

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 626/JP/2019
निर्धारण वर्ष / Assessment Year :.....

Disha Delphi Education Society, 334, Asiad Village, Hauz Khas, New Delhi-110049.	बनाम Vs.	Pr.CIT (Central), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAATD 8461 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 313/JP/2020
निर्धारण वर्ष / Assessment Year: 2016-17

Disha Delphi Education Society, 334, Asiad Village, Hauz Khas, New Delhi-110049.	बनाम Vs.	Pr.CIT (Central), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAATD 8461 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Shri Ajay Chandra (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 05/10/2021
उदघोषणा की तारीख / Date of Pronouncement : 27/12/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

These are the appeals filed by the common assessee against the separate order of Id. Pr.CIT(Central), Rajasthan, Jaipur dated 22/03/2019 and 29/10/2020 for the A.Y. 2016-17 in the matter of order passed U/s

12AA(3) & 12AA(4) as well as Section 263 of the Income Tax Act, 1961 (in short, the Act).

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

3. Firstly we take ITA No. 626/JP/2019 for deciding the appeal. In this appeal, following grounds have been raised by the assessee.

"1. The Id. Pr.CIT has erred on facts and in law in cancelling the registration granted to the assessee trust u/s 12AA(3) of the IT Act, 1961 w.e.f. 01/04/2014 by incorrectly holding that activities of the trust are not genuine and are not being carried out in accordance with its objects.

1.1 The Id. Pr.CIT has further erred in cancelling the registration u/s 12AA(4) of the IT Act, 1961 by holding that activities are being carried out in such a manner that the provisions of Section 11 & 12 do not apply to exclude the income of the assessee due to operation of Section 13(1).

2. The appellant craves to alter, amend and modify any ground of appeal.

3. Necessary cost be awarded to the assessee."

4. The brief facts of the case are that the assessee society was constituted on 20.09.2002 with the objectives of providing education & medical facilities without any profit motive. It is registered under Societies Registration Act XXI of 1860 and also registered u/s 12AA of the Act vide order no. 1094 dated 27.10.2008. In pursuance to these objects, the assessee is presently running a school in the name of Disha Delphi Public

School (DDPS) at Kota. Disha Delphi Public School run by the assessee society is affiliated with CBSE. A search was conducted on the Allen Group, Kota on 02.02.2017. During the course of search documents relating to payment made by Sh. Govind Maheshwari & others to Sh. R.K. Verma for acquiring management and administrative rights in the assessee society and thereby acquiring management and administrative control over DDPS were found and seized from Shri Lalit Maheshwari, CFO & key person of Allen Group. Shri Lalit Maheshwari in his statement admitted that these documents relate to a deal entered between Maheshwari brothers (i.e., Shri Govind Maheshwari, Shri Rajesh Maheshwari, Shri Naveen Maheshwari, & Shri Brajesh Maheshwari and Shri R.K. Verma (key person of Resonance Coaching Classes) for transfer of administrative control and management of DDPS. This was also admitted by Shri Govind Maheshwari in his statement dated 06.02.2017 wherein he stated that Rs.46 crores (Rs.11.50 crores by each brother) was paid by cheque for obtaining membership in the assessee society and these funds were used to repay the loan by the assessee society. Therefore, the irregularities in the functioning of assessee society begin in FY 2014-15 as assessee society accepted huge loan from Maheshwari brothers as quid-pro-quo for handing over the management and control of DDPS to Maheshwari brothers. Also Rs.8 crores (Rs.2 crores by each brother) was paid by cheque to acquire shareholding in R.C. Jain Invest & Finance Pvt.

Ltd. and Rs.19 crores was paid by cash to Shri R.K. Verma. These facts were also admitted by Shri R.K. Verma in his statement dt. 09.09.2017 recorded during course of search of Resonance Group. On the basis of above documents and statements, the Ld. PCIT alleged that Allen Group has made DDPS subservient to their coaching programme inasmuch as most of the students who attend coaching classes of M/s Allen Career Institute are enrolled with DDPS for the purpose of completing their secondary/ senior secondary education and thus, making huge profit from their coaching business which is in contravention of clause 4 of MOA of assessee society. Thus, the activities of assessee society are not being carried out in accordance with its objectives and it falls under the purview of section 12AA(3). The Ld. PCIT also alleged that from the time Maheshwari brothers took management control over DDPS, this school which is the property of society is being used or applied directly for the benefit of Maheshwari brothers and M/s Allen Career Institute. Therefore, provision of section 13(1)(c)(ii) is also applicable. Thus, the activities of the assessee are also hit by the provisions of section 12AA(4). Accordingly, the Ld. PCIT issued show cause notice dated 19.02.2019 (1A-3A) seeking explanation from the assessee as to why the registration granted u/s 12A should not be cancelled u/s 12AA(3) & 12AA(4). The assessee vide reply dated 11.03.2019 explained that since the assessee society was running into losses, it approached the

Maheshwari brothers to become members of the assessee and help it to run the school efficiently. Thus, loan of Rs.46 crores was given by the Maheshwari brothers at interest rate of 9% p.a. which was used to repay loan taken by the assessee from PNB & others at higher rate of interest. Further, since Shri R.K. Verma was in financial hardship, Maheshwari brothers in order to help him invested Rs.8 crores in M/s R.C. Jain Invest & Finance Pvt. Ltd. and also provided him fund of Rs.19 crores. Thus, the amount so provided by Maheshwari brothers to Sh. R.K Jain is no way connected with the affairs of assessee society. The Ld. PCIT, however, did not accept the contention of assessee by giving the following reasons:-

- i) Shri R.K. Verma has admitted on oath that the payment of Rs.46 crores in cheque and Rs.19 crores in cash by Maheshwari brothers and investment of Rs.8 crores in R.C. Jain Invest & Finance Pvt. Ltd. were all made in lieu of the deal between them for transfer of the administrative control and management rights of DDPS to Maheshwari brothers and Allen Group.
- ii) The claim of the assessee that Maheshwari brothers are mere members and office bearers of the assessee society have not changed is not acceptable as irrespective of the designations, it is an undisputed fact that the administrative control and management of DDPS vests solely with the Maheshwari brothers and Allen group. This fact has not been disputed by the assessee.
- iii) Incriminating evidence has been found in search of Allen Group, Resonance Group and during survey on assessee that Maheshwari brothers exercise full control over DDPS and that they have made this school subservient to their coaching

programme. It is for this reason that huge money was spent by Maheshwari brothers.

Thus, the Ld. PCIT held that the activities of assessee society are not genuine and are not being carried out in accordance with its objects. Accordingly, he cancelled the registration by invoking section 12AA(3) w.e.f. 01.04.2014 i.e. the FY from which irregularities in the functioning of the assessee have come to notice. He further held that the activities of the assessee society are being carried out in a manner that the provisions of sections 11 & 12 do not apply to exclude its income due to operation of section 13(1). Accordingly, he cancelled the registration by invoking section 12AA(4) w.e.f. 01.10.2014, i.e. the date from which this sub section come into force.

5. Against the said order of the Id. Pr.CIT, the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

6. Both the grounds taken by the assessee are interrelated and interconnected and relates to challenging the order of the Id.Pr.CIT in cancelling the registration granted to the assessee trust U/s 12AA(3) and 12AA(4) of the Act. In this regard, the Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id.Pr. CIT and also relied on the written submissions filed before the Bench and the contents of the same are reproduced below:

"1. At the outset it is submitted that the sole reason for cancelling the registration granted u/s 12AA of the Act to the society as narrated in Para 18 & 19 of the order is on the allegation that (i) Maheshwari brothers paid Rs.46 crores by cheques to the society, (ii) invested Rs.8 crores in shares of R.C. Jain Investment & Finance Pvt. Ltd. and (iii) paid Rs.19 crore in cash to Sh. R.K. Verma in lieu of the deal between Maheshwari brothers and Sh. R.K. Verma for transfer of administrative control and management rights of DDPS from Sh. R.K. Verma to Maheshwari brother and Allen group with the intention that school becomes subservient to the coaching institute of Allen group. In this connection it may be noted that sections 12AA(3) and 12AA(4) apply only when any of the following condition mentioned therein is satisfied:-

(i) The activities of the trust or institution are not genuine

(ii) The activities are not carried out in accordance with its object

(iii) There is operation of section 13(1) meaning thereby that income does not ensures for the benefit of general public and is for benefit of particular religious community or caste or the income or property is applied for benefit of specified persons or funds are invested in violation of section 11(5).

2. In the present case, none of the conditions mentioned in section 12AA(3)/ 12AA(4) is violated as is evident from the following:-

(i) There is no dispute that Disha Delphi Public School is run by Disha Delphi Education Society which is registered under the Societies Registration Act XXI of 1860. The affairs of the society are managed by its office bearers and executive committee. The society can purchase the assets and also sale the assets through its office bearers. Once society sells the assets, the same goes out of its Balance Sheet. In the present case, land, building and other assets of school remains with the society even after induction of

Maheshwari brothers as general member of the society (PB 29-31). Therefore, the allegation that Maheshwari brothers have entered into a deal with Shri R.K. Verma for transfer of administrative control and management right of DDPS is incorrect in as much as Shri R.K. Verma is not the owner of school. The school is the property of society and still remains the property of the society.

- (ii) *Maheshwari brothers have provided funds of Rs.46 crore to the society at the interest rate of 9% p.a. not for obtaining benefit for themselves but in the interest to society so that such funds can be utilised for repayment of loan taken from PNB & others at higher interest rate This is evident from the Balance Sheet of assessee as on 31.03.2014 to 31.03.2016 whereby the loan from PNB and from others at Rs.39.01 crores was repaid from the funds provided by Maheshwari brothers. Therefore, payment of interest to Maheshwari brothers by the society does not enure any benefit to the specified persons as envisaged u/s 13(1). In fact, section 13(2)(c) itself provides that trust can pay any amount to specified person out of its resources for services rendered by that person provided that the amount paid is not in excess of what may be reasonably paid for such services. Hence, payment of interest 09% to Maheshwari brothers is not unreasonable and thus, there is no violation of section 13(1) on payment of interest to Maheshwari brothers.*
- (iii) *The Maheshwari brothers have invested Rs.8 crore in the shares of R.C. Jain Invest & Finance Pvt .Ltd. and also provided fund of R.s.19 erore to Shri R.K. Verma. This is an independent transaction and has nothing to do with the objects or activities of the society. By making such investment/ payment by Maheshwari brothers to Shri R.K. Verma/ R.C. Jain Invest & Finance Pvt. Ltd., it cannot be presumed that Maheshwari brothers have utilised DDPS for theii profitable purpose. These observations are only on conjectures or surmises and are not covered by any of the clauses of section 13(1) in as much as no part of the income or property of the society is used or applied directly or indirectly for the benefit of Maheshwari brothers.*
- (iv) *So far as clause (4) of Memorandum of Association of the society is concerned (PB 3), it only provides that all income/ properties shall be solely utilised for its object, no profit shall be paid in any manner whatsoever to the members of the society and no members shall*

have any personal claim on any properties of the societies or make any profit by virtue of his membership. On providing funds by Maheshwari brothers to Shri R.K. Verma or by making investment in shares of R.C. Jain Invest & Finance Pvt. Ltd., no income/ property of the society has been utilised in any manner whatsoever by the members of the society nor any members have made any profit by virtue of his membership. Further, as per section 12AA(3) registration can be withdrawn only when the activities of the trust are not genuine or not carried out in accordance with its object. There is no allegation against the society that its activities are not genuine or not carried out in accordance with its object in as much as the objectives of the society is to run the school which is being run by the society and the students are imparted education therein which vouches the genuineness of its activities.

3. *It may be noted that even after the searches of Maheshwari brothers on 06.02.2017 & Shri R.K. Verma on 09.09.17, assessment of the society was completed by DCIT. Central Circle, Kota for AY 2016-17 on 10.12.2018 (PB 26-26A) where after examining books of accounts & objectives of the society, it was held that activities of the society is covered by section 2(15) and is eligible for the benefit of section 11 & 12 of the Act. Thus, when subsequent to the search, AO has examined the objects of the trust and also the genuineness of its activities, withdrawal of registration granted to the society only on surmises & conjectures without pointing out any specific violation of section 12AA(3)/ 12AA(4) is unlawful.*
4. *It is a fact on record that assessee society was running into losses and therefore, Maheshwari brothers were inducted as members in the meeting of Executive Committee held on 20.02.2015 (PB 27-28) and were also requested to provide funds to the extent of Rs.50 crores so that loan taken from PNB bank and other unsecured loans can be repaid. At this point of time, the assessee society was having secured loan from Punjab National Bank carrying interest rate of 14.25% p.a. and also unsecured loan from certain persons carrying interest rate of*

18% p.a. Accordingly, the Maheshwari brothers brought funds of Rs.46 crore in the society at interest rate of 9% p.a. which was utilised for repayment of higher rate interest loan taken from PNB & others. Thus, the funds so brought by the Maheshwari brothers cannot be alleged to be a deal for transfer of administrative control and management rights of DDPS from Sh. R.K. Verma to Allen group in as much as such administrative control & management remains with the executives of society and not with individual members of society.

- 5. It may be noted that Maheshwari brothers also provided financial help to Sh. R.K. Verma and his company. Only because along with providing funds of Rs.46 crores to the society, Maheshwari brothers also provided funds to Shri R.K. Verma to help him to tide over his financial difficulties would not mean that society has sold/ transferred the school run by it to Maheshwari brothers/ Allen group.*
- 6. It is also alleged that by becoming the member of assessee society, Maheshwari Brothers and Allen group are making huge profit from their coaching business as because of this there is increase in enrolment of coaching classes. No material is brought on record by the Ld. PCIT in support of this allegation. M/s Allen Career Institute is otherwise providing coaching to more than 1.25 lakhs of students and has filed the return declaring income ranging between Rs.63.35 cr. to Rs.110.98 cr. in AY 2014-15 to 2017-18 and therefore, by no stretch of imagination it can be presumed that by becoming members of society, Maheshwari brothers received any benefit from the assessee society.*
- 7. It is submitted that due to active participation of Maheshwari brothers in the society, the CBSE affiliated the school for providing the education upto Sr. Secondary level and the total strength of the students in the school which was around 600 at that point of time increased to 2500*

students at present and the losses have also substantially reduced as can be seen from the table:

<i>FY</i>	<i>Gross Receipt</i>	<i>Deficit as per Income & Expenditure A/c</i>	<i>% of Deficit to Gross Receipt</i>
<i>2013-14</i>	<i>Rs.95,87,655/-</i>	<i>Rs.6.32,52,009/-</i>	<i>659.72%</i>
<i>2014-15</i>	<i>Rs.1,59,94,094/-</i>	<i>Rs.5,07,19,601/-</i>	<i>317.11%</i>
<i>2015-16</i>	<i>Rs.2,64,39,290/-</i>	<i>Rs.4,73,99,607/-</i>	<i>179.27%</i>
<i>2016-17</i>	<i>Rs.4,84,51,065/-</i>	<i>Rs.3,12,43,218/-</i>	<i>64.48%</i>
<i>2017-18</i>	<i>Rs.7,06,75,694/-</i>	<i>Rs.2,29,92,425/-</i>	<i>32.53%</i>
<i>2018-19</i>	<i>Rs.8,25,99,969/-</i>	<i>Rs.3,52,90,111/-</i>	<i>42.72%</i>

From the above table, it can be noted that the deficit which was substantial has gradually reduced. This deficit was also mainly on account of the interest burden. It would also be pertinent to mention here that even after inducing Maheshwari brothers as members in the society, they are only the members as on date except Shri Govind Maheshwari who is designated as executive member but the office bearer of the society remains the same (PB 31) as were earlier before Maheshwari brothers were inducted.

- 8. Reliance in this connection is placed on the following cases:-DCIT Vs. Cosmopolitan Education Society (2000) 244 ITR 494 (Raj.) (HC). It was held that if there was any misutilisation or mismanagement, action could be taken against the management of the society but it is not possible to say that any amount of the funds of the society was not utilized for educational purpose and for that reason exemption u/s 10(22) cannot be denied.*

The SLP filed by the department against this order is dismissed by the Supreme Court reported in 241 ITR (St) 132.

CIT Vs. Islamic Academy of Education (2015) 229 Taxman 274 (Kai.) (HC) The held part is as under:-

"In the instant case, the material on record shows that the Trust has established educational institution and imparting medical education. Every year, students are admitted. Huge investment is made for construction of buildings for housing the college, hostel and to provide other facilities to the students who are studying in the College. The College is recognized by the Medical Council of India, State of Karnataka and all other statutory authorities. Therefore, it cannot be said that the Trust is not genuine. Admittedly, the students are being admitted every year. Students are studying in all courses. Thus the object of the constitution of the Trust namely imparting of education is going on uninterruptedly. Therefore, it cannot be said that the activities of the Trust are not being carried out in accordance with the objects of the Trust. When the aforesaid two conditions are fully satisfied, on the ground that the trustees are misappropriating the funds of the Trust the registration of the Trust cannot be cancelled. If the trustees are misappropriating the funds, if they are maintaining false accounts, it is open to the authorities to deny the benefit under section 11 of the Income Tax Act, but that is not a ground for cancelation of registration itself That is precisely what the Tribunal has held. Therefore, the substantial question of law is answered in favour of the assessee and against the revenue. There is no merit in this appeal."

In view of above, it is incorrect on part of Ld. PCIT to allege that activities of assessee are not genuine or are not carried out in accordance with its object or that any benefit is provided to the specified person and therefore, he be directed to withdraw the cancellation of registration granted to the assessee society."

7. On the other hand, the Id. CIT-DR has vehemently supported the order passed by the Id. Pr.CIT and submitted that the Id. Pr.CIT has passed a speaking and well reasoned order discussing all the legal factual position of

the case. He further submitted that the activities of the assessee-society was not found genuine, therefore, the Id. Pr.CIT has rightly invoked the provisions of Section 12AA(3) of the Act.

8. We have considered the rival contentions and carefully perused the material placed on record. We have also perused the impugned order passed by the Id. Pr.CIT. From perusal of the impugned order we observed that the Id. Pr.CIT has cancelled the registration of the assessee-society by observing as under:

- "3. *A search action was conducted in the "Allen Group" group of Kota in February 2017. During the search action u/s 132 of the I.T. Act in the premises of Shri Lalit Maheshwari who is the CFO & key person in Allen Group at A-205, Neelanchal, Shrinathpuram, Kota, various incriminating documents were found and seized. These documents contained incriminating evidences relating to the key individuals of the Allen Group making various payments for acquiring management and administrative rights in the assessee-society, and thereby acquiring management and administrative control over Disha Delphi Public School at R K Puram Kota which is the property of the assessee.*
4. *During the course of search, statement of Shri Lalit Maheshwari was recorded on oath wherein he clearly admitted that the documents seized from his possession were written by him and they were related to a transaction / deal entered into by Shri Govind Maheshwari, Shri Rajesh Maheshwari, Shri Naveen Maheshwari & Shri Brajesh Maheshwari (hereinafter "the Maheshwari brothers") of the Allen Group and Shri RK. Verma (key person of Resonance Coaching Classes, Kota) for transfer of*

administrative control and management of Disha Delphi Public School for which one CA Shri Ajay Jain acted as mediator.

5. *The evidences recovered during search and statements of Shri Lalit Maheshwari were confronted to Shri Govind Maheshwari, partner of M/s Allen Career Institute. Shri Govind Maheshwari admitted that the incriminating document seized from premises of Shri Lalit Maheshwari pertains to the deal of Disha Delphi Education Society through Shri Ajay Jain. He stated that Rs. 46 Crore (i.e. Rs.11.50 crores by each brother) were paid by cheque for obtaining membership in assessee-society and these funds were used by the assessee-society to repay its existing bank loan. Also in terms of present deal, Rs.8 crore (i.e. Rs.2 Crores by each brother) were paid by cheque for acquiring shareholding in R. C. Jain Invest & Finance Pvt Ltd.*
6. *Evidence was gathered during search that each brother had extended loan of Rs. 9.37 crores to the assessee-society in three tranches viz. Rs. 5 crores was extended on 21.02.2015, Rs. 4.37 crores was extended on 03.03.2015. Balance amount was extended by the brothers to the assessee-society in F.Y. 2015-16. Therefore, the irregularities in functioning of assessee-society began in F.Y. 2014-15 inasmuch as the assessee-society accepted huge loan from Maheshwari brothers as quid-pro-quo for handing over the management and control of the Disha Delphi School to the Maheshwari Brothers. The relevant ledger account of the assessee-society is reproduced as under:*

DISHA DELPHI EDUCATIONAL SOCIETY 334, ASIAD VILAGE, AHUZ KHAS NEW DELHI Mr. Naveen Maheshwari Ledger Account To Shri Laxmi Narayan Maheshwari CP-6, Indra Vihar, Kota 1-Apr-2014 to 31-Mar-2015					
Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
21-2-2015	Dr (as per details)				
	Mr Govind Maheshwari	Receipt	35		5,00,00,000.00
	Mr. Brijesh Maheshwari	5,00,00,000.00 Cr			
	Mr. Rajesh Maheshwari	5,00,00,000.00 Cr			
	ICICI BANK LTD.	5,00,00,000.00 Cr			
		20,00,00,000.00 Dr			
3-3-2015	Dr (as per details)				
	Mr Govind Maheshwari	Receipt	40		4,37,50,000.00
	Mr. Rajesh Maheshwari	4,37,50,000.00 Cr			
	Mr. Brijesh Maheshwari	4,37,50,000.00 Cr			
	ICICI BANK LTD.	4,37,50,000.00 Cr			
		17,50,00,000.00 Dr			
	Cr Closing Balance				9,37,50,000.00
				9,37,50,000.00	
				9,37,50,000.00	9,37,50,000.00

7. Over and above these payments, a sum of Rs.19 Crores was also paid by the Allen Group in cash to Shri R.K. Venna, who was an active member in the society and was running the day to day activities of the school. The above said sum of Rs.19.00 Crores was paid out of un-accounted cash of each brother in equal proportion for acquiring the administrative control and management rights of Disha Delphi School. During the course of search action in the case of Allen Group, all the 04 Maheshwari brothers admitted on oath that they have made unaccounted cash payment to Shri RK Venna in order to secure management and control of Disha Delphi School. The Maheshwari brothers also admitted that as part of the deal, they were required to advance loan to the assessee-society and also invest in shares of RC Jain invest & Finance Pvt. Ltd at a premium. The relevant part of the statement of Shri Govind Maheshwari recorded on 06.02.2017 during search action in the cases of Allen Group is reproduced as under:

प्रश्न-7 आपके ऐतान ग्रुप पर सर्च की कार्यवाही के दौरान आपके CPO
 श्री ललित माहेश्वरी के निवास स्थान (फ्लैट नं. A-205, आशुवादि
 मीलमंचल, श्रीवाद्यपुरम, कोटा) पर भी सर्च की कार्यवाही की गई है।
 उस परिसर पर सर्च के दौरान कुछ incriminating documents मिले
 थे जिन्हें Annexure-As, Exhibit-4 के पृष्ठ नंबर 2, 3, 4, 5, 35
 व 36 के रूप में सूचीबद्ध करके जब्त किया गया था। इन documents
 के बारे में जब ललित माहेश्वरी से पूछा गया तो उन्होंने बताया कि
 उनमें सेन से जो कुछ भी लिखा गया है वह उनकी ही handwriting में
 है। साथ ही उन्होंने यह भी बताया कि उक्त documents में प्रामाण्य
 entries उनके द्वारा आपके निर्देशन में लिखी गई हैं तथा उनके बारे
 में आप ही explain कर सकते हैं। मैं उक्त जब्त documents की

W:

[Signature]
 6/11/19

(Sashi Kumar)
 [Signature]

[Signature]

प्रतिप्रतियाँ तथा श्री ललित माहेश्वरी के ध्यान की प्रति आपको दिखा रहा हूँ। कृपया इन documents को ध्यान से देखकर व सजाइकर हमारे में अपना स्पाइटीकरण देने का कष्ट करें।

उत्तर - कोटा में स्थित दिशा डेलफी पब्लिक स्कूल एक सोसाइटी के तहत संचालित की जाती है। इसका नाम दिशा डेलफी Education Society है। इस सोसाइटी में मेरे अलावा तीन भाइयों राजेश माहेश्वरी, नवीन माहेश्वरी तथा बृजेश माहेश्वरी के साथ फरवरी 2015 में सदस्य बने थे। इस सोसाइटी में श्री राम किशन वर्मा एक active member थे। दिशा डेलफी पब्लिक स्कूल को इन करने में उनकी एक अहम भूमिका थी। उन्होंने हमारे से संपर्क किया तथा यह प्रस्ताव रखा कि चूंकि उनके स्कूल चल करने में दिक्कत आ रही है और कुछ विनीय दिक्कतें भी उनकी हैं, अतः हम इस सोसाइटी में active member बन जायें तथा actively इस स्कूल को चल करें। हम भी इस प्रस्ताव से सहमत थे। लेकिन उनकी यह बात थी कि इस सबके लिए हमें कुछ विनीय मदद करनी होगी जो कि 4-6 करोड़ (अर्थात् छियालीस करोड़) रूपर सोसाइटी में Unsecured Loan के रूप में देने होंगे तथा R.C. जैन फायनांस प्रा. लि. कंपनी में डीयर डेपिटल में 8 करोड़ (अर्थात् आठ करोड़) रूपर का निवेश करना होगा और 19 करोड़ (अर्थात् उन्तीस करोड़) रूपर का नगद में उनके भुगतान करना होगा। उनके इस प्रस्ताव पर हमारी अंतिम सहमति बनी। इस सहमति के आधार पर हम चारों भाई (गोविंद माहेश्वरी, राजेश माहेश्वरी, नवीन माहेश्वरी तथा बृजेश माहेश्वरी) दिशा डेलफी Education सोसाइटी के मैम्बर बने। उक्त सहमति के आधार पर हम चारों भाइयों ने इस सोसाइटी में कुल 46 करोड़ रूपर का Unsecured Loan दिया (प्रत्येक ने 11.5-11.5 करोड़ रूपर का लोन दिया)। इसके अलावा हम चारों भाइयों ने कुल 8 करोड़ रूपर (प्रत्येक द्वारा 2 करोड़ रूपर) का निवेश म/s R.C. Jain Invest & Finance Pvt. Ltd.

W.P. 1/2
6/14/18
W.P. 2/2
Ramesh

(श्री ललित माहेश्वरी)
(श्री. Sushil Kumar)
सहायक निदेशक (अर्थ), कोटा

Shu Sh

00
 कंपनी के ड्रॉयर खरीदने के लिए किया। इसके अलावा आपकी
 सहमति के आधार पर ही हम चारों भाइयों ने कुल 19 करोड़
 (अधरे इन्नीस करोड़) रूपए का नगद भुगतान श्री राम किशन
 वर्मा जी को CA अजय जैन के माध्यम से किया। यह भुगतान
 exactly किल-किल dates को किया गया, यह मुझे दीक से बाद
 नहीं है; लेकिन मेरी याददाश्त के अनुसार यह भुगतान वित्तीय
 वर्ष 2015-16 में किया गया था। CA श्री अजय जैन ने इस
 शील में हमारे mediator की भूमिका निभाई थी। अब हम
 इस सोसाइटी में मेंबर हैं तथा actively इस स्कूल को रन
 कर रहे हैं। श्री रामकिशन वर्मा जी भी वैसे अजी भी इस सोसाइटी
 के मेंबर हैं। इस समस्त शील एवं भुगतान से संबंधित ही
 ने कागजात हैं जिन्हें आराकर विज्ञापन की टीम के द्वारा श्री ललि
 मोहेश्वरी के फ्लैट से जब्त किया गया है। इन कागजातों का
 पेज नंबर 2 व 3 इसी से संबंधित हिस्सा का मिट आउट है जो
 उस पार्टी ने हमारे पास भिजाया था, लेकिन यह हिस्सा हमारे
 समक्ष में नहीं आया कि उन्होंने कैसे किया था। लेकिन मैं
 यह स्पष्ट करना चाहता हूँ कि यह संपूर्ण शील कुल 73
 करोड़ रुपये (46 करोड़ Unsecured Loan + 8 करोड़
 Share Capital + 19 Crore Cash) की ही थी जैसा कि मैं
 इस जवाब में ऊपर आपको बताया है। सत्यता केवल यही है
 जिसे मैं स्वीकार करता हूँ।

8. During the course of search action in the cases of Resonance Group, the recipient of the money Shri RK Verma also admitted that he had received Rs.19 crores in cash from the Maheshwari brothers in exchange for handing over control and management of Disha Delphi School to them. He also admitted that as part of the deal, they advanced loans to the assessee-society and also invested in shares of RC Jain Invest & Finance Pvt. Ltd at premium. The relevant part of statement recorded from Shri

RK Verma on 09.09.2017 during course of search in the cases of Resonance Group is reproduced as under:

जन- 20 आपके यह जानकारी दी जा रही है कि दिनांक 2.2.17 को इलाहाबाद विभाग की जनसंपर्क शाखा के द्वारा कोटा के एलेन ग्रुप पर धारा 132(1) आयकर अधिनियम, 1961 की के तहत सर्च की कार्रवाई की गई थी। इस कार्यवाही के दौरान कुछ महत्वपूर्ण दस्तावेज इस ग्रुप के CFO श्री लजिंद महेश्वरी के निवास स्थान (Flat No A-905, मंगलवादी नौलाखल, शीनामपुरम, कोटा) से जब्त किये गये थे। इन दस्तावेजों के संबंध में एलेन ग्रुप के मालिक श्री गोविंद महेश्वरी के बयान धारा 132(4) आयकर अधिनियम के तहत दर्ज किये गये थे। इन बयानों का प्रश्न संख्या 7 व प्रश्न संख्या 39 में आपको दिख रहा है। इन प्रश्नों व उनके उत्तरों को आपके इन बयानों का भाग भी बनाया जा रहा है। कृपया इन प्रश्नों एवं श्री गोविंद महेश्वरी के द्वारा दिये गये इनके उत्तरों को हमान से पढ़कर, समझकर व देखकर दिशा डेल्टा पब्लिक स्कूल के संबंध में जाचने व उनसे विलंब हुई डील के संबंध में अपना स्वयं का स्पष्टीकरण देने का कष्ट करें।

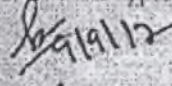
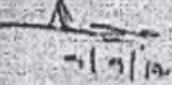
उत्तर- मैंने आपके द्वारा दिये गये श्री गोविंद महेश्वरी के धारा 132(4) आयकर अधिनियम के बयानों के प्रश्न संख्या 7 व 39 तथा उनके जवाबों को ठीक से देखा, पढ़ा व समझ लिया है। मैंने इन बयानों की प्रतिमें पर हस्ताक्षर भी कर दिये हैं। उन्हें आपने इन बयानों का पार्ट भी बनाया है। मैं यह बात स्वीकार करता हूँ कि मैं दिशा डेल्टा education society में सक्रिय member था तथा इस स्कूल के संचालन में मेरी महत्व भूमिका थी। मैंने इस सोसायटी को एक बड़ा लोन भी दे रखा था। वित्त वर्ष 2015-16 के समयमें मुझे कुछ वित्तीय कठिनाइयां थी। अतः एलेन ग्रुप के संचालकों (गोविंद महेश्वरी, गजेश महेश्वरी, नवीन महेश्वरी एवं बृजेश महेश्वरी) से मेरी बातचीत हुई। इस बातचीत एवं डील में मुख्यतः श्री गोविंद महेश्वरी ही शामिल थे। इस डील में CA भी अजय जैन ने mediator की भूमिका निभाई थी। इस डील के तहत उपरोक्त लोगों और उक्त सोसायटी में मेंबर बने तथा उन्होंने सोसायटी को कुल 40 करोड़ रुपये का Unsecured loan दिया। इसके बदले मैंने उस सोसायटी को


WA - 1/10/17
 WA - 2/10/17
 (श्री गोविंद महेश्वरी)
 धर्मशास्त्र विभाग (अध्यापक) - जयपुर
 09.09.2017

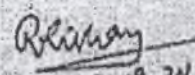
दिया गया लोन ग्रुपस लिमिटेड कर लिया। इसके अलावा इस डील के अनुसार मुझे उन चारों माहेश्वरी बंधुओं से कुल 19 करोड़ रूपए (असरे उन्नीस करोड़ रूपए) नकद में भी वित्त वर्ष 2015-16 के अंत में मिले। यह बात भी मैं स्वीकार करता हूँ। लेकिन यह बात अभी मुझे डीक से याद नहीं आ रही है कि क्या उन्होंने M/S R.C. D'vans Invest & Finance Pvt. Ltd. कंपनी के कोई जोनर भी इस डील के तहत खरीदे थे क्या। इस एक तथ्य के अलावा श्री गोविंद माहेश्वरी के बयान की सभी बातें मैं स्वीकार करता हूँ। इस डील के बाद एलेन ग्रुप के इस माहेश्वरी बंधु द्वारा ऐलसी education Society के active member बन गये थे एवं स्कूल का संचालन वो करने लगे थे।

प्रश्न - 2) जैसा कि हमने उपरोक्त अताल के अंतर्गत में स्वीकार किया है कि इस डील के तहत हमको एलेन ग्रुप के माहेश्वरी बंधुओं से कुल 19 करोड़ रूपए वित्त वर्ष 2015-16 के अंत में मिले थे, तो कृपया यह स्पष्ट करें कि क्या आपने उक्त उन्नीस करोड़ रूपए की अपनी आय को निर्धारण वर्ष 2016-17 की अपनी आयकर विवरण में दिखाया था और क्या इस आय पर देय आयकर उदा किया था ?

उत्तर - जी नहीं, मैंने निर्धारण वर्ष 2016-17 की उक्त उन्नीस करोड़ रूपए की मेरी आय पर कोई आयकर उदा नहीं किया था। मैंने 19 करोड़ रूपए की इस राशि को मेरी निमनलिखित लेखा पुस्तकों में भी नहीं दिखाया था। लेकिन श्री गोविंद माहेश्वरी के उक्त बयान पढ़ने व देखने के बाद मैं यह स्वीकार करता हूँ कि उक्त 19 करोड़ रूपए भी जो राशि मुझे वित्त वर्ष 2015-16 में माहेश्वरी बंधुओं से मिली थी, वह मेरी वित्त वर्ष 2015-16 की अनोचित आय है जिसे मैं यहां इच्छा से मेरी मनकी शांति के लिए स्वीकार करता हूँ। मैं 19 करोड़ रूपए की वित्त वर्ष 2015-16 की मेरी इस अनोचित आय पर देय आयकर उदा करने का वचन देता हूँ तथा इस संबंध में मुझे Penalty व prosecution से मुक्त बचायी प्रार्थना करता हूँ।

W-1 
 W-2 
 21/9/19


 (Disha Delphi Educational Society) - 2019
 पञ्जी


 09.09.2019

9. *After acquiring management rights and administrative control over Disha Delphi School, the Allen Group has made this school subservient to their coaching programme inasmuch as that most of the students who attend coaching classes at M/s Allen Career Institute are enrolled with Disha Delphi School for the purposes of completing their secondary / senior secondary education. Due to the fact that the control of the school vests solely with the Allen Group, students who are enrolled for coaching with M/s Allen Career Institute find it convenient to manage the requirements of attendance and other school requirements if they are enrolled with Disha Delphi School. In fact, M/s Allen Career Institute did not have administrative control over any other school before Disha Delphi School. With a view to increase enrolment in their coaching classes, the Allen Group found it to be a good business deal to pay exorbitant sums of money to acquire control over Disha Delphi School. The only reason why Allen Group has paid huge amount of money to RK Verma including cash from unaccounted sources was because acquiring control over Disha Delphi School was essential for them to expand their coaching business and thereby derive huge profits from the same.*
10. *By making huge payment, both in cheque and cash, to acquire membership in assessee-society and control over Disha Delphi School, the Maheshwari brothers and Allen Group are making huge profits from their coaching business. Therefore, it is clear that the Maheshwari brothers are deriving profit by virtue of their membership in the assessee-society which is in contravention of clause 4 of the Memorandum of Association of the assessee-society reproduced above.*
11. *In light of the above discussion, the activities of the assessee-society are not being carried out in accordance with the objects of the assessee-society inasmuch as that by virtue of the fact that the Disha Delphi School has become subservient to the coaching programme of Allen Group, the Maheshwari brothers are making huge profits by virtue of*

them being members of the assessee-society. Accordingly, the activities of the assessee-society fall under the purview of Section 12AA(3) of the Income-tax Act. For ready reference, the provisions of this sub-section are reproduced as under:

"12AA(3) Where a trust or an institution has been granted registration under clause (b) of subsection (1) or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996) and subsequently the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard"

12. *By paying huge amounts of money to Shri RK Verma, the Maheshwari brothers namely S/Shri Govind Maheshwari, Rajesh Maheshwari, Naveen Maheshwari & Brajesh Maheshwari have become members of the assessee-society and have acquired management control over Disha Delphi School which is the property of the assessee-society. Therefore, these individuals are managers of the assessee-society and are therefore persons who come under the ambit of Section 13(3)(cc). Moreover, the flagship concern of the Allen Group viz. M/s Allen Career Institute comes under the ambit of Section 13(3)(e). For ready reference, the provisions of Section 13(3) are reproduced as under:*

"13(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely :—

(a)

(b)

(c)

(cc) any trustee of the trust or manager (by whatever name called) of the institution;

(d)

(e) any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest."

13. In light of the facts mentioned above, it is evident that from the time the Maheshwari brothers have taken management control over Disha Delphi School, this school which is the property of the assessee-society is being used or applied directly for the benefit of the Maheshwari brothers as well as M/s Allen Career Institute. Therefore, as per the provision of Section 13(1)(c)(ii), nothing contained in Section 11 or Section 12 shall operate so as to exclude the total income of the assessee-society. For ready reference, the provisions of this sub-section are reproduced as under:

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—

(a)

(b)

(bb) [***]

(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) :

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any 'person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution:

Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (ii)

shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3) in so far as such use or application relates to any period before the 1st day of June, 1970;

14. *In light of the above, the activities of the assessee-society are also hit by the provisions of Section 12AA(4). The relevant provisions of this section are reproduced as under:*

"12AA(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13 then, the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution: Provided that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner."

15. *In order to provide the assessee an opportunity of being heard in the matter, a show-cause notice was issued vide No. Pr.CIT(Central)/Tech/JPR/2017-18/3304 dated 19.02.2019 seeking an explanation from the assessee as to why its registration u/s 12A should not be cancelled u/s 12AA(3) and 12AA(4). In response, a letter dated 11.03.2019 was received from Shri PC Parwal CA of M/s Kalani & Company and A/R of the assessee.*
16. *In his submission, the MR has mentioned that the assessee-society was running into losses and therefore, Shri RK Verma approached the Maheshwari brothers to become member of the assessee-society and help the assessee-society to run the school efficiently. Thereafter, the Maheshwari brothers had extended loan to assessee-society at 9%*

interest rate and this loan was used to pay-back loan taken from Punjab National Bank at higher interest rate at 16%.

- 17. Insofar as the payments by cheque and cash to Shri RK Verma and investment in shares of R. C. Jain Invest & Finance Pvt Ltd are concerned, the A/R of the assessee-society has attempted to distance the assessee-society from these transactions by claiming that they are independent transactions between the Maheshwari brothers and Shri RK Verma, and the assessee-society is in no way connected to these payments.*
- 18. The submission made by the A/R of the assessee-society are not acceptable as they are in contrary to the facts at hand. Firstly, the Maheshwari brothers as well as Shri RK Verma have admitted on oath that the payment of Rs.46 crore in cheque and Rs.19 crore in cash by Maheshwari brothers to Shi R.K. Verma as well as share investment of Rs.8 crores by Maheshwari brothers in R. C. Jain Invest & Finance Pvt Ltd were all made in lieu of the deal between the Maheshwari brothers and Shri RK Verma for transfer of administrative control and management rights of Disha Delphi School from Shri RK Verma to the Maheshwari brothers and Allen Group. Therefore, the claim made by the A/R that the assessee-society is not connected in any way to these payments is completely opposite to the actual scenario.*
- 19. The A/R has also claimed that the Maheshwari brothers are just mere members of the assessee-society and the office bearers of the society have not changed even after the deal between Maheshwari brothers and RK Verma. With this argument, the A/R is attempting to hide the true picture behind nomenclatures and designations. Irrespective of what designation is bestowed upon the Maheshwari brothers, it is undisputed fact that as on date, the administrative control and management of Disha Delphi School vests solely with the Maheshwari brothers and the Allen Group. This fact was not disputed anywhere by the A/R in his*

submission. Incriminating evidences have been gathered during search action in the cases of Allen Group, Resonance Group as well as surveys in the case of the assessee that the Maheshwari brothers exercise full control over Disha Delphi School and that they have made this school subservient to their coaching programme. It is solely for this purpose that huge money was spent by Maheshwari brothers to obtain management rights over Disha Delphi School.

20. *In view of the discussion made above, I am satisfied that activities of the assessee M/s Disha Delphi Educational Society are not genuine and are not being carried out in accordance with the objects of the assessee-society. Therefore, the registration of the assessee-society u/s 12A is hereby cancelled by invoking section 12AA(3) with effect from 01.04.2014 i.e. the financial year from which irregularities in the functioning of the assessee-society have come to notice. I am also satisfied that the activities of the assessee-society are being carried out in a manner that provisions of Sections 11 & 12 do not apply to exclude the income of the assessee-society due to operation of Section 13(1). Accordingly, the registration of the assessee-society u/s 12A is hereby cancelled by invoking section 12AA(4) with effect from 01.10.2014 i.e. viz. the date from which this sub-section has come into force."*

9. We observed from perusal of the record that during the course of search, statement of Shri Lalit Maheshwari, who is the CFO & Key person in Allen Group, was recorded on oath wherein he clearly admitted that the documents seized from his possession during the course of search were written by him and they were related to a transaction/deal entered into by Shri Govind Maheshwari, Shri Rajesh Maheshwari, Shri Naveen Maheshwari & Shri Brajesh Maheshwari of the Allen Group and Shri RK. Verma (key person

of Resonance Coaching Classes, Kota) for transfer of administrative control and management of Disha Delphi Public School for which one CA Shri Ajay Jain acted as mediator. We also observed that the evidences recovered during search and statements of Shri Lalit Maheshwari were confronted to Shri Govind Maheshwari, partner of M/s Allen Career Institute. Shri Govind Maheshwari admitted that the incriminating document seized from premises of Shri Lalit Maheshwari pertains to the deal of Disha Delphi Education Society through Shri Ajay Jain. He stated that Rs. 46 Crore (i.e. Rs.11.50 crores by each brother) were paid by cheque for obtaining membership in assessee-society and these funds were used by the assessee-society to repay its existing bank loan. Also in terms of present deal, Rs.8 crore (i.e. Rs.2 Crores by each brother) were paid by cheque for acquiring shareholding in R.C. Jain Invest & Finance Pvt. Ltd. Evidence was gathered during search that each brother had extended loan of Rs. 9.37 crores to the assessee-society in three tranches viz. Rs. 5 crores was extended on 21.02.2015, Rs. 4.37 crores was extended on 03.03.2015. Balance amount was extended by the brothers to the assessee-society in F.Y. 2015-16. Therefore, the irregularities in functioning of assessee-society began in F.Y. 2014-15 inasmuch as the assessee-society accepted huge loan from Maheshwari brothers as quid-pro-quo for handing over the management and control of the Disha Delphi School to the Maheshwari Brothers.

10. We further observed that a sum of Rs.19 Crores were also paid by the Allen Group in cash to Shri R.K. Verma, who was an active member in the society and was running the day to day activities of the school. The above said sum of Rs.19.00 Crores were paid out of unaccounted cash of each brother in equal proportion for acquiring the administrative control and management rights of Disha Delphi School. During the course of search action, in the case of Allen Group, all the 04 Maheshwari brothers admitted on oath that they have made unaccounted cash payment to Shri RK Verma in order to secure management and control of Disha Delphi School. The Maheshwari brothers also admitted that as part of the deal, they were required to advance loan to the assessee-society and also invest in shares of RC Jain invest & Finance Pvt. Ltd at a premium. During the course of search action in the cases of Resonance Group, the recipient of the money Shri RK Verma also admitted that he had received Rs.19 crores in cash from the Maheshwari brothers in exchange for handing over control and management of Disha Delphi School to them. He also admitted that as part of the deal, they advanced loans to the assessee-society and also invested in shares of RC Jain Invest & Finance Pvt. Ltd at premium. The relevant part of statement recorded from Shri RK Verma on 09.09.2017 during course of search in the cases of Resonance Group.

11. We further observed from perusal of the record that after acquiring management rights and administrative control over Disha Delphi School, the Allen Group has made this school subservient to their coaching programme inasmuch as that most of the students who attend coaching classes at M/s Allen Career Institute are enrolled with Disha Delphi School for the purposes of completing their secondary / senior secondary education. Due to the fact that the control of the school vests solely with the Allen Group, students who are enrolled for coaching with M/s Allen Career Institute find it convenient to manage the requirements of attendance and other school requirements if they are enrolled with Disha Delphi School. In fact, M/s Allen Career Institute did not have administrative control over any other school before Disha Delphi School. With a view to increase enrolment in their coaching classes, the Allen Group found it to be a good business deal to pay exorbitant sums of money to acquire control over Disha Delphi School. The only reason why Allen Group has paid huge amount of money to RK Verma including cash from unaccounted sources was because acquiring control over Disha Delphi School was essential for them to expand their coaching business and thereby derive huge profits from the same. By making huge payment, both in cheque and cash, to acquire membership in assessee-society and control over Disha Delphi School, the Maheshwari brothers and Allen Group are making huge profits from their coaching business. Therefore, it is clear that the

Maheshwari brothers are deriving profit by virtue of their membership in the assessee-society which is in contravention of clause 4 of the Memorandum of Association of the assessee-society. From the above, we are of the view that the activities of the assessee-society are not being carried out in accordance with the objects of the assessee-society inasmuch as that by virtue of the fact that the Disha Delphi School has become subservient to the coaching programme of Allen Group, the Maheshwari brothers are making huge profits by virtue of them being members of the assessee-society. Accordingly, the activities of the assessee-society fall under the purview of Section 12AA(3) of the Act.

12. We also observed that by paying huge amounts of money to Shri RK Verma, the Maheshwari brothers namely S/Shri Govirid Maheshwari, Rajesh Maheshwari, Naveen Maheshwari & Brajesh Maheshwari have become members of the assessee-society and have acquired management control over Disha Delphi School which is the property of the assessee-society. Therefore, these individuals are managers of the assessee-society and are therefore persons who come under the ambit of Section 13(3)(cc). Moreover, the flagship concern of the Allen Group viz. M/s Allen Career Institute comes under the ambit of Section 13(3)(e). For ready reference, the provisions of Section 13(3) are reproduced as under:

"13(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely :—

(a)

(b)

(c)

(cc) any trustee of the trust or manager (by whatever name called) of the institution;

(d)

(e) any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest."

From the above facts and circumstances, it is evident that Maheshwari brothers have taken management control over Disha Delphi School, this school which is the property of the assessee-society is being used or applied directly for the benefit of the Maheshwari brothers as well as M/s Allen Career Institute. Therefore, as per the provision of Section 13(1)(c)(ii), nothing contained in Section 11 or Section 12 shall operate so as to exclude the total income of the assessee-society. For *ready reference, the provisions of this sub-section are reproduced as under:*

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—

(a)

(b)

*(bb) [***]*

(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) :

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any 'person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution:

Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3) in so far as such use or application relates to any period before the 1st day of June, 1970;

In his submissions, the AR has mentioned that the assessee-society was running into losses and therefore, Shri RK Verma approached the Maheshwari brothers to become member of the assessee-society and help the assessee-society to run the school efficiently. Thereafter, the Maheshwari brothers had extended loan to assessee-society at 9% interest rate and this loan was used to pay-back loan taken from Punjab National Bank at higher interest rate at 16%. Insofar as the payments by cheque and cash to Shri RK Verma and investment in shares of R. C. Jain Invest & Finance Pvt. Ltd. are concerned, the Id. A/R of the assessee-society has attempted to distance the assessee-society from these transactions by claiming that they are independent transactions between the Maheshwari brothers and Shri RK

Verma and the assessee-society was in no way connected to these payments. The submissions made by the Id. AR of the assessee-society are not acceptable as they are in contrary to the facts at hand. Firstly, the Maheshwari brothers as well as Shri RK Verma have admitted on oath that the payment of Rs.46 crore in cheque and Rs.19 crore in cash by Maheshwari brothers to Shri R. K Verma as well as share investment of Rs.8 crores by Maheshwari brothers in R. C. Jain Invest & Finance Pvt. Ltd were all made in lieu of the deal between the Maheshwari brothers and Shri RK Verma for transfer of administrative control and management rights of Disha Delphi School from Shri RK Verma to the Maheshwari brothers and Allen Group. Therefore, the claim made by the Id. AR that the assessee-society is not connected in any way to these payments are completely opposite to the actual scenario.

13. The Id. AR has also claimed that the Maheshwari brothers are just mere members of the assessee-society and the office bearers of the society have not changed even after the deal between Maheshwari brothers and RK Verma. With this argument, the Id. A/R is attempting to hide the true picture behind nomenclatures and designations. Irrespective of what designation is bestowed upon the Maheshwari brothers, it is undisputed fact that as on date, the administrative control and management of Disha Delphi School vests solely with the Maheshwari brothers and the Allen

Group. This fact was not disputed anywhere by the A/R in his submission. Incriminating evidences have been gathered during search action in the cases of Allen Group, Resonance Group as well as surveys in the case of the assessee that the Maheshwari brothers exercise full control over Disha Delphi School and that they have made this school subservient to their coaching programme. It is solely for this purpose that huge money was spent by Maheshwari brothers to obtain management rights over Disha Delphi School. The facts and submissions as well as case laws relied upon by the Id. AR are not applicable as per facts of the present case, therefore, considering the totality of facts and circumstances, we found that the Id. CIT(A) has passed a speaking and well reasoned order discussing all the details of the case of the assessee, therefore, we do not find any reason to interfere into or deviate from the findings so recorded by the Id. CIT(A) and hence, we uphold the same.

14. In the result, this appeal of the assessee stands dismissed.

15. Now we take assessee's appeal being ITA No. 313/JP/2020 for the A.Y. 2016-17, wherein the assessee has raised following grounds of appeal:

- “1. Under the facts and circumstances of the case, order passed by the Id. PCIT(Central) U/s 263 is illegal and bad in law and the same be quashed.
2. The Id. PCIT (Central) has erred on facts and in law in holding that order passed by the AO u/s 143(3) dt. 10/12/2018 is erroneous and

prejudicial to the interest of revenue as registration u/s 12A was not available to the assessee for AY 2016-17 ignoring that as on the date of passing the order, the assessee was registered u/s 12A.

3. *The appellant craves to alter, amend and modify any ground of appeal.*
4. *Necessary cost be awarded to the assessee."*

16. Since, we have upheld the action of the Id. Pr.CIT in cancelling the registration of the assessee-society U/s 12AA(3) & and 12AA(4) of the Act, therefore, this appeal against the order of the Id. Pr.CIT U/s 263 of the Act is become infructuous and needs no fresh adjudication. Therefore, this appeal of the assessee is also dismissed.

17. In the result, both these appeals of the assessee are dismissed.

Order pronounced in the open court on 27th December, 2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 27/12/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- Disha Delphi Education Society, New Delhi.
2. प्रत्यर्थी / The Respondent- The Pr.CIT (Central), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 626/JP/2019 & 313/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar