society the assessee committed a violation of Section 13(1)(c)(ii) read with Section 13(2) and Section 13(3) cannot be accepted - The order of the Tribunal upheld - Decided against Revenue.

D) Interest free loan advanced by one charitable society to another having similar object, does not fall in purview of section 11(5)”

14. We draw strength from the decision of the Coordinate Bench of the Chennai Tribunal in the case of JCIT (OSD) (Exemptions) Vs Bhaktavatsalam Memorial Trust (2014) 30 ITR 264 (Chennai Trib) wherein the Coordinate Bench has held as under:

“Advancement of interest free loan by a charitable institution to other having similar objects is not in violation of provisions of section 13(1)(d)

Voluntary contribution made with a specific direction that it shall form part of corpus of trust cannot be treated as income of trust even if purpose for which such donation is given has not been specified

While working out application of income as prescribed in relation to purposes/objectives of a trust in terms of section 11(1)(a) in computation of taxable income, no disallowance of depreciation could be made

I. Section 13, read with section 11, of the Income-tax Act, 1961 - Charitable or religious trust - Denial of exemption (Sub-section (1)(d)) - Assessment year 2009-10 - Whether advancement of interest free loan by a charitable institution to other charitable institutions registered under section 12A having similar objects is not in violation of provisions of section 13(1)(d), read with section 11(5) - Held, yes [Para 7][In favour of assessee]

II. Section 11 of the Income-tax Act, 1961 - Charitable or religious trust - Exemption of income from property held under (Voluntary Contributions) - Assessment year 2009-10 Whether where voluntary contributions are made with a specific direction that it shall form part of corpus of trust, said amount cannot be treated as income of trust even if purpose for which such donation is given has not been specified -Held, yes [Para 17] [In favour of assessee]

III. Section 11 of the Income-tax Act, 1961 - Charitable or religious trust - Exemption of income from property held under (Application of income) - Assessment year 2009-10 Whether while working out application of income as prescribed in relation to purposes/ objectives of a trust in terms of section 11(1) (a) in computation of taxable income, no disallowance of depreciation could be made - Held, yes [Para 11] [In favour of assessee]”

We also draw strength from the decision of the Hon'ble Jurisdictional High Court in the case of **CIT Vs Shri Eklingji Trust (2001) 119 Taxman 527 (Raj)** wherein the Hon'ble Rajasthan High Court has held as under:

“Section 154, read with section 13, of the Income-tax Act, 1961 - Rectification of mistakes - Apparent from record - Assessment year 1974-75 - Assessee-trust gave loan at a lower rate of interest to a company in

which managing trustee had substantial interest Assessing Officer held that less interest was charged for benefit of prohibited persons referred to in section 13(3) - He, therefore, made addition on account of undercharged interest - On appeal, AAC affirmed Assessing Officer's order - Thereafter, Assessing Officer initiated rectification proceedings on ground that sections 13(1)(c) and 13(2) were not considered during original assessment - Assessing Officer's order was rejected by Commissioner (Appeals) and subsequently by Tribunal - Whether on decision by appellate authority, order of lower authority stood merged in order of appellate authority and became unamenable to rectification under section 154 - Held, yes - Whether since section 13(3) merely identifies prohibited persons referred to in sections 13(1)(c) and 13(2) payment to whom would deprive trust of exemptions under sections 11 and 12, no rectification could have been initiated in instant case on ground that sections 13(1)(c) and 13(2) were not considered during original assessment - Held, yes

Section 13 of the Income-tax Act, 1961 - Charitable or religious trust - Withdrawal of exemption - Assessment year 1974-75 - Whether section 13(1)(c), section 13(2) and section 13(3) are integral part of same scheme and sub-section (3) does not operate and cannot be applied without reference to provisions of section 13(1)(c) and 13(2) - Held, yes”

We also draw strength from the decision of Coordinate Bench of cochin bench of the Tribunal in the case of **George Educational, Medical & Charitable Society Vs Assistant Director of Income Tax 2002 80 ITD 619 Coch**, wherein the Coordinate Bench has held as under:

“These are cross-appeals filed by the assessee-society and the Department against the order of the CIT(A) dt. 30th Nov., 1999, for the asst. yr. 1996-97, wherein 'he held, inter alia, that the income of the assessee-society is not entitled for exemption under Section 11, because it is hit by the provisions of Section 13(1)(c) of the IT Act. It was held that while granting registration under section 12A of the Act where the objects of the assessee society were genuine, merely because it had incurred certain expenditure, which fell within the category of benefit to a person under section 13(3) of the Act and hence, the assessee society was held to be hit by the provisions of section 13(1) (c) of the Act, does not entitle the CIT to deny the exemption of income claimed under section 11 of the Act.

Further assessee relied on the case of CIT Vs. Red Rose School [2007] 163 Taxman 19 (All.) It was, inter alia, held in this case that the language used in section 12AA for the registration of a trust, only requires that activities of the trust or the institution must be genuine, which, accordingly, would mean that they are in consonance with the objects of the trust / institution and are not mere camouflage, but are real, p e an. sincere and are not against the objects of the trust. The profit earning or misuse of the income derived by charitable institution from its charitable activities may be a ground for refusing exemption only with respect to that part of the income, but cannot be taken to be a synonym to the genuineness of the activities of the trust or institution [Paragraph 34 on pages 32 and 33 of the Report]

It may, thus, be seen that as per the aforesaid judgement of the Allahabad High Court, the misuse of the income derived by the charitable institution from its charitable activities may be a ground for refusing exemption only with respect to that part of income and not the whole of the income of the trust / institution.”

The Coordinate Bench of Delhi ITAT in the case of **Additional Director of Income Tax (Exemption) Training Circle-III, New Delhi Vs Manav Bharati Child Institute & Child Psychology (2008) 20 SOT 517 (Delhi)** has held as under:

“Section 11, read with sections 12 and 13, of the Income-tax Act, 1961 - Charitable or religious trust - Exemption of income from property held under - Assessment year 200102 - Whether so long as objects of a society are for charitable purposes, merely because there is some surplus in activities carried out by society, it would not disentitle it to claim exemption under sections 11 and 12 - Held, yes - Whether there is no prohibition in Act to remunerate interested person but such remuneration should be commensurate with services rendered by them and so found, it cannot be said that provisions of section 13(1)(c) are attracted so as to deny benefit of exemption under sections 11 and 12 - Held, yes

As found by the Commissioner (Appeals), the payments made to person referred to in sub-section (3) of section 13 were for the services rendered by those persons and which was commensurate with the nature of services rendered. There is no prohibition in the Act to remunerate the interested person but such remuneration should be commensurate with the services rendered by them. If so found, it cannot be said that

provisions of section 13(1)(c) are attracted so as to deny benefit of exemption under sections 11 and 12. Since it was found by the Commissioner (Appeals) that payment was not undue or unreasonable, the exemption under sections 11 and 12 could not be denied. Accordingly, there was no ground to deny the benefit of sections 11 and 12. [Para 3]”

15. We also observe from perusal of the record that the case laws relied upon by the Id CIT(A) do not relate with the case of the assessee. Therefore, in view of the above facts and circumstances and by respectfully following many of the decisions cited supra, we hold the assessee is entitled for exemption U/s 11 of the Act and we direct to delete the additions made by the A.O. and sustained by the Id. CIT(A). We direct accordingly.

16. Now we take ITA No. 88/Jodh/2020 for the A.Y. 2014-15. In this appeal, the assessee has raised following grounds of appeal:

- “1. On the facts and circumstances of the case, Id. CIT(A) has erred in law as well as in facts by disallowing the vehicle running expenses of the society of Rs. 1,16,905/- treating the same as personal nature to which the assessee does not agree*
- 2. The appellant hereby craves leave for addition, alteration, modification or deletion in the above grounds of appeal on or before it is finally heard.”*

17. In this appeal, the assessee has mainly aggrieved by the order of the Id. CIT(A) in confirming the addition of Rs. 1,16,905/- with regard to vehicle running expenses.

18. At the outset, the Id AR of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied on the written submissions filed before the Bench and submitted that the Id. CIT

(A) disallowed 20% of these expenses amounting to Rs 1,16,905.

The accounts of the Society are duly audited and certified by Independent chartered Accountants/ Auditor. All the expenses have been properly recorded and verified from vouchers and books of accounts. No expenses of personal nature have been booked as appearing from audited financial statements. Therefore, there is no justification by disallowing 20% of Expenses deeming as personal in nature.

19. On the other hand, the Id DR has relied on the order of the Id. CIT(A)

20. We have considered the rival contentions and carefully gone through the orders of the authorities below. From perusal of the record, we found that during the year under consideration the assessee has claimed the following expenses:-

S.No.	Nature of Expense	Amount (Rs.
1	Diesel and Lubricant	59834
2.	Vehicle Running expense	35132
3	General Repair and maintenance	27101
4	Interest on Vehicle Loan	462461
	Total	584528

We also observe that the accounts of the assessee Society are duly audited and certified by independent chartered Accountants/ Auditor. All the expenses have been properly recorded and verified

from bills/vouchers and books of accounts. No expenses with regard to personal nature have been recorded as appearing from audited financial statements. Therefore, we direct to delete the disallowance made qua this issue.

21. In the result, both the appeals of the assessee are allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962 by placing the details on the notice board.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Jodhpur

Dated 01/02/2021

*Ranjan

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT (A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench