आयकर अपीलीय अधिकरण, ’सी’ न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL ‘C’ BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./**I.T.A. Nos.3006 & 3007/Chny/2018**
निर्धारण वर्ष/Assessment Years: 2018-19

M/s. Investor Financial Education Academy, 5A, 5th Floor, Kences Tower, No. 1, Ramakrishnan Street, T. Nagar, Chennai 600 017. **[PAN:AACCI5911R]**	Vs.	The Income Tax Officer (Exemption) - 4, Chennai 600 034.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri R. Sivaraman, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri M. Rajan, CIT
सुनवाई की तारीख/ Date of hearing	:	08.02.2022
घोषणा की तारीख /Date of Pronouncement	:	12.04.2022

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against different orders of the ld. Commissioner of Income Tax (Exemptions), Chennai both dated 28.09.2018 passed under section 80G(5)(vi) as well as 12AA of the Income Tax Act, 1961 relevant to the assessment year 2018-19.

2. Brief facts of the case are that the assessee originally filed the application in Form No. 10A for registration under section 12AA of the

Act on 02.03.2017. The ld. CIT(E), vide his order dated 29.09.2017 rejected the application filed by the assessee on the ground that the predominant activity of the assessee is imparting financial education and awareness amongst the investor community which cannot be categorized into object of education under the provisions of section 2(15) of the Act. The ld. CIT(E) further held that the assessee is rendering service for price with a view to generate profit and the same is not a charitable purpose and accordingly the application of the assessee was rejected. On appeal before the ITAT, vide its order in I.T.A. No. 2565/Chny/2017 dated 11.06.2018, the Tribunal upheld the rejection order passed by the ld. CIT(E).

3. Subsequently, the assessee made a fresh application in Form No. 10A for registration under section 12AA of the Act on 15.03.2018 on the ground that it made amendment in the MOA and therefore, it is entitled for registration under section 12AA of the Act. After considering the application as well as by following the decision of the Tribunal, the ld. CIT(E) rejected the application dated 15.03.2018 in Form No. 10A for grant of registration under section 12AA of the Act.

4. On being aggrieved, the assessee is in appeal against the order of the ld. CIT(E). The ld. Counsel for the assessee has submitted that against the order of the ITAT in I.T.A. No. 2565/Chny/2017 dated 11.06.2018 upholding the rejection of original application in Form 10A filed by the assessee on 02.03.2017 towards grant of registration under section 12AA of the Act, the assessee preferred further appeal before the Hon'ble Jurisdictional High Court and the Hon'ble High Court, vide its order in T.C.A. No. 900 of 2018 dated 04.09.2020, allowed the appeal of the assessee and therefore, the ld. Counsel prayed that the order of the Hon'ble High Court may be followed for grant of registration in the present application dated 15.03.2018.

5. On the other hand, the ld. DR has not expressed any serious objection.

6. We have heard both the sides, perused the materials available on record and gone through the order passed by the ld. CIT(E) as well as order of the Hon'ble Jurisdictional High Court in assessee's own case. The substantial question of law raised and the observations of the order of the Hon'ble High Court are reproduced as under:

> *"2. The appeal is admitted on the following substantial questions of law:-*

A. Whether on the facts and circumstances of the case, the Tribunal was justified in holding that the appellant is not entitled for registration under Section 12AA of the Income Tax Act, 1961?

B. Whether on facts and circumstances of the case, the Tribunal was justified in holding that the appellant is not entitled to exemption u/s 2(15) of the Act, holding that the activities carried on by it are not charitable in nature?

3. We have elaborately heard Mr.R.V.Eswar, learned Senior Counsel, assisted by Ms.Rubal Bansal and Mr.R.Sivaraman, learned counsel for the appellant/assessee; and Mr.J.Narayanasamy, learned Senior Standing Counsel for the respondent/Revenue.

4. The assessee filed an application dated 28.02.2017, before the Director of Income Tax (Exemptions) for grant of registration under Section 12AA of the Act. The assessee represented that they are a Company incorporated under Section 25 of the Companies Act, 1956 on 22.02.2011 and that they are applying for obtaining registration under Section 12AA of the Act. Along with the application, the assessee filed a copy of the Certificate of Incorporation, Memorandum of Association, Articles of Association and Financial Report for three years. The Commissioner of Income Tax (Exemptions) (for brevity the CIT) issued notice to the assessee calling for certain clarifications, which were furnished by the assessee. The CIT by order dated 29.09.2017 rejected the application on the ground that the assessee's activity of imparting 'financial education/awareness' is a service for price, to the investor in the field of investments; the assessee's activity is designed in such a way that what it receives in the form of fee from the client for imparting financial education/ awareness is always higher than what is spent for imparting such education/ awareness to the said clients. It was further stated that the entire structure is designed to generate surplus/profit and there is no element of charity in the process, rather it is purely on commercial basis amounting to a commercial activity.

5. It was further stated that the activity of the assessee in the nature of rendering services to the investor community amounts to rendering services to a particular trade/commerce/business. Further, there is a clear price/fee/ consideration fixed for the said services and the quantum of consideration is always on commercial basis. Therefore, the CIT held that the activity of the assessee amounts to an activity of rendering services in relation to trade/commerce/business, for fee/consideration and such activity is specifically excluded from the definition of 'Charitable Purpose' as provided in Proviso to Section 2(15) of the Act.

6. The assessee preferred appeal to the Tribunal, which dismissed the appeal by the impugned order. The Tribunal relied on the decision of the Hon'ble Supreme Court in the case of Sole Trustee, Loka Shikshana Trust vs. CIT [(1975) 101 ITR 234] and quoted several paragraphs of the said decision and held that if the ratio-decidendi of the said judgment is applied to the object of the assessee, which admittedly is imparting financial education to the general public through programmes sponsored by various companies, will clearly show that pursuing subject object would not come within the meaning of education. It further observed that none of the objects as contained in the main object clauses of the MOA, will fall within the meaning of education.

7. The Tribunal next considered as to whether the activity of the assessee would be an activity for charitable purpose. After referring to the nature of activities of the assessee, the Tribunal observed that though the assessee was not collecting any fees from the participants, it was collecting substantial amount as sponsorship fees from various sponsors and all these sponsors were from private sectors and not from any Department of the Government. Further, it held that the Profit and Loss account for the years ending 31.03.2015 and 31.03.2016 show that a surplus has been generated, which goes contrary to the assessee's claim that it was pursuing any charitable activity.

8. While dealing with the arguments of the assessee that the CIT ought to have considered the applicability of the first proviso to Section 2(15) of the Act, the Tribunal held that just because the assessee is a company registered under Section 25 of the Companies Act, it would not make them eligible for registration under Section 12AA of the Act. Thus, what weighed in the minds of the Tribunal was the sponsorship fees collected by the assessee from the various companies, which ultimately led the Tribunal to conclude that the dominant activity of the assessee did not reflect selflessness, nor it involves any charity and accordingly, confirmed the order passed by the CIT.

9. Firstly, we deal with the observations of the Tribunal that every company registered under Section 25 of the Companies Act would not be automatically entitled to a registration under Section 12AA of the Act.

Though the observation, as a general proposition, may be right, yet the Income Tax Department has been consistently granting registration under Section 12AA of the Act to several companies registered under Section 25 of the Companies Act, which have the main objects more or less as that of the assessee company. Before us, the details pertaining to six such companies have been given, viz., (i) Tejas International Education Institutions; (ii) Invest Karnataka Forum; (iii) MCCIA Electronic Cluster Foundation; (iv) Jain International Trade Organisation; (v) Arya Bhatta Welfare Organisation; and (vi) Financial Literacy Advisory Board of India. Among the six companies, the Financial Literacy and Advisory Board of India does the activities akin to that of the assessee company. We say so upon comparison of the main objects of the said company with that of the main objects of the assessee company. In this regard, it would be relevant to refer to the decision of the High Court of Delhi in ICAI Accounting Research Foundation vs. DGIT (Exemptions) [(2009) 183 Taxman 462 (Delhi)]. In the said decision, the Court examined the case of a company registered under Section 25 of the Companies Act and pointed out that this aspect has been ignored by the Tribunal, as the status which is granted by the Government itself, is the recognition of the fact that the petitioner foundation is essentially established for the purpose of education and/or for advancement of any other project of general public utility.

10. The question would be whether one limb of the Government can ignore the order or decision taken by other limb of the Government with regard to the status of an entity. In this regard, it would be beneficial to refer to the decision of the Hon'ble First Bench of this Court in the case of M.V.S. Kathirvelu Nadar vs. Commissioner of Agricultural Income-tax [(1968) 68 ITR 786] wherein, in a matter arising under the Agriculture Income Tax Act, the Court observed that the Government themselves, though in a different context, have recognised the partition, it is expected that in

Revenue Department, which deals with Agriculture Income Tax too, there should be co-ordination. We have referred to this decision to state that a company registered under Section 25 of the Companies Act upon examination of its Memorandum and Articles of Association and a licence being granted mentioning the objects and activities permitted to be carried on by the company, cannot be ignored when the company applies under the Income Tax Act for registration under Section 12AA of the Act.

11. We are not laying down a broad proposition that every company registered under Section 25 of the Companies Act would be automatically entitled for registration under Section 12AA of the Act, but the registration under Section 25 of the Companies Act is undoubtedly a very relevant factor to be noted by the CIT while considering the application for registration under Section 12AA of the Act, as the registration under Section 25 of the Companies Act recognises the main objective of the company, which is a non-profit organisation. Thus, we answer this issue though not framed as a substantial question of law.

12. The CIT and the Tribunal were guided by the decision of the Hon'ble Supreme Court in Loka Shikshana Trust (supra). This judgment has held the field since 1975. The judgment is heavily relied on by Mr.J. Narayanasamy, learned Senior Standing Counsel to state that the nature of activity done by the assessee cannot be an educational activity. We need not labour much to decide this issue, as we are benefited by the decision of the High Court of Gujarat in the case of DIT (Exemption) vs. Ahmedabad Management Association [(2014) 47 taxmann.com 162 (Guj.)]. The Court considered the decision in Loka Shikshana Trust (supra), as it was argued by the Revenue as is done before us that the activity is not education as explained in Loka Shikshana Trust (supra) and it was held as follows:-

> *5.4.Now while considering whether the activities of the assessee can be said to be educational activities or not the decision of this Court as well as Honble the Supreme Court is required to be referred to and considered. In the case of Gujarat State Cooperative Union (Supra) it is held by the Division Bench of this Court that mere existence of profit will not disqualify institution for exemption under Section 10(22) of the Act, if sole purpose of its existence is not profit making but is educational activities. In the said decision the Division Bench also considered the decision of Honble the Supreme Court in the case of Lok Shikshana Trust (Supra), which has been relied upon by the Assessing Officer as well as the learned Counsel appearing on behalf of the revenue. In the said decision the Division Bench of this Court has observed as under;*
>
> *It appears to us that the decision of the tribunal which seeks to rest it on the observations made by the Supreme Court in Loka Shikshana Trusts (Supra) for holding that, the assessee is not entitled to exemption under Section 10(22) of the Act is based on a complete misreading of the observations of the Supreme Court. In Loka Shikshana Trusts (Supra) the Supreme Court, while dealing with the provisions of Section 11 read with Section 2(15) of the Act, which defines charitable purpose observed as under;*
>
> *The sense in which the word education has been used in Section 2(15) of the Act in the systematic instruction, schooling or training given to the young is*

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

The Supreme Court, in the above observations by referring to the systematic instruction, schooling or training given to the young has only cited an instance in order to indicate as to what the word education appearing in Section 2(15) of the Act which defines charitable purposes is intended to mean. We are certain that these observations were not intended to keep out of the meaning of the word education, persons other than young. The expression schooling also means that schools, instructs or educates (The Oxford English Dictionary Vol. IX, page 217). The Supreme Court has observed that the word education also connotes the whole course of scholastic instruction which a person has received. This clearly indicates that the observations of the Supreme Court were not intended to give a narrow or pedantic sense to the word education. By giving further illustrations of a traveler gaining knowledge, victims of swindlers and thieves becoming wiser, the visitors to night clubs adding to their knowledge the hidden mysteries of life, the Supreme Court has indicated that the word education is not used in a loose sense so as to include acquisition of even such knowledge. The observations of the Supreme Court only indicate the proper confines of the word education in the context of the provisions of Section 2(15) of the Act. It will not be proper to construe these observations in a manner in which they are construed by the tribunal when it infers from these observations, in paragraph 17 of its judgment, that the word education is limited to schools, colleges and similar institutions and does not extend to any other media for such acquisition of knowledge. The observations of the Supreme Court do not confine the word education only to scholastic instructions but other forms of education also are included in the word education. As noticed above, the word schooling also means instructing or educating. It, therefore, cannot be said that the word education has been given an unduly restricted meaning by the Supreme Court in the said decision. Though, in the context of the provision of Section 10(22), the concept of education need not be given any wide or extended meaning, it surely would encompass systematic dissemination of knowledge and training in specialized subjects as is done by the assessee. The changing times and the ever widening horizons of knowledge may bring in changes in the methodology of teaching and a shift of the better in the institutional setup. Advancement of knowledge brings within its fold suitable methods of its dissemination and though the primary method of sitting in a classroom may remain ideal for most of the initial education, it may become necessary to have a different outlook for further education. It is not necessary to nail down the concept of education to a particular formula or to flow it only through a defined channel. Its progress lies in the acceptance of new ideas and development of appropriate means to reach them to recipients.

13. In the above decision, the Court has pointed out that the observations of the Hon'ble Supreme Court in Loka Shikshana Trust (supra) only indicate the proper conscience of the word education in the context of the provisions of Section 2(15) of the Act and it will not be proper to infer that the word education is limited to schools, colleges and similar institutions and does not explain to any other media for such acquisition of knowledge. It has been further pointed out that it cannot be said that the word education has been given an unduly restricted meaning by the Supreme Court in the said decision. The above position will apply with full force to the case on hand.

14. In the case of DIT(E), Chartered Accountants Study Circle [(2012) 23 taxmann.com 444 (Madras)], while considering the activities of the assessee therein, which was a society called the Chartered Accountants Study Circle, after analysing the objective, it was held that the activities of the assessee-trust cannot be construed to be one of trade or commerce or business and it would only be charitable in nature and merely because they were selling books and books of professional interest and other reference materials to the general public, it would not term their activity as commercial.

15. In Gujarat State Co-operative Union vs. CIT [(1992) 195 ITR 279], the Court considered as to whether the co-operative union was entitled for exemption under Section 10(22) of the Act and one such activity being publication of journal on the subject of 'co-operative movement'. The Tribunal rejected the case of the assessee therein based on the observation made by the Hon'ble Supreme Court in Loka Shikshana Trust (supra).

Considering the correctness of the order of the Tribunal, it was held as follows:-

> *5. From the nature of the activities of the assessee, it is abundantly clear to us that the assessee is existing solely for educational purposes. It was sought to be contended by learned counsel for the Revenue that having regard to the objects enumerated in clauses (iii), (iv), (vi) and (viii) of bye-law 2 of the bye-laws of the assessee, it cannot be said that the assessee was existing solely for educational purposes. In clause (iii) of bye-law 2, the object enumerated is that the assessee will function as a focusing centre on non-official opinion on various subjects affecting the movement and for representing it in proper quarters. Under clause (iv), its object is to further the spread of the co-operative movement. Clause (vi) refers to the objects of opening circulating libraries, publishing periodicals, books, pamphlets, and literature in general on co-operation, rural development and allied subjects, while clause (viii) refers to running of a printing press. It is difficult to accept the contention of the Revenue that these clauses indicate any object other than educational for which the assessee seems to have been established. On totality of the objects enumerated in bye-law 2, it is clear to us that the assessee-Co-operative Union is existing solely for educational purposes and even the objects which are enumerated in clauses (iii), (iv), (vi) and (viii) are referable to such purposes. It will not be open to read any of these clauses in isolation torn of its context for the purposes of urging that the assessee is not existing solely for educational purposes as envisaged under section 10(22) of the Act. It is obvious that the objects of functioning*

as a focusing centre on non-official opinion on various subjects affecting the movement and for representing it is proper quarters, promoting the study of problems connected with co-operation and carrying on research in the same and of opening circulating libraries, publishing periodicals, books, pamphlets and literature are connected with educational purposes for which the assessee-Co- operative Union is established. The object of running a printing press as enumerated in clause (viii) has to be read in the context of the object of publishing periodicals, books, pamphlets and literature. Therefore, so read, it becomes part of the educational activities of the assessee-Co-operative Union. The subsidiary objects such as printing and publishing books and literature on the relevant subjects are, in our judgment, ancillary and do not detract from its exclusively educational character. The question whether an educational institution whether an educational institution is existing solely for educational purposes or not can also be resolved with reference to the activities actually carried on by it and as noted above, the list of activities of the assessee clearly indicates that it is existing solely for educational purposes. It cannot be doubted that the assessee was a society for diffusion of a certain branch of knowledge, namely, knowledge of the co-operative movement in various fields governing human life and the activities for the purpose were carried out in an organised and systematic manner by conducting regular courses for imparting instruction and training on various subjects included in the curricula as is reflected from the list of its activities. There is no dispute about the fact that the assessee-Co-operative Union is given financial assistance by the Government. The resolutions of the Government dated February 15, 1968, and December 10, 1982 (mentioned in para 8 of the order of the Commissioner of Income-tax (Appeals)) clearly indicate that the grants sanctioned by the Government are for educational purposes. The Government had sanctioned Rs. 15 lakhs for the year 1982-83 which appears to have been raised to Rs. 20 lakhs from the year 1988-89. We are fully satisfied from the nature of the activities of the assessee-Co-operative Union and its objects that the assessee is existing exclusively for educational purposes and not for the purposes of profit. The assessee was publishing two journals : (1) "Sahakar", a weekly journal having a circulation of 6,700 copies, and (2) "Gram Swaraj", a monthly magazine having a circulation of 7,150 copies. Both these journals were published in connection with the activities of the assessee and on the subject of co-operative movement. The assessee was also having an audio-visual unit for exhibiting films on the co-operative movement to educate the masses. It also appears that the assessee maintained a rich library on the subject of co-operation. As noticed above, from the objects of the assessee, it is conducting training centres and colleges for various courses having a bearing on the field of co-operative movement. It appears to us that the decision of the Tribunal which seeks to rest it on the observations made by the Supreme Court in Loka Shikshana Trust's case [1975] 101 ITR 234, for holding that, the assessee is not entitled to exemption under section 10(22) of the Act is based on a complete misreading of the observations of the Supreme Court. In Loka Shikshana Trust's case [1975] 101 ITR 234, the Supreme Court, while dealing with the provisions of section 11 read with section 2(15) of the Act which defines "charitable purpose" observed as under (at page 241) :

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

6. The Supreme Court, in the above observations, by referring to the systematic instruction, schooling or training given to the young has only cited an instance in order to indicate as to what the word 'education' appearing in section 2(15) of the Act which defines "charitable purposes" is intended to mean. We are certain that these observations were not intended to keep out of the meaning of the word "education", persons other than "young". The expression "schooling" also means "that schools, instructs or educates" (The Oxford English Dictionary, Vol. IX, page 217). The Supreme Court has observed that the word "education" also connotes the whole course of scholastic instruction which a person has received. This clearly indicates that the observations of the Supreme Court were not intended to give a narrow or pedantic sense to the word "education".

By giving further illustrations of a traveller gaining knowledge, victims of swindlers and thieves becoming wiser, the visitors to night clubs adding to their knowledge the hidden mysteries of life, the supreme Court has indicated that the word "education" is not used in a loose sense so as to include acquisition of even such knowledge. The observations of the Supreme Court only indicate the proper confines of the word "education" in the context of the provisions of section 2(15) of the Act. It will not be proper to construe these observations in a manner in which they are construed by the Tribunal when it infers from these observations, in para 17 of its judgment, that the word "education" is limited to schools, colleges and similar institutions and does not extend to any other media for such acquisition of knowledge. The observations of the Supreme Court do not confine the word "education" only to scholastic instructions but other forms of education also are included in the word "education". As noticed above, the word "schooling" also means instructing or educating. It, therefore, cannot be said that the word "education" has been given an unduly restricted meaning by the Supreme Court in the said decision. Though, in the context of the provisions of section 10(22), the concept of education need not be given any wide or extended meaning, it surely would encompass systematic dissemination of knowledge and training in specialised subjects as is done by the assessee. The changing times and the ever widening horizons of knowledge may bring in changes in the methodology of teaching a shift for the better in the institution set up. Advancement of knowledge brings within its fold suitable methods of its dissemination and though the primary methods of sitting in classroom may remain ideal for most of the initial education, it may become necessary to have a different outlook for

> *further education. It is not necessary to nail down the concept of education to a particular formula or to flow it only through a defined channel. Its progress lies in the acceptance of new ideas and development of appropriate means to reach them to the recipients.*

16. The above decision would come to the aid and assistance of the appellant-assessee. Therefore, we hold that the Tribunal erred in holding that the word education should be given a restrictive meaning and we respectfully agree with the decision in the case of Gujarat State Cooperative Union (supra) and Ahmedabad Management Association (supra).

17. The second aspect on which the assessee was non-suited is on the ground that the assessee has generated surplus. The learned Senior Counsel for the assessee has taken us through the financial statement of the assessee for the relevant period. No doubt, under the head reserves and surplus, the surplus generated has been mentioned. What is important to note is that the said surplus has been retained by the company and not distributed. Essentially this is the basic feature of a registration under Section 25 of the Companies Act. Even assuming that there was a surplus, can it dis-entitle the assessee for registration under Section 12AA of the Act.

This issue was considered by the Hon'ble Supreme Court in Queen's Educational Society vs. CIT [(2015) 8 SCC 47]. The Hon'ble Supreme Court after taking note of the various decisions, summed up the law which is common to Sections 10(23C)(iiiad) and (vi), in paragraphs 11 and 19, it was held as follows:-

> *11. Thus, the law common to Section 10(23C) (iiiad) and (vi) may be summed up as follows:*
>
> *Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.*
>
> *The predominant object test must be applied - the purpose of education should not be submerged by a profit making motive.*
>
> *A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.*
>
> *If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes.*
>
> *The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons.*

19. It is clear, therefore, that the Uttarakhand High Court has erred by quoting a non existent passage from an applicable judgment, namely, Aditanar and quoting a

portion of a property tax judgment which expressly stated that rulings arising out of the Income Tax Act would not be applicable. Quite apart from this, it also went on to further quote from a portion of the said property tax judgment which was rendered in the context of whether an educational society is supported wholly or in part by voluntary contributions, something which is completely foreign to Section 10(23C) (iiiad). The final conclusion that if a surplus is made by an educational society and ploughed back to construct its own premises would fall foul of Section 10(23C) is to ignore the language of the Section and to ignore the tests laid down in the Surat Art Silk Cloth case, Aditanar case and the American Hotel and Lodging case. It is clear that when a surplus is ploughed back for educational purposes, the educational institution exists solely for educational purposes and not for purposes of profit. In fact, in S.RM.M.CT.M. Tiruppani Trust v. Commissioner of Income Tax, (1998) 2 SCC 584, this Court in the context of benefit claimed under Section 11 of the Act held:

"9. In the present case, the assessee is not claiming any benefit under Section 11(2) as it cannot; because in respect of this assessment year, the assessee has not complied with the conditions laid down in Section 11(2). The assessee, however, is entitled to claim the benefit of Section 11(1)(a). In the present case, the assessee has applied Rs 8 lakhs for charitable purposes in India by purchasing a building which is to be utilised as a hospital. This income, therefore, is entitled to an exemption under Section 11(1). In addition, under Section 11(1)(a), the assessee can accumulate 25% of its total income pertaining to the relevant assessment year and claim exemption in respect thereof. Section 11(1)(a) does not require investment of this limited accumulation in government securities. The balance income of Rs 1,64,210.03 constitutes less than 25% of the income for Assessment Year 1970-71. Therefore, the assessee is entitled to accumulate this income and claim exemption from income tax under Section 11(1)(a)."

We set aside the judgment of the Uttarakhand High Court dated 24th September, 2007. The reasoning of the ITAT (set aside by the High Court) is more in consonance with the law laid down by this Court, and we approve its decision.

18. The above decision has been followed by the Hon'ble Supreme Court in Chief Commissioner of Income Tax vs. St. Peter's Educational Society [(2016) 14 SCC 306]. In the case of P.A.Inamdar & Ors. vs. State of Maharashtra & Ors. [AIR 2005 SC 3226], the Constitution Bench while considering various issues pertaining to educational institution, which included issue of fee structure, reservation, admission policies, etc., followed the decision in the case of T.M.A. Pai Foundation vs. State of Karnataka [(2002) 8 SCC 481] and held that every institution is free to advice its own fee structure subject to the limitation that there should be no profiteering and no capitation fee charged, directly or indirectly, or in any form. The Court further held that no profiteering does not imply that the institution cannot have reasonable surplus for future sustenance and expansion of the institute and it was held that up to 15% of profit could be considered and reasonable and legitimate for any charitable organisation. Though the aforementioned decision arose out of a matter concerning educational institutions, it was examining the cases of institutions, which were registered as charitable trust and a profit rate of 15% was held to be reasonable, as the institution had to sustain. In the instant case, from the financial statements submitted before this Court, we find that surplus is *http://www.judis.nic.in* *T.C.A.No.900 of 2018 around 5.9%.*

19. What is important to note is that the surplus cannot be distributed, which is clearly spelt out in the Memorandum of Association, which states that the income and profit of the company, whatsoever derived shall be applied solely for the promotion of its objects as set forth in the memorandum; no portion of the income or property aforesaid shall be paid or transferred, directly or indirectly, by way of dividend, bonus, otherwise by way of profit to persons who, at any time are, or have been member of the company or to any one or more of them or to any person claiming through any one or more of them. Further, it is stated that except with the previous approval of the Central Government, no remuneration or other benefit in money or money's worth shall be given by the company to any of its members whether, officers or servants of the company; in case of winding up or dissolution of the company, after satisfaction of all the debts and liabilities, any property whatsoever, the same shall not be submitted amongst the members of the company, but shall be given or transferred to such other company having objects similar to the objects of the assessee company. The relevant portions of the Memorandum of Association, which we have referred to, also find place in the licence issued under Section 25 of the Companies Act by the Regional Director of Company Affair.

20. Thus, for all the above reasons, we hold that the rejection of the application filed by the assessee for registration under Section 12AA is erroneous on account of misreading of the scope of the decision of the Hon'ble Supreme Court in Loka Shikshana Trust (supra).

21. In the result, the appeal filed by the assessee is allowed and the substantial questions of law framed for consideration, are answered in favour of the assessee. No costs."

7. Respectfully following the above decision of the Hon'ble Jurisdictional High Court in assessee's own case against the original application dated 02.03.2017, we direct the ld. CIT(E) to grant registration under section 12AA of the Act.

8. Against the application in Form 10G dated 15.03.2018 seeking approval under section 80G(5)(vi) of the Act, the mandatory requirement of filing copy of the certificate of registration granted under section 12AA of the Act was not filed, the ld.CIT(E) rejected the said application of the assessee. In pursuance to the judgement of the

Hon'ble Jurisdictional High Court in assessee's own case in T.C.A. No. 900 of 2018 dated 04.09.2020, the Tribunal has directed the ld. CIT(E) to grant registration under section 12AA of the Act hereinabove, we also direct the ld. CIT(E) to grant approval under section 80G(5)(vi) of the Act after filing of copy of the certificate of registration under section 12AA of the Act as may be granted.

9. In the result, both the appeals filed by the assessee are allowed.

Order pronounced on 12th April, 2022 at Chennai.

Sd/-	Sd/-
(G. MANJUNATHA)	(V. DURGA RAO)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, 12.04.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.