

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE MS.SUCHITRA KAMBLE, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

*(Conducted through Virtual Court)*

**ITA No.927/Ind/2019**  
**Assessment Year: 2013-14**

Dy. CIT (Exemption) Bhopal	<b>बनाम/</b> Vs.	All India Society for Electronics & Computer Technology, Bhopal
(Appellant / Revenue)		(Respondent / Assessee)
<b>PAN: AAAAA1914 G</b>		
Assessee by	Shri S.S. Deshpande, AR	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	15.12.2022	
Date of Pronouncement	31.01.2023	

**आदेश/ O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 16.08.2019 passed by learned Commissioner of Income-Tax (Appeals)-2, Bhopal [“**Ld. CIT(A)**”], which in turn arises out of assessment-order dated 31.03.2016 passed by learned DCIT (Exemption), Bhopal [“**Ld. AO**”] u/s 143(3) of the Income-tax Act, 1961 [“**the Act**”] for Assessment-Year [“**AY**”] 2013-14, the revenue has filed this appeal on following grounds:

- “1. Whether on the facts and in the circumstances of the case, the ld. CIT(A) was justified in treating the receipt of Rs 9,37,56,268/- as not in

*the nature of receipt from business, trade or commerce, without considering the finding of AO that the said receipts are business receipts and therefore the activity of the assessee violates the provisions of first proviso to section 2(15) of the IT Act.*

2. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in treating the payment for data processing, Book purchase, charges for use of centers and salary etc. to persons covered u/s 13(3) of the I.T Act as not excessive without considering the finding of the AO that such payments are made to provide benefits to the persons covered u/s 13(3) of the Act which violates the provision of section 13(1)(c) of the Act.*

3. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in allowing exemption u/s 11 and 12 of the Act to the assessee deleting the addition of Rs 2,93,49,953/- being the amount of surplus and Rs. 7,43,91,421/- being the amount of development fees not included in the total receipts, ignoring the finding of the AO that the society has violated the provisions u/s 2(15) as well as section 13(1)(c) of the Act and assessee is not eligible for exemption u/s 11 and 12 of the Act.*

4. *The order of Ld. CIT(A) is erroneous both in law and on facts"*

2. Heard the learned Representatives of both sides and case records perused.

3. Briefly stated the facts are such that the assessee named as "All India Society for Electronics and Computer Technology" [**"AISECT"**] is a society registered by the Registrar of Societies, Bhopal. It is also registered u/s 12A of the Income-tax Act, 1961 w.e.f. 17.09.2007. It is running a university named as "AISECT University, Bhopal", which is duly recognized by the University Grant Commission (UGC), a statutory body set up by Govt. of India for granting recognition and monitoring universities all over India. The assessee is also carrying several schools and colleges affiliated to M.P. Education Board / its own University / other Universities. Thus, the assessee is primarily engaged in imparting education. Besides it is also rendering various services under E-Governance Projects of Govt. of India aimed at development of rural India to utilize the services of various Govt. agencies through use of computers /

internet. Such services are practically called as “Banking kiosks”, “Suvidha Centres”, etc. The assessee claims to be engaged in “charitable purpose” and filed return after claiming exemption u/s 11 and 12. During assessment-proceeding, Ld. AO made two-fold adverse observations, viz. (i) certain activities of assessee were in the nature of business, trade or commerce and therefore the assessee cannot be characterized as engaged in “charitable purpose” within the meaning of section 2(15) of the Act; and (ii) the assessee has extended benefit to the persons specified in section 13(3) which attracted the provisions of section 13(1)(c). With these observations, the Ld. AO denied exemption u/s 11 / 12 of the Act and assessed total income at Rs. 10,37,41,374/- consisting of (i) Rs. 2,93,49,953/- surplus shown by assessee in Income & Exp. A/c, treated as taxable-income, and (ii) Rs. 7,43,91,421/- received by assessee from students by way of development-feeshown as “Corpus Fund” and not credited to Income & Exp. A/c, treated as taxable income. Aggrieved, the assessee went in first-appeal and succeeded. Now the revenue has filed this appeal before us assailing the order of first-appeal.

**Ground No. 1:**

4. In this ground, the revenue claims that the Ld. CIT(A) has erred in treating the receipts of Rs. 9,37,56,268/- as not in the nature of receipts from “business, trade or commerce” without giving proper consideration to the findings of Ld. AO and therefore the activity of assessee violates section 2(15).

5. Facts apropos to this ground are such that during assessment-proceeding, the Ld. AO found that the assessee has derived receipts of Rs. 9,37,56,268/- from following activities:

Commissioner of BF/BC/S/T	1,09,60,001
Suvidha Recharge Receipt	84,76,277
Punjab CSC Fee Receipt	15,92,000

SBI Kiosk	11,52,807
Idea Recharge Receipt	15,73,270
VLE Revenue Support	3,45,82,668
MP Online & SBI Kiosk (CSC Project)	3,54,19,245
Total	9,37,56,268

Ld. AO enquired the assessee with regard to these activities, in response to which the assessee submitted explanation of activities and also pointed out that these activities were part of the national objectives of Govt. of India and in pursuance of the directives of Reserve Bank of India [“RBI”] which prescribe that such activities shall be done only through NGOs / NPOs like assessee. However, Ld. AO observed that the RBI has not denied payment of income-tax on such activities and that these activities were in the nature of business, trade or commerce. Referring to the proviso to section 2(15), Ld. AO observed that such business-receipts are though allowed upto Rs. 25 lakh, but in the present case the ceiling-limit of Rs. 25 lakh has also been breached; therefore not entitled for exemption u/s 11.

6. During first-appeal, the Ld. CIT(A) made a detailed analysis of the nature of aforesaid activities in the light of applicable provisions of law and finally reversed the conclusion taken by Ld. AO by observing and holding thus:

**Ground No. 2**

*2. This ground is as under:*

*“The appellant has challenged the finding of the AO that the appellant has carried on activities which are in the nature of business.”*

*The A.O. found that the appellant has made sales and purchases of books, carried on various activities from which receipts have been shown which are treated in the nature of business and not charitable activity as defined u/s 2(15) of the Act. Therefore, the Ld. A.O. denied exemption u/s.11 and 12 of the Act.*

*The appellant submitted that the Ld. A.O. on the following observations denied the exemption available u/s.11 of the Act :*

*a. The appellant has purchased and sold books and have rendered services for SBI Kiosk and M.P. Online which are in the nature of business activity.*

*b. The appellant has received commission from M. P. Online & SBI Kiosks on services rendered under the CSC project which as informed by the appellant can be rendered by only NGO's as per guidelines of Reserve Bank of India. However, the Reserve Bank of India has not said that tax should not be paid on these business activities.*

*c. In addition to above the appellant has also received income from Commissioner of BF/BC/ST, receipts under Punjab CSC, Suwidha Recharge and Idea Recharge for which no reply has been made by the appellant.*

*In this regard, the appellant submitted that purchase and sale of books have been made with an object for supplying it to the students of the appellant society and as such are incidental to the core activity of providing education and is not covered by the proviso to section 2(15). In this connection, following facts stated by the appellant:*

*(i) The appellant has sold books which were required to be supplied to the students of the University being managed and operated by the appellant. AISECT Ltd has been in the business of coordinating and supplying course material to the students for which it has created infrastructure through which timely/accurate delivery of books/course material is ensured by them. The appellant society provides education to the students for its 38 diploma/certification courses on online mechanism. The university with an object to concentrate its focus on education and other activities has outsourced the activity of providing books to the students to AISECT Ltd which supplies/dispatches the books to the students. These books are generally procured /printed by AISECT Ltd and in some cases the books are procured by them from the appellant society and other entities. The books are supplied by the said company through postal department for which the bills are received monthly by the said company from the post office. Copy of ledger account along with bills raised by the post office on AISECT Ltd evidencing the supply of books to the students during the relevant period are on the record. The details of dispatches are very voluminous in nature and are destroyed from time to time after completion of the courses. However to substantiate the claim the appellant*

also filed details of bill received from the postal department for supply made in the month of January 2015 before the Ld. A.O. Thus the activity of the sale of books was an activity which was incidental to providing education to the students and as such is not covered by the proviso to section 2(15).

(ii) The appellant submitted that providing the books and the course material to the students is an integral part of education and no student can complete his education without books. As the books available in the market are prohibitively costly the appellant has made arrangement for supply of books to its students at much cheaper rates which are nearly at cost. The entire details of the sales made to students were provided to the ld. AO during the course of assessment proceedings. Thus once it was substantiated that the books purchased by the appellant have been supplied to its students the same has to be considered as an activity which is incidental to the core activity of providing education and cannot be called as business activity. Further any activity which is incidental to the activity of providing Education is not covered by the proviso to section 2(15)

As regards SBI Kiosk and M.P. Online these services have been rendered under the E- Governance Plan of the Government. In this connection, following facts stated by the appellant:

(i) The appellant during the year has received various amounts under the CSC project. One of the **main objects** of the appellant society was to spread computer awareness and services that can be achieved by use of the information technology in rural India. The appellant society had been working on this object in an active manner since its inception. The Government of India also realizing the need of spreading information technology to the village formulated an E-Governance plan under which the Common Service Centre's (CSC) were to be established.

(ii) The CSC is meant to be a low cost vehicle for Government institutions to deliver e-Governance services to the rural population of India in '**Simple, Moral, Accountable, Responsive and Transparent**' (SMART) and most cost-effective manner. They are the physical front-end for delivery of e-Government Services to citizens and accepting requests for government services from the private citizen via e-Forms. They would also be used for delivery of services and interaction with private service providers. The aim of the Government of India as mentioned in the plan is to create 1,00,000 CSC across 600,000 rural and remote locations of India. CSC is a strategic cornerstone of the National e-Governance

Plan (NeGP), approved by the Government of India in May 2006, as part of its commitment in the National Common Minimum Program to introduce e-governance on a massive scale.

(iii) The E-Governance plans formulated by the government of India and the desired objects to be achieved were in total synchronization with the objects and activities of the appellant society. The management of the society was of the opinion that the objects of the appellant society will be more effectively achieved if the appellant society joins the plan of the Government in the form and manner as have been formulated by the government of India in the said plan.

(iv) Accordingly the appellant joined the said program and was assigned the responsibility of **SCA ( Service Centre Agency)**. In the process of discharge of its role the appellant supported the government in opening 5011 such centers, most of which are situated in Blocks, Panchayats and villages, spread throughout the state of M.P, Chattisgarh & Punjab through appointment of 5011 village level entrepreneurs (VLE) who were rendering the services envisaged by the government in their respective villages in the manner envisaged by the government.

(v) Under the scheme no charges are recovered by the VLE from the villagers who are the user of the services and fees is paid by the service recipient at the rates fixed by the Government of India/State which is required to be reimbursed to the various VLE.

(vi) As part of the plan it was provided that the services rendered at village level in many cases may not be viable for the VLE and to ensure continuity of the services by the VLE provision of revenue support to subsidize the losses up till a fixed amount was also envisaged in the scheme. As a part of the scheme and to make these VLE self sufficient the appellant society also tied up with the State Bank of India to act as its Business Correspondence / Facilitator to render certain banking services in the villages through these centres.

(vii) As per the scheme framed by Reserve Bank of India such services can only be rendered by an NGO, cooperative society or section 25 company.

(viii) As provided in the plan the services rendered by these VLE were all to be coordinated by the SCA on the state level and the appellant society was conducting the role of the same as SCA. Thus, the appellant society was not conducting any business activity. The services were rendered by the VLE's which were independent persons not related to the appellant society in any manner. However as per the plan the service charges payable to these VLE was first paid by the respective agencies (SBI, UTI, Suvidha, M.P. Online, Idea) to the appellant society which was

*treated as commission and TDS was deducted thereon. The commission so received was thereafter reimbursed to the various VLE after deducting of applicable TDS. Thus the appellant was not carrying on any activity with the intention of earning income but was carrying on the activity with an object to support the government of India in implementation of its e- governance plan which were similar to the objects of the appellant society.*

*(ix) As per the details of the amounts received and payments made by the appellant on activities covered by CSC project the appellant has incurred total expenses of Rs.9,98,49,638/- as against receipt of Rs 9,37,56,268/, thus incurring an excess expenditure of Rs. 60,93,370/- on the said project. It may be mentioned that the payments made include Rs. 3,38,90,715/- which has been made to the VLE to compensate the losses suffered by them and to provide sustainability to the Village Level Entrepreneur (VLE) from which it can be easily inferred that the appellant was not carrying on any activity to earn profit.*

*(x) In due course of time the appellant society was able to achieve its object by supporting the establishment of centres providing information technology services in villages and ensuring the continuity of these centres by making them self sufficient and after achieving its objects have decided to withdraw itself from the said activity so that it can focus its attention on other activities and have accordingly withdrawn themselves from the CSC project.*

*(xi) Thus the receipts under the CSC project by the appellant was not its business receipts but was received as a part of its efforts to spread computer awareness and services at village level as part of the plan of the government of India. The appellant was not carrying on any activity which was in the nature of trade commerce or business activity and was simply instrumental in selection of the VLE and supporting him in establishing the centre in the village and to ensure that he gets enough work to sustain himself to ensure that the centre established is not required to be closed and as soon as the VLE reached a level where they became self sufficient the appellant withdrew itself from the activity.*

*As regards receipts from Commissioner of BF/BC/ST, receipts under Punjab CSC, Suvidha Recharge and Idea Recharge, the appellant submitted that all these services have been rendered under the CSC project. In this connection, following facts stated by the appellant:*

*(i) The services were provided by the VLE and the scheme in Madhya Pradesh envisaged providing revenue support to the VLE to*

sustain viability which would not be generally done in any business activity. Furthermore the revenue was received by the appellant from the Government of Madhya Pradesh through M.P.S.E.D.C the nodal agency of the government.

(ii) The basic objective of the payee, the appellant, in this case was to spread computer literacy and make online availability of the various services provided by the government and used by the general public. The payee did not have any intention to earn income out of the activity in immediate or long term future.

(iii) The appellant society received Rs. 3,45,82,668/- (the amount actually received by the appellant after deduction of TDS @ 2.0 % was Rs. 3,38,90,715/-) as revenue support which was given with an intention to subsidize the loss as against which Rs3,38,90,715/- .was paid by the appellant to VLE for revenue support.

The appellant has placed reliance upon various judicial pronouncements in support of its claim. The appellant submitted that it has been held by various courts that the activity to constitute business should have been undertaken with an object of earning income. Hon'ble Supreme Court in the case of **Lahore Electric Supply Company Limited**, [1966] 60 ITR 1 (SC) wherein it was held that the term "business", as contemplated under the Indian Income Tax Act, 1922, contemplates activity capable of producing profit which can be taxed. The appellant has also placed reliance upon following other decisions:

(i) **India Trade Promotion Organization** (Delhi High Court) : Hon'ble court held that "The expression "charitable purpose", as defined in Section 2(15) cannot be construed literally and in absolute terms. It has to take colour and be considered in the context of Section 10(23C)(iv) of the said Act. It is also clear that if the literal interpretation is given to the proviso to Section 2(15) of the said Act, then the proviso would be at risk of running foul of the principle of equality enshrined in Article 14 of the Constitution India. In order to save the Constitutional validity of the proviso, the same would have to be read down and interpreted in the context of Section 10(23C)(iv) because, in our view, the context requires such an interpretation. The correct interpretation of the proviso to Section 2(15) of the said Act would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration. In both the activities, in the nature of trade, commerce or business or the activity of rendering any

*service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. If the dominant and prime objective of the institution, which claims to have been established for charitable purposes, is profit making, whether its activities are directly in the nature of trade, commerce or business or indirectly in the rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a 'charitable purpose'. On the flip side, where an institution is not driven primarily by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an institution established for charitable*

*(ii). **H. Abdul Bakhi & Bros.**, (1964) 15 STC 664 : Hon'ble Supreme Court elucidated that the expression "business" is an extensively used word of indefinite import. In the taxing statutes it is used in the sense of an occupation or profession which occupies time, attention or labour of a person and normally associated with the object of making profit. It was held as under:*

*"4. ....To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure. But to be a dealer a person need not follow the activity of buying selling and supplying the same commodity. Mere buying for personal consumption i.e. without a profit motive will not make a person, dealer within the meaning of the Act, but a person who consumes a commodity bought*

*by him in the course of his trade, or use in manufacturing another commodity for sale, would be regarded as a dealer "*

*(iii). **Raipur Manufacturing Company**, (1967) 19 STC 1 (SC): It is stated that business is normally with the object of making profit. To regard an activity as business, there must be a course of dealings either actually continued or contemplated to be continued with profit motive and not for sport or pleasure. The expression "profit motive" does not postulate or intends that profit must, in fact, be earned. Nor does the expression cover a mere desire to make some monetary gain out of a transaction or a series of transactions. It predicates a motive which pervades the transaction(s) effected by the person in the course of his activity.*

*(iv). **Director of Supplies and Disposal versus Member, Board of Revenue**, (1967) 20 STC 398 (SC): It has been held:-  
". ...The expression "business" though extensively used in taxing statutes, is a word of indefinite import. In taxing statutes, it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there*

*must be a course of dealings, either actually continued or contemplated to be continued with a profit- motive; there must be some real and systematic or organised course of activity or conduct with a set purpose of making profit. To infer from a course of transactions that it is intended thereby to carry on business ordinarily there must exist the characteristics of volume, frequency, continuity and system indicating an intention to continue the activity of carrying on the transactions for a profit. But no single test or group of tests is decisive of the intention to carry on the business. It must be decided in circumstances of the each particular case whether an inference could be raised that the appellant is carrying on the business of purchasing or selling of goods within the meaning of the statute."*

(v). **The Institute of Chartered Accountant of India** [(2012) 347 ITR 86 (Delhi)] : It has been held that while construing the term business for the purpose of Section 2(15) of the Act the object and purpose of the Section must be kept in mind and a broad and extended definition of business would not be applicable for the purpose of interpreting and applying the first proviso to Section 2(15) of the Act. The relevant extract of the said judgment is reproduced herein below:

*"Section 2(15) defines the term "charitable purpose". Therefore, while construing the term "business" for the said section, the object and purpose of the section has to be kept in mind. We do not think that a very broad and extended definition of the term "business" is intended for the purpose of interpreting and applying the first proviso to section 2(15) of the Act to include any transaction for a fee or money. An activity would be considered "business" if it is undertaken with a profit motive, but in some cases this may not be determinative. Normally, the profit motive test should be satisfied but in a given case activity may be regarded as business even when profit motive cannot be established /proved. In such cases, there should be evidence and material to show that the activity has continued on sound and recognized business principles, and pursued with reasonable continuity. There should be facts and other circumstances which justify and show that the activity undertaken is infact in the nature of business. The test as prescribed in Raipur Manufacturing Company [1967] 19 STC 1 (SC) and Sai Publication Fund [2002]*

*258 ITR 70 (SC); [2002] 126 STC 288 (SC) can be applied. The six indicia stipulated in Lord Fisher [1981] STC 238 are also relevant. Each case, therefore, has to be examined on its own facts."*

(v). **Sai Publication Fund:** [2002] 258 ITR 70 (SC) : Hon'ble Supreme Court while interpreting the word "business" in the context of Section 2(5A) of the Bombay Sales Tax Act, 1959 held that the inclusion of incidental or ancillary activity in the definition of business presupposes the existence of trade, commerce and business. Thus, if the dominant activity of the appellant was not business then any incidental or ancillary activity would also not fall within the definition of business. In that case, the Supreme Court was examining the issue whether the activity of the trust in bringing out and selling a publication to spread the message of Sai Baba would make the appellant trust a dealer. The Supreme Court also referred to various other decisions wherein it was held that if the principal object or purpose of an appellant was not business then an incidental activity would also not be exigible to sales tax and constitute the appellant as a dealer. In the case of State of Gujarat v. Raipur Manufacturing Co. Ltd.: (1967) 19 STC 1 (SC), the Supreme Court held that in order for any activity to be considered as business, there must be a course of dealings either actually continued or contemplated to be continued with the motive to earn profit and not for sport or pleasure.

5.2.4.1 It is further submitted by the appellant that the most of the cases mentioned above relate to the period prior to 1.04.2009 the date on which proviso to section 2(15) has been inserted. However the effect of the earlier decisions on the proviso to section 2(15) inserted w.e.f. 01.04.2009 was considered by the Hon'ble Punjab & Haryana High Court in its decision dated 23.12.2016 in the case of **The Tribune Trust V CIT in Income Tax Appeal No 62/2015** wherein it was held by the court that If the legislature intended the latter part of the proviso to apply to the word "advancement" as well and not merely to the words "object of general public utility", it would have worded the amendment entirely differently. The proviso would have expressly been made applicable to the advancement as well as to the object of general public utility. That the legislature did not do so is an indication that it accepted the interpretation of the Supreme Court of Section 2(15) as it originally stood and retained the effect of the section in that regard in the 2009 amendment. The ratio of the judgment in **Surat Art Silk's** case (supra), in this regard, therefore, remains the same.

The appellant has also relied upon on plethora of the judgments in its favour and submitted that proviso to section 2(15) is not applicable to the case of the appellant and the exemption u/s 11 cannot be denied on this account.

I have gone through the submissions made by the

*appellant and facts brought on the record by the Ld. A.O. in the assessment order. Considering all aspects of the case, I have found following facts :*

*(i). The appellant has received Rs. 5,57,51,380/- towards sale of books and also Rs.9,37,56,268/- from various Common Service Center (CSC) activities which are held by the AO to be in the nature of business receipts and have invoked the proviso to section 2(15) and have disallowed the exemption claimed u/s 11 by the appellant.*

*(ii). The following activities of the appellant are held by the Ld. AO to be in the nature of business :*  
*Sale & Purchase of Books.*

*Commission from SBI Kiosk & M.P. Online Commission under CSC projects including receipt under Suvidha & Idea recharge.*

*(iii). In the case of the appellant it is seen that the appellant is primarily involved in the field of education. It is found to be running seven schools/colleges affiliated to various boards and Universities and is also managing one University. The total receipts of the appellant during the year are Rs. 92.10 crore out of which the AO have held that the receipts of Rs. 9.37 crore are in the nature of "advancement of any other object of general public utility" and further the appellant has made sale of books of Rs.5.57 crore. Thus receipts of 77.16 crore (83.77 %) are undisputedly held to be belonging to activity of "Education" and thus the dominant and primary object of the appellant society is education.*

*(iv). The appellant is carrying on these activities in accordance with the scheme of government which is primarily aimed at development of usage of government and other services through computers in rural India.*

*(v). The guidelines issued by the Reserve Bank of India specifies that these services can be rendered only through NGOs, societies etc. which itself signifies that the activities are expected to be done without any profit motive meaning thereby the institutions incorporated for the purpose of charitable activities and not for profit making have been selected by the Government. The appellant was one of them.*

*(vi). The amount received by the appellant for reimbursement of losses during the year was Rs.3,38,90,715/- (after TDS) against which the remittance made for reimbursement of losses was Rs.3,38,90,715/-. In any business, generally there cannot be any reimbursement of losses.*

*(vii). The charges were paid by the government/ sponsoring agency to compensate for the expenses incurred on providing*

such service and that too was also at rates fixed by the sponsoring agency which was generally the government of India/State Government. The appellant had no say in the charges so fixed.

(viii). Further the appellant is not carrying on the activities with an object of earning any income. This fact is obvious from the fact that the appellant has not earned any income from such activities during this year or in any of the years in the past, the details of which were furnished before the AO during the course of assessment proceedings and no deficiencies have been found in the same.

(ix). The bylaws of the appellant society do not permit any distribution of the surplus to any person in any manner. (x). Such activities are being done since last over 6 years by the appellant and there is no change in the same during the year and the same has been accepted by the Department. The AO has neither made any allegation that the activities of the appellant during the year are different from the activities of the appellant done in past and nor have not brought any material on records to substantiate such stand. These activities in the past have been held as non business activities in assessments completed u/s 143(3) and exemption u/s 11 of the Act has been provided to the appellant.

Considering the facts that the activities carried out by the appellant were planned by the Government Of India/RBI in public interest basically for development of rural India and which could have been undertaken only by an NGO and like entities, which envisaged that the activities are not financially viable and hence provided for subsidizing of losses, and the appellant did not have any profit motive as is also ascertained from the factual findings of the AO in the assessment orders made u/s 143(3) for A.Ys. 2011-12, 2015-16 & 2016-17 and the profitability statement submitted for these activities during the year and from the judgments of the Hon'ble Supreme Court / High Courts as detailed below it can be said that the activities of the appellant are not in the nature of trade commerce or business and consequently is not covered by the proviso to section 2(15) of the Act. In the preceding year and subsequent years also the same activities have not been treated as business in the course of assessment proceedings. Therefore, on the same set of facts, different stand is not justifiable in view of various judicial pronouncements. The decisions relied upon by me are discussed as under:

(i). It is well settled position of law that in absence of any

change in facts/circumstances a different view should not be taken. Judgment of the Hon'ble Supreme Court in the case of **Radhasoami Satsang**, [1992] 193 ITR 321 (SC) is relevant wherein the Supreme Court did not think it appropriate to allow the reconsideration of an issue for a subsequent assessment year if the same "fundamental aspect" permeates in different assessment years. In para 13 of the order it is held that:

"We are aware of the fact that, strictly speaking, *res judicata* does not apply to IT proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year".

(ii). In the case of **Parashuram Pottery Works Ltd. v. Income Tax Officer**, [1977] 106 ITR 1 (SC) Hon'ble Apex Court has held as under:

"We are aware of the fact that strictly speaking *res judicata* does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

"On these reasoning in the absence of any material change justifying the Revenue to take a different view of the matter - and if there was no change it was in support of the appellant - we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income Tax in the earlier proceedings, a different and contradictory stand should have been taken."

(iii). The above view has again been reiterated by the Hon'ble Supreme Court in the case of **CIT v Excel Industries Ltd** (2013)358 ITR 295(SC) wherein it was held by the court in Para 31 of it's order that :

"It appears from the record that in several assessment years, the Revenue accepted the order of the Tribunal in favour of the appellant and did not pursue the matter any further but in respect of some assessment years the matter was taken up in

*appeal before the Bombay High Court but without any success. That being so, the Revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather than spend the tax payers' money in pursuing litigation for the sake of it."*

(iv). In the case of **Sulabh International Social Service Organisation** (2011) 57 DTR 0008 Hon'ble Patna High Court wherein in para 10 of the judgment it was held by the court that *"...the learned counsel was unable to point out any change in circumstances which enabled the Ld AO to take a different view from those taken by the authorities under the Act with respect to the respondents in identical situation....on the same facts the Learned AO .....has taken a different view without any change of circumstances ....The Ld AO has also overlooked the order for past year in identical situation, where identical transactions have been treated as charitable activity qualifying for exemption.*

(v). Hon'ble Delhi High Court in the case of **A. K. J. Security Printers**, (2003) 264 ITR 276 has observed that *"we are of the view that having accepted at least in three assessment years that the appellant's business activity fell within the ambit of S. 80-I of the Act, the Revenue cannot be allowed to now turn around and contend that deduction under the said section is not available to them in respect of the present assessment years."*

(vi). The Full Bench of Hon'ble Delhi High Court in the case of **Usha International** (2012) 348 ITR 485 has observed that *when a regular order of assessment is passed in terms of the sub-section (3) of section 143, a presumption can be raised that such an order has been passed on application of mind and that a presumption can also be raised to the effect that in terms of clauses (e) of section 114 of the Indian Evidence Act, the judicial and official acts have been regularly performed. Thus, there has to be consistency and uniformity in the approach of the Revenue in the appellant's own case in the subsequent assessment years on the same set of facts.*

Regarding Sale & Purchase of Books, I agree with the arguments of the Ld. AR that the books generally available in market are prohibitively costly. The students of the appellant society are coming from Rural India & are generally belonging to weaker section who cannot afford to purchase costly books hence books / course material is provided to the students without making any separate charge for such books/course material. The appellant with an object to concentrate its efforts on its core

*activity of providing education have offloaded the non core incidental activities to its associate concern and consequently such books are got supplied to the students through an associate concern who has got experience in such activity. Books required to be supplied to the students are generally directly procured by the associate concern. In certain cases the books are available/course material is prepared by the appellant hence such books/course material available with the appellant is sold to the associate concern for onward supply to the students. Thus it is seen that the books and course material is supplied by the appellant to its students through its associate concern without making any specific charge. Further the sale of books made to its associated concern is with an object of getting it supplied to its students and for accounting purpose this transaction has been accounted in its books of accounts. Thus, sale of books cannot be held to be in the nature of business. It is also seen that under the circumstances the sale of books is incidental to the activity of education. **The same does not fall in the fourth limb of section 2(15) i.e “advancement of any other object of “General Public Utility” & as such proviso to sec 2(15) does not have any applicability to this activity.***

*Regarding issue of CSC, it is found that the appellant has also rendered certain services under the E-Governance plan of the Government Of India under which Common Service Centre (CSC) were to be established, through which E-Governance services of the Government of India/ State were to be delivered to the people of India with special emphasis on rural India in a Simple, Moral, Accountable, Responsive and Transparent*

(SMART) and cost effective manner. It is also seen that the appellant has carried out the responsibility of SCA (Service Centre Agency) under the plan whereby 5011 centre were opened throughout the country rendering services to the citizen of India in the manner envisaged by the government. The services are rendered by Village Level Entrepreneur (VLE) & coordinated by the appellant; the charges are received by the appellant & remitted to the VLE after deduction of certain amount towards expenses of the appellant. It is also seen that the government have found that rendering of such services for rural population may not be financial viable & thus to ensure continuity of the services, provision was inbuilt in the scheme to provide revenue support to the VLE through subsidizing the losses up till a fixed amount. Thus it is seen that the activity was conducted in accordance with the scheme of the Govt. of India to create awareness of electronics & its use specially for rendering Govt. services & as the activity was not financial viable it also provided for revenue support. Various other activities were also promoted by the appellant to ensure additional revenue to VLE to make them self sufficient and which would result in successful implementation of the Govt. Scheme. It is also seen that the appellant has received Rs. 3,38,90,715/- which is included in the receipt under dispute towards compensation of the losses suffered by the VLE & the same amount was reimbursed by the appellant to the VLE towards subsidizing the loss suffered by them.

Details of the CSC Scheme was verified by me also form the site of the Ministry of Electronics and Information Technology and the information available is reproduced herein below:

#### *“CSC Scheme*

##### *Common Services Centres*

*The CSC is a strategic cornerstone of the National e- Governance Plan (NeGP), approved by the Government in May 2006, as part of its commitment in the National Common Minimum Programme to introduce e-governance on a massive scale.*

*The CSCs would provide high quality and cost-effective video, voice and data content and services, in the areas of e-governance, education, health, telemedicine, entertainment as well as other private services.*

*A highlight of the CSCs is that it will offer web-enabled e-governance services in rural areas, including application forms, certificates, and utility payments such as electricity, telephone and water bills. In addition to the universe of G2C services, the CSC Guidelines envisage a wide variety of content and services that could be offered as listed below:*

Agriculture Services (Agriculture, Horticulture, Sericulture, Animal Husbandry, Fisheries, Veterinary) Education & Training Services (School, College, Vocational Education, Employment, etc.)

Health Services (Telemedicine, Health Check-ups, Medicines)

Rural Banking & Insurance Services (Micro-credit, Loans, Insurance)

Entertainment Services (Movies, Television) Utility Services (Bill Payments, Online bookings)

Commercial Services (DTP, Printing, Internet Browsing, Village level BPO).

*The Scheme creates a conducive environment for the private sector and NGOs to play an active role in implementation of the CSC Scheme, thereby becoming a partner of the government in development of rural India. The PPP model of the CSC scheme envisages a 3-tier structure consisting of the CSC operator (called Village Level Entrepreneur or VLE); the Service Centre Agency (SCA), that will be responsible for a division of 500-1000 CSCs; and a State Designated Agency (SDA) identified by the State Government responsible for managing the implementation in the entire State”.*

*On going through the scheme of the Ministry it is seen that the activity envisaged that the NGO should play an active role in implementation of the of the CSC scheme, thereby becoming a partner of the government in development of rural India.*

*It is further seen that the appellant has been acting as a Business correspondent of State Bank of India. The CSC Scheme framed by the government provides provision of providing Rural Banking Services under the Plan. Consequent to this the Reserve Bank of India(RBI) with an objective of ensuring greater financial inclusion and increasing the outreach of the banking sector to rural areas, have framed a policy for spread of banking in rural area through use of Business facilitator and correspondent. The opening para of the relevant circular of RBI*

*(DBO D. No. BL.BC. 58/22.01.001/2005-2006 Dated 25.01.2006)*

*states that “with an objective of ensuring greater financial inclusion and increasing the outreach of the banking sector, it has been decided in public interest to enable banks to use the services of Non Government Organization , Self Help Groups*

*(NGO / SHG), Micro finance institution and other civil society organization (CSO) as intermediaries in providing financial and banking service through the use of Business facilitator & correspondent models”.*

*Thus as per the circular of RBI it is observed that the policy was made in public interest and was to be implemented through NGO, and the appellant being an NGO was entrusted the task for implementation of the activity .*

*Thus, it is seen that:*

*a. The appellant is carrying on these activities in accordance with the scheme of Government of India which is primarily aimed at development of usage of government and other services in rural India and spread of banking facilities in rural India.*

*b. The guidelines issued by the Reserve Bank of India specifies that the banking services can be rendered only through NGO's which itself signifies that the activities are expected to be done without any profit motive and consequently cannot be termed as a business activity.*

*c. The scheme of CSC envisages that rendering of these services may not be a financially viable option and hence provides for subsidization of losses incurred to the specified limits. The amount received by the appellant for reimbursement of losses during the year was*

*Rs.3,38,90,715/-(after TDS) against which the remittance made for reimbursement of losses was Rs.3,38,90,715/-. In any business, generally there cannot be any reimbursement of losses.*

*d. The charges were paid by the government/ sponsoring agency to compensate for the expenses incurred on providing such service and that too was also at rates fixed by the sponsoring agency which was generally the government of India/state. The appellant had no say in the charges so fixed.*

*e. Further the appellant is not carrying on the activities with an object of earning any income. This fact is also verified from the profitability statement submitted from where it is observed that the appellant has incurred net excess expenditure of Rs. 60,93,370/- in these activities.*

*f. The bylaws of the appellant society do not permit any distribution of the surplus to any person in any manner.*

*The claim of the appellant that it is not carrying on any activity in the nature of business carries weight. In the facts and circumstances, the case of the appellant is squarely covered by the decisions of various Courts which have been discussed in para-5.2.4 of this order. Profit motive is not involved in the*

activities carried out by the appellant which is an essential ingredient to establish an activity as business. Hon'ble Apex Court, in the case of **Raipur Manufacturing Company** (19 STC 1) has held that business is normally with the object of making profit. To regard an activity as business, there must be a course of dealings either actually continued or contemplated to be continued with profit motive and not for sport or pleasure. The

expression "profit motive" does not postulate or intends that profit must, in fact, be earned. Nor does the expression cover a mere desire to make some monetary gain out of a transaction or a series of transactions. It predicates a motive which pervades the transaction(s) effected by the person in the course of his activity. Further, Hon'ble Delhi High Court in the case of **The Institute of Chartered Accountant of India** [(2012) 347 ITR 86] held as under :

“Section 2(15) defines the term “charitable purpose”. Therefore, while construing the term “business” for the said section, the object and purpose of the section has to be kept in mind. We do not think that a very broad and extended definition of the term “business” is intended for the purpose of interpreting and applying the first proviso to section 2(15) of the Act to include any transaction for a fee or money. **An activity would be considered “business” if it is undertaken with a profit motive**, but in some cases this may not be determinative. Normally, the profit motive test should be satisfied but in a given case activity may be regarded as business even when profit motive cannot be established /proved. In such cases, there should be evidence and material to show that the activity has continued on sound and recognized business principles, and pursued with reasonable continuity. There should be facts and other circumstances which justify and show that the activity undertaken is infact in the nature of business. The test as prescribed in Raipur Manufacturing Company [1967] 19 STC

1 (SC) and Sai Publication Fund [2002] 258 ITR 70 (SC); [2002] 126 STC 288 (SC) can be applied. The six indicia stipulated in Lord Fisher [1981] STC 238 are also relevant. Each case, therefore, has to be examined on its own facts.”

The dominant activity of the appellant is not found to be business and therefore, incidental or ancillary activity would also not fall within the definition of business. Thus considering all the facts,objects of the appellant and the judicial principals laid down by the Hon'ble Supreme Court of India and various High Courts, it is held that the AO was not justified in invoking the

*proviso to section 2(15) and disallowing the exemption in the case of the appellant when in similar circumstances the exemption has been allowed in the preceding and subsequent years.*

*5.7 In view of the detailed discussion made above, it is held that AO was not justified in holding that the activities carried out by the appellant were in the nature of business. **Therefore, this ground of appeal is allowed.***

7. Before us, Ld. DR representing the revenue defended the order of Ld. AO and argued that the activities done by assessee, viz. Commissioner of BF/BC/S/T, Suvidha recharge receipt, CSC fee, SBI Kiosk, Idea Recharge receipt, VLE revenue support, MP Online & SBI kiosk are in the nature of business/commercial activities done for consideration and cannot fall within the ambit of “charitable purpose”, due to proviso to section 2(15). Ld. DR submitted that the assessee has done these activities only to augment its revenue and there is no public charity involved therein. Ld. DR submitted that it is for the assessee to prove that these activities have character of “charitable purpose” but since the assessee has miserably failed to do so, the Ld. AO has, taking into account the nature of activities, rightly concluded that they are not for “charitable purpose”. Ld. DR prayed to uphold the conclusion taken by Ld. AO.

8. Per contra, the Ld. AR representing the assessee strongly opposed the submissions of Ld. DR. The Ld. AR straightaway carried us to the latest judgement of Hon’ble Supreme Court in **Assistant Commissioner of Income-tax (Exemptions) Vs. Ahmedabad Urban Development Authority, Civil Appeal No. 21762 of 2017 dated 19.10.2022**. This judgement runs over 149 pages and gives a very deep and detailed analysis of the provisions of Income-tax Act, 1961 with regard to “Charitable purpose u/s 2(15)”, more particularly the activities of “business, trade, commerce” in different situations and by different entities. Ld. AR submitted that this latest decision is clearly in favour of assessee and therefore he has filed a detailed “Written-Submission” running over 16 Pages and a full copy of judgement. Ld. DR drew our attention and also reiterated line by line, his submissions in the said Written-

Submission which includes a detailed explanation on the impugned activities undertaken by assessee vis-à-vis the analysis of the same done by Ld. CIT(A) in various paragraphs of the appeal-order and a contemporary analysis of the relevant observations of Hon'ble Supreme Court. We extract below the relevant portion of Written-Submission filed by Ld. AR:

***“3. Applicability of the Judgment of the Supreme Court to the facts of the case of the assessee***

*In the case of the assessee:*

*Following activities are considered as business activity of the assessee by the AO;*

***a. Purchase/sale of books and course material***

*Purchase and sale of books have been made with an object for supplying it to the students of the assessee society at a concessional rate which are incidental to the core activity of providing education and is not covered by the proviso to section 2(15).*

***b. Rendering services of SBI Kiosk & MP Online***

*As regards SBI Kiosk and M.P. Online these services have been rendered under the E-Governance Plan of the Government*

*What is CSC?*

*The Government of India realizing the need of spreading information technology to the village formulated an E-Governance plan under which the Common Service Centre's (CSC) were to be established. The CSC is meant to be a low cost vehicle for Government institutions to deliver e-Governance services to the rural population of India in Simple, Moral, Accountable. Responsive and Transparent" (SMART) and most cost-effective manner. Government (both Central and State) provide various services to its citizens. However due to various constrains of the Government such services were restricted to big small cities and big towns only. Accordingly, the services provided were available to the villagers only after approaching the nearby towns which was very costly and time-consuming activity and which in ten forced the villagers not to use the services. The Government of India with an object of taking the services to the villagers preferably at least at the Panchayat level formulated the National e-Governance plan (NeGP). As a part of this plan the Central government through the concerned State Government envisaged a plan to set up Common Service Centres (CSC). The plan of the government also envisaged that the services so provided should be in a transparent manner and cost effective. The government also appreciated that opening up of such centres at village level may not be financially viable for any person to operate and hence the plan also provided financial support to such persons in the manner and to the extent prescribed in*

*the plan In order to make the CSC financially viable the plan provided that various services being provided by various agencies G to C (Government to Citizen), B to C (business to consumer services of all non-government services offered through CSC) be also provided through these centres*

*Submissions of the assessee are given here under:*

*It would be appreciated that the assessee was not carrying on any activity with the intention of earning income. AISECT society was having various objects which it was fulfilling through its network spread up till the village level. One of the main objects of the assessee society was to spread computer awareness and services that can be achieved by use of the information technology in rural India. The assessee society had been working on this object in an active manner since its inception. The E-Governance plans formulated by the government of India and the desired objects to be achieved were in total synchronization with the objects and activities of the assessee society. Accordingly the assessee joined the said program and was assigned the responsibility of SCA (Service Centre Agency). In the process of discharge of its role the assessee supported the government in opening 5011 such centers, most of which are situated in Blocks, Panchayats and villages, spread throughout the state of M.P, Chattisgarh& Punjab through appointment of village level entrepreneurs(VLE) who were rendering the services envisaged by the government in their respective villages in the manner envisaged by the government.*

*The CSC plan formulated by the government also required that the other non-government services which are required by the villagers be also provided through these centres to provide maximum services at the village level as also to make the service centre financially viable which in turn would ensure smooth functioning and continuity of the centre.*

*As part of this the assessee made an arrangement with State Bank of India to open its kiosks at village level. These kiosks were operated by persons generally residents of the respective locality, who would set up a centre having computer and internet connection. Through this facility all government services were rendered to the villagers at the rates fixed by the government for such services. In addition, as per the arrangement with SBI direct link to the bank servers were provided to the centres who were having their own separate kiosk ID and Pass word. The villager would approach the centre for using any banking service including opening of account, deposit of cash/cheque in the account, withdrawals from the account etc. The villager would approach the centre and request for withdrawal. The centre would after completing the required verification, give cash to the villager and would directly debit the account of the customers in the banks record through the bank's portal. Similarly, cash/cheque would be received and deposited. The net cash received/paid by the Centre is deposited in the bank account with SBI the next day. Similarly in case of excess cash payment by the centre, such excess paid is transferred to the account of the centre the next day.*

**No charges are paid by the user of these services.** *The service charges are paid by the bank at rates fixed by them for various activities.*

*It may be mentioned that as per the scheme framed by Reserve Bank of India such services could only be rendered by an NGO, cooperative society or section 25 company. The rates of services were fixed by the Government/SBI and obviously the rates so fixed were most cost effective and did not have any element of excess profit.*

*Reference may also be made to the order of the CIT(A):*

*The details of the amounts received and payments made by the assessee on activities covered by CSC project are also submitted earlier and is placed on records. It would be appreciated that the assessee has incurred total expenses of Rs. 9,98,49,638/- as against receipt of Rs 9,37,56,268/-,thus incurring an excess expenditure of Rs. 60,93,370/-on the said project. It may be mentioned that the payments made include Rs. 3,38,90,715/- which has been made to the VLE to compensate the losses suffered by them and to provide sustainability to the Village Level Entrepreneur (VLE) from which it can be easily inferred that the assessee was not carrying on any activity to earn profit.*

**Para 5.3 (iv);** *The applicant is carrying on these activities in accordance with the scheme of government which is primarily aimed at development of usage of government and other services through computers in rural India.*

**Para 5.3 (v);** *The guidelines issued by the Reserve Bank of India specifies that these services can be rendered only through NGOs, societies etc. which itself signifies that the activities are expected to be done without any profit motive meaning thereby the institutions incorporated for the purpose of charitable activities and not for profit making have been selected by the Government. The appellants were one of them.*

**Para 5.3 (vi);** *The amount received by the appellant for reimbursement of losses during the year was Rs.3,38,90,715/- (after TDS) against which the remittance made for reimbursement of losses was Rs.3,38,90,715/-. In any business, generally there cannot be any reimbursement of losses.*

**Para 5.3 (vii);** *The charges were paid by the government / sponsoring agency to compensate for the expenses incurred on providing such service and that too was also at rates fixed by the sponsoring agency which was generally the government of India/State Government. The Appellant had no say in the charges so fixed.*

**Para 5.3 (viii);** *Further the appellant is not carrying on the activities with an object of earning any income. This fact is obvious from the fact that the appellant has not earned any income from such activities during this year or in any of the years in the past, the details of which were furnished before the AO during the course of assessment proceedings and no deficiencies have been found in the same.*

**Para 5.3 (x):** *Such activities are being done since last over 6 years by the appellant and there is no change in the same during the year and the same has been accepted by the Department. The AO has neither made any allegation that the activities of the appellant done in past and nor have not bought any material on records to substantiate such stand. These activities in the past have been held as non business activities in assessment completed us 143(3) and exemption w/s 11 of the Act has been provided to the appellant.*

**Para 5.4;** *Considering the facts that the activities carried out by the appellant were planned by the Government of India / RBI in public interest basically for development of rural India and which could have been undertaken only NGO and like entities, which envisaged that the activities are not financially viable and hence provided for subsidizing of losses, and the appellant did not have any profit motive as is also ascertained from the factual findings of the AO in the assessment orders made u/s 143(3) for A. Ys. 2011-12, 2015-16 & 2016-17 and the profitability statement submitted for these activities during the year. From the judgements of the Hon'ble Supreme Court / High Courts it is clear that the activities are not in the nature of trade commerce or business and consequently is not covered by the proviso to section 2(15) of the Act. In the preceding year and subsequent years also the same activities have not been treated as business in the course of assessment proceedings. Therefore, on the same set of facts, different stand is not justifiable in view of various judicial pronouncements.*

**Para 5.6.1;** *Details of the CSC Scheme was verified by me also for the site of the Ministry of Electronics and Information Technology and the information available is reproduced herein below:*

CSC Scheme

Common Services Centres

*The CSC is a strategic cornerstone of the National e-Governance Plan (NeGP), approved by Government in May 2006. As part of its commitment in the National Common Minimum Programme to introduce e-governance on a massive scale.*

*The CSC's would provide high quality and cost-effective video, voice and data and content and services, in the areas of e-governance, education, health, telemedicine, entertainment as well as other private services.*

*A highlight of the CSCs is that it will offer web-enabled e-governance services in rural areas, including application forms, certificate, and utility payments such as electricity, telephone and water bills. In addition to the universe of G2C services, the CSC Guidelines envisage a wide variety of content and services that could be offered as listed below:*

*Agriculture Services (Agriculture, Horticulture, Sericulture, Animal Husbandry, Fisheries, Veterinary)*

*Education & Training Services (School, College, Vocational Education, Employment etc.)*

*Health Services (Telemedicine, Health Check-ups. Medicines)*

*Rural Banking & Insurance Services (Micro-credit, Loans, Insurance)*

*Entertainment Services (Movies, Television)*

*Utility Services (Bill Payments, Online bookings)*

*Commercial Services (DTP, Printing, Internet, Browsing, Village level BPO)*

*The Scheme creates a conducive environment for the private sector and NGOs to play an active role in implementation of the CSC Scheme, thereby becoming a partner of the government in development of rural India. The PPP model of the CSC scheme envisages a 3-tier structure consisting of the CSC operator (called Village Level Entrepreneur or VLE); the Service Centre Agency (SCA), that will be responsible for a division of 500-1000 CSCs; and a State Designated Agency (SDA) identified by the State Government responsible for managing the implementation in the entire State".*

*On Going through the scheme of the Ministry it is seen that the activity envisaged that the NGO should play an active role in implementation of the CSC scheme, thereby becoming a partner of the government in development of rural India.*

**Para 5.6.2:** *It is further seen that the appellant has been acting as Business correspondent of State Bank of India. The CSC Scheme framed by the government provides provision of providing Rural Banking Services under the Plan. Consequent to this the Reserve Bank of India (RBI) with an objective of ensuring greater financial inclusion and increasing the outreach of the banking in rural areas, have framed a policy for spread of banking in rural area through use of Business facilitator and correspondent. The opening para of the relevant circular of RBI (DBO D.No. BL.BC 58/22.01.001/2005-2006 Dated 25.01.2006) states that "with an objective of ensuring greater financial inclusion and increasing the outreach of the banking sector, it has been decided in public interest to enable banks to use the services of Non Government Organisation, Self Helps Groups (NGO / SHG). Micro finance institution and other civil society organization (CSO) as intermediaries in providing financial and banking service through the use of Business facilitator & correspondent models".*

*Thus as per the circular of RBI it is observed that the policy was made in public interest as was to be implemented through NGO, and the appellant being an NGO was entrusted the task for implementation of the activity.*

**C. Receipt of income from Commissioner of BF/BC/BT, Punjab CSC, Suvidha & Idea Recharge:**

As regards receipts from Commissioner of BF/BC/ST, receipts under Punjab CSC, Suvidha Recharge and Idea Recharge it may be mentioned that all these services have been rendered under the CSC project and is duly covered in para b above.

It may be mentioned that in the case of the assessee, the services were provided by the VLE and the scheme in Madhya Pradesh envisaged providing revenue support to the VLE to sustain viability which would not be generally done in any business activity. Furthermore, the revenue was received by the assessee from the Government of Madhya Pradesh through M.P.S.E.D.C the nodal agency of the government. The basic objective of the payee in this case was to spread computer literacy and make online availability of the various services provided by the government and used by the general public. The payee did not have any intention to earn income out of the activity in immediate or long term future. It may also be mentioned that the assessee society received Rs. 3,45,82,668/- (the amount actually received by the assessee after deduction of TDS @ 2.0 % was Rs. 3,38,90,715/-) as revenue support which was given with an intention to subsidize the loss as against which Rs.3,38,90,715/-, was paid by the assessee to VLE for revenue support.

Keeping in view the well settled legal position as enumerated above. It may be summarized that

a) The assessee is carrying on these activities in accordance with the scheme of government which is primarily aimed at development of usage of government and other services through computers in rural India.

b) The guidelines issued by the Reserve Bank of India specifies that these services can be rendered only through NGO's which itself signifies that the activities are expected to be done without any profit motive.

c) The amount received by the assessee for reimbursement of losses during the year was Rs.3,38,90,715/- (after TDS) against which the remittance made for reimbursement of losses was Rs.3,38,90,715/-. In any business, generally there cannot be any reimbursement of losses.

d) No cess fees or other consideration has been received from the users of the services. The charges were paid by the government/ sponsoring agency to compensate for the expenses incurred on providing such service and that too was also at rates fixed by the sponsoring agency which was generally the government of India/state. The assessee had no say in the charges so fixed.

e) Further the assessee is not carrying on the activities with an object of earning any income. This fact is obvious from the fact that the assessee has not earned

*any income from such activities during this year or in any of the years in the past, the details of which were furnished before the AO during the course of assessment proceedings and no deficiencies have been found in the same*

*The bylaws of the assessee society do not permit any distribution of the surplus to any person in any manner.*

*All the above submissions were made before the AO during assessment proceedings and the correctness of the same is not disputed. The CIT(A) also have accepted these facts.*

*Accordingly, as concluded by the Hon'ble Supreme Court in Para 253 - A.3 of the judgment that "Generally, the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost-basis or nominally above cost, be considered to be "trade, commerce, or business" or any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of "cess, or fee, or any other consideration" towards "trade, commerce or business"*

*The above view is again reiterated in Para 253-H of the order in which the court held that*

#### ***"H. Application of interpretation***

***H.*** *At the cost of repetition, it may be noted that the conclusions arrived at by way of this judgment, neither precludes any of the assessees (whether statutory, or non-statutory) advancing objects of general public utility, from claiming exemption, nor the taxing authorities from denying exemption, in the future, if the receipts of the relevant year exceed the quantitative limit. The assessing authorities must on a yearly basis, scrutinize the record to discern whether the nature of the assessee's activities amount to "trade, commerce or business" based on its receipts and income (i.e., whether the amounts charged are on cost-basis, or significantly higher). If it is found that they are in the nature of "trade, commerce or business", then it must be examined whether the quantified limit (as amended from time to time) in proviso to Section 2(15), has been breached, thus disentitling them to exemption.*

***In view of the above it is humbly submitted that the assessee is not carrying on any business activity and as such provisions of section 11 are 29applicable to the assessee Society and no tax can be collected by rejecting the claim of the assessee. Attention is drawn to para 206 to 211 of the judgment in respect of ERNET and NIXI where the facts are similar.***

#### **4. Other legal issue relevant to the case of the assessee.**

*ij. It may further be mentioned that these activities are being done since last over 6 years by the assessee as also in subsequent years and there is no change in the same as compared to the activities during the year and the same has been accepted by the Department in the past as well as in the future. The AO has not made any allegation that the activities of the assessee during the year are different from the activities of the assessee done in past. The Ld. AO has also not brought any material on records to substantiate such stand. These activities in the past have been held as non- business activities in assessments completed u/s 143(3) and exemption u/s 11 of the Act has been provided to the assessee. Copy of assessment order for A.Y. 2011-12 is placed at page 11 of paper book.*

*Similarly, the assessment for A.Y 2015-16 was subsequently completed us 143(3) and it was accepted that the activities under consideration are not in the nature of trade or commerce.*

*It is also a well settled position of law that in absence of any change in facts/circumstances a different view should not be taken. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court InRadhasoami Satsang Saomi Bagh v. Commissioner of Income Tax, [1992] 193 ITR 321 (SC) wherein the Supreme Court did not think it appropriate to allow the reconsideration of an issue for a subsequent assessment year if the same "fundamental aspect" permeates in different assessment years. In arriving at this conclusion, the Hon'ble Supreme Court referred to an interesting passage from Hoystead v. Commissioner of Taxation, 1926 AC 155 (PC) wherein it was said:*

*"Parties are not permitted to begin fresh litigation because of new views they may entertain of the law of the case, or new version which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle. Thirdly, the same principle, namely, that of setting to rest rights of litigants applies to the case where a point, fundamental to the decision taken or assumed by the plain and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."*

9. This way, the Ld. AR submitted that the activities of assessee cannot be said to be business, trade or commerce. Thereafter, Ld. AR also drew our attention to Para No. 206 to 211 of the aforesaid decision of Hon'ble Supreme Court where similar activities carried on by similar bodies have been analysed and the Hon'ble Supreme Court was pleased to hold them not in the

nature of business, trade or commerce. We reproduce below the relevant paras:

“(iv) **Non-statutory bodies – ERNET, NIXI and GSI India**

206. ERNET is a not for profit society, set up under the aegis of the Union Government. At one time, government functionaries, including the late President, APJ Abdul Kalam, were members, on account of their ex officio capacity. The objects of this assessee are to

“3.11. To advance the cause of computer communication in the country in all its aspects and dimensions with a view to provide capital nationwide development of the sector and technological and economic growth of the county.

3.1.2 To develop, design, setup and operate nationwide state of the art computer communication infrastructure with international connectivity directed towards research and development, advancement of high quality education, create and host content, express creative and academic potential via intranet and intranet peer to peer connectivity among educational and research institutions in the country and the world and make available the communication infrastructure to users in academic, research and development institutions, Govt organizations in line with national priorities.”

207. ERNET's networks are a mix of terrestrial and satellite-based wide-area network. It provides services through its 15 Points of Presence (PoPs) located across the country. All those are equipped to provide access to Intranet, Internet and Digital Library through trial leased circuits and radio links to the user institutions. The PoP at STPI Bengaluru provides Intranet and Internet access through Satellite. ERNET provides, services, namely, Network Access Services, Network Applications Services, Hosting Services, Operations Support Services und Domain Registration Services under srnet.in, ac.in, edu.in &res.in domains. Funded through government grants, its projects support educational networks and development of internet infrastructure innumeros other segments of society.

208. Having regard to the nature of ERNET's activities, it cannot be said that they are in the nature of trade, commerce or business, or service, towards trade, commerce or business. It has to receive fees, to reimburse its costs. The materials on record nowhere suggest that its receipts (in the nature of membership fee, connectivity charges, data transfer differential charges, and registration charges) are of such nature as to be called as fees or consideration towards business, trade or commerce, or service in relation to it. The functions ERNET performs are vital to the development of online educational and research platforms. For these reasons, it is held that the impugned judgment, which upheld the ITAT's order, does not call for interference.

209. The Revenue has appealed the decision of Delhi High Court in which the ational Internet Exchange of India (NIXI) Was held to be a GPU category charity.

*The materials on record show that NIXI Was established in 2003 under the aegis of the Ministry of Information Technology of the Union Government for the promotion and growth of internet services in India, to regulate the internet traffic act as an internet exchange and undertake ".in" domain name registration. Concededly, NIXI, is a not for profit, and is barred from undertaking any commercial or business activity. Its object is to promote the interests of internet service providers and internet consumers in India, improve quality of internet service, save foreign exchange, and carry-on domain name operations. It is bound by licensing conditions - which include the prohibition from altering ill memorandum, Without the prior consent of the Union Government. According to the submissions made on NIXI's behalf, it charges annual membership fee of Rs. 1000/- and registration of second and third level domain names at Rs.500/- and Rs.250/-. The finding of the ITAT and the High Court are that NIXI' s objects and functioning are by way of general public utility and thus it is a GPU category **charity.***

*210. Having regard to the findings on record and the materials placed by the parties, it is evident that NIXI carries on the essential - crucial purpose of promoting internet services and more importantly, regulating domain name registration which is extremely essential for internet users in India. A country's need to have a domestic internet exchange, rather than depend on an international one, cannot be overemphasized. The Union Government's object of setting up of internet exchange is part of its essential function as a government to regulate certain segment of the communication networks. In the absence of a single entity authorized to register "in" domain names, there is bound to be chaos or **confusion.***

*211. In view of the forgoing discussion, this court is of the opinion that the revenue's contention that NIXI does not merely carry on public purpose of regulatory activity but is involved in trade, commerce, or business or in providing service in relation thereto, cannot be accepted."*

10. With such submissions, Ld. AR strongly contended that the Ld. AO has wrongly apprehended / branded the impugned activities of assessee as business, trade or commerce but the Ld. CIT(A) has rightly reversed the action of Ld. AO. The Ld. AR prayed us to uphold the decision of Ld. CIT(A).

11. We have considered rival submissions of both sides. We have also perused the orders of the lower authorities; the Written-Submission of Ld. AR and the relevant paragraphs of the decision of Hon'ble Supreme Court referred to by Ld. AR as narrated above. After a careful consideration, we observe that the assessee is a society with no profit motive, engaged mainly in furtherance of education through University, Colleges, Schools, etc. The assessee's objectives also include publication of books; setting up centres to promote vocational education and training; arrange for extension of IT based services;

and participation in various projects and programmes of the Govt. in the area of technology, etc. We also observe that the assessee has received several awards, recognitions and appreciations from the Govt. and Govt. officials including the Hon'ble President of India for its activities. With regard to the alleged activities noted by Ld. AO, we observe that the Ld. CIT(A) has given clear findings that those activities done by assessee were part of the national objective of Govt. of India to spread Information Technology to the villages under E-Governance plan; even the assessee has also well-explained this aspect before us in the Written-Submission extracted above. We further note that the assessee has received several approvals/certificates/permissions from various governmental authorities which are placed at Page No. 95 to 115 of the Paper-Book. We further observe that the assessee has received fee / commission from those activities, to reimburse its costs and not to generate any profit during this year and even in past, which stands duly verified and accepted by the revenue-authorities in completed assessment of assessee for AY 2011-12 u/s 143(3), a copy of which is placed at Page No. 121 of the Paper-Book, para number 4 of the same is reproduced below:

***“4. The major activities of the assessee during the year have been running a school affiliated to M.P. Education Board and several colleges affiliated to various universities. In addition the assessee is also imparting education on various vocational courses and insurance and has also provided various services under the E-Governance project of the Government of India by assisting in establishment of CSC Centres in various rural places which has been done on no loss and no profit basis. All the activities of the assessee carried out during the year have been found to be genuine and in accordance with its objects. The assessee has not been found to have made any changes in its object since the grant of registration u/s 12AA of the act.”***

Thus, the case of assessee clearly fits in the decision of Hon'ble Supreme Court narrated above. Therefore, we are of the opinion that the Ld. AO's contention that the assessee does not carry on public purpose of charitable nature but it is involved in trade, commerce or business, cannot be accepted. Being so, we uphold the order of first-appeal passed by Ld. CIT(A) on this issue. The ground raised by revenue is, therefore, dismissed.

**Ground No. 2:**

12. In this ground, the revenue claims that the Ld. CIT(A) was not justified in treating the payment for data processing, books purchase, charges for use of centers and salary etc. to persons covered u/s 13(3) of the I.T Act as not excessive without considering the finding of the AO that such payments are made to provide benefits to the persons covered u/s 13(3) of the Act which violates the provision of section 13(1)(c) of the Act.

13. During assessment-proceeding, Ld. AO observed that the assessee has made following payments to the persons specified u/s 13(3):

Sl.	Paid to	Amount	Nature
1	AISEC Ltd.	80,67,513	Data processing
2	AISEC Ltd.	2,23,77,631	Book purchase
3	AISEC Ltd.	1,88,37,802	Fee paid for course material
4	AISEC Ltd.	14,37,36,336	Charges towards use of infra & facilities for Centres, IGNOU, Vocational courses and Exams
5	Siddhartha Chaturvedi (Secretary)	9,60,685	Salary as National Co-ordinator
6	Aditi Chaturvedi (Member)	7,53,000	Salary as State Co-ordinator
7	Amitabh Saxena (Member)	10,80,000	Salary as University Pro VC
8	Yatin Sharma(Member)	4,98,000	Salary Data Base Incharge

14. During first-appeal, Ld. CIT(A) deleted the entire addition by observing and holding as under:

**Ground No. 3**

3. This ground is as under:

*“The appellant has challenged the finding of the AO that the appellant has made any excessive or unreasonable payments to any of the concerns/person covered by the provisions of section 13(3).”*

*The AO had observed that the appellant has undertaken various transactions with its associate concerns which have been undertaken with an object of diverting the income of the appellant society to its related parties.*

*The appellant submitted that the Ld. AO has held that the appellant had purchased /sold books and had received /paid other sums from/to one of the associate concerns M/s AISECT Ltd and made conflicting observations in the assessment order as detailed below:*

*i. The books are purchased/ sold by the appellant through AISECT Ltd, and the reason for not selling the books directly to students is not explained and this has been done with an object to enable the associate concern to earn income.*

*ii. The appellant has not called for any tenders or quotations from other parties for services which have been availed through associate concerns and the payments are made with an object to enable the associate concern to earn income.*

***iii. On verification of books it is observed that the appellant is mis-utilising the exemption u/s 11 and is showing the income of associate concerns as income of the appellant society and is claimed as exempted income.***

*The appellant further submitted that it would be observed that in Para i & Para ii above the AO has alleged that the appellant society has diverted its income in the favour of an associated company and in Para iii it is alleged that the income of that company has been diverted to the appellant society. Thus, all the statements of the Ld. AO are vague, unsubstantiated and contradictory to each other and hence are required to be ignored. It is submitted that during the course of assessment proceedings it was explained that the appellant is a university which has off loaded its non core activities to AISECT Ltd which has a long experience of supplying books to the students. The relevant submissions made before the Ld. AO during the course of assessment proceedings have also been submitted by the appellant during appellate proceedings.*

From the submissions made before the Ld. AO it may be observed that :

- a. The activities were undertaken through AISECT Ltd as it was cost effective for the society resulting in substantial saving in the cost. No shortcoming or deficiency is found by the AO in the explanations furnished by the appellant.
- b. The appellant has obtained quotations from various suppliers for the services availed from AISECT Ltd and had availed the services on the lowest rates. The comparative charts and quotations were submitted before the AO as would be evident from the written submissions.
- c. The AO had not brought on record any material to suggest that the appellant has made any excessive payment to the said company. **Rather he has mentioned that the appellant has mis-utilised the exemption and have shown income of the associate concerns as its own income, as the income of the appellant is exempt. This clearly establishes that the Ld. AO was of the opinion that the appellant has diverted the income of the company to the appellant society.** Thus, provisions of section 13 have no applicability. The AO have however failed to bring on record any instance where or the manner in which the appellant has transferred the income of AISECT Ltd to itself.
- d. Further the AO has neither rejected the books of accounts, nor have brought any instance of the appellant having made any excessive payment to any of the associate concerns and have accepted the book results by not making any disallowance of expenses claimed .

The appellant submitted that under the circumstances, it is requested that it be held that the appellant has not made any payment in violation of the provisions of section 13.

I have duly considered the submissions made by the Ld. AR along with details/material brought on record before me. It is observed that during the assessment proceedings the appellant submitted comparative charts of rate charged by the associate concern and quotations submitted by independent parties to justify the reasonableness of the payments made for Data Processing, Books Purchase and course material purchased. As regards other expenses, it is observed that the appellant had submitted that the facility of 991 affiliated centers (which provided the counseling, faculty, library, class rooms, computer and internet facility to the students) of that company were utilized by the students registered for the off line course. It is further observed that had the appellant maintained such centers independently it would have been required to incur an expense of app 118.92 crore (Rs.

1,00,000/- per month \*12 months\*991 centers) against which the actual payment made by the appellant was only 14.37 crore which is apprx. 12000/- per center per month. None of the information/ comparative quotations given by the appellant have been found to be false or non genuine by the Ld. A.O. It is also seen that the though the Ld. AO has stated that the appellant has made excessive payments to the person covered by the provisions of section 13(3), he has not made any disallowance u/s 13(3) and have accepted the returned income. The Ld. AO has also not brought on record any material to substantiate that any of the payments made are excessive or unreasonable. Under the circumstances, it cannot be said that the appellant has made any excessive payments to any of its associate concern. It is further seen that the assessment order at places have stated that the appellant have diverted its income to associate concerns and on Page 5 of the order it is stated “**On** verification of books it is found that by making sale of books the provisions of section 12A have been intentionally violated and using the exemption available to the appellant u/s 11 & 12, the income of the associated concerns have been shown as tax free income of the appellant and tax have been evaded.”

Thus, it is found that in the same order the AO have alleged that the appellant had diverted its income to the associate concerns and have also alleged that the income of the associated concerns have been diverted to the appellant to enjoy the exemption. No material is brought on record to substantiate any of the allegations. The returned income has been accepted and no disallowances have been made and this also negates the theory of excessive payments. It is well settled principal of law that without establishing the excessive or unreasonableness of the expenses section 13(1)(C) of the Act cannot be applied. The case of the appellant is squarely covered by the judgment of the Hon'ble Gujarat High Court in the case of **Shree Kamdaar Education Trust V ITO** (153 DTR 49) wherein it is held that “Section 13(1)(c) of the Act does not prohibit normal transactions between the trust and the persons referred to in sub-section (3) of the Act. What is relevant is the use or application of any part of the income of the trust directly or indirectly for the benefits of any such person referred to in subsection (3). Mere payment of lease rent or interest on borrowed funds, without there being any element of such payments being excessive or unreasonable compared to the normal rates prevailing, would not fall within the mischief of section 13(1)(c)”

It is also seen that the assessment of the appellant for the assessment year 2011-12, 2015-16 and 2016-17 have been completed u/s 143(3) of the Act and no disallowance u/s

*13 have been made in any of the assessments though similar expenses are found to have been made in those years also. Considering the above facts, it is held that none of the payments made by the appellant to its associated concerns can be treated as excessive or unreasonable. **Therefore, this ground of appeal is allowed.***

15. Before us, Ld. DR strongly supported the action of Ld. AO. He argued that by making several payments, as mentioned in assessment-order, the assessee has extended benefit to the persons specified in section 13(3), therefore it is a clear violation of section 13(1)(c). He urged us to uphold the action of Ld. AO.

16. Per contra, Ld. AR supported the order passed by Ld. CIT(A). He submitted that the Ld. AO has made only general / superficial remarks in assessment-order without citing any basis or cogent reason and even those remarks are self-contradictory as analysed by Ld. CIT(A) in appellate-order reproduced above. Then, Ld. AR also submitted that the assessee made some of the similar payments in AY 2013-14 and 2014-15 too and when the matter travelled upto ITAT, Indore in assessee's own case in **ITA No. 952 & 953/Ind/2019 order dated 28.06.2021**, the Hon'ble Co-ordinate Bench accepted the issue in favour of assessee and dismissed the departmental grounds by holding thus:

*"19. During the course of assessment proceedings Ld. A.O came across such payments made to related parties or sister concerns. He need to first examine the information that whether such expenditure is excessive or unreasonable having regard to the fair market value of the books, for which payment is made or the purchase are made or the legitimate needs of the business of profession. Perusal of records shows that no such activity have been undertaken by the Ld. A.O before concluding that purchases from sister concerns are not genuine or they are made at an inflated price. Therefore making disallowance of purchase just because they are from sister concerns/ related parties, Memorandum of Undertaking not prepared and "why the job was entrusted to sister concerns" merely shows that the disallowance of purchase made by the Ld. A.O was on surmises and conjectures and without any support of any evidence. The disallowance sustained by Ld. CIT(A) at Rs.9,12,873/- is merely based on the addition made during assessments of preceding years. Had it been a legal issue this would have been different but being a factual matter such*

*disallowance on adhoc basis should be avoided unless and until supported by evidence and proper finding.*

*20. We therefore in the given facts and circumstances of the case are of the considered view that no disallowance of purchase from the sister concern at Rs.3,04,29,100/- was called for. The finding of Ld. Cit(A) is set aside to the extent of sustaining the disallowance of purchase at Rs.9,12,873/-. In the result total disallowance for Rs.3,04,29,100/- is deleted. Ground no.3 raised by the assessee is allowed and that of Ground no.3 raised by the Revenue is dismissed.”*

Ld. AR submitted that the present issue is well-covered by the aforesaid decision of ITAT, Indore and as such the departmental ground does not have any merit.

17. We have considered rival contentions put forward by both sides and also perused the material held on record. After a careful consideration, we observe that although the Ld. AO has made a list of payments made by assessee to specified persons u/s 13(3) and given his observations in assessment-order, but those observations are general and not supported by any cogent basis. Further, the Ld. AO has made self-contradictory observations, as found by Ld. CIT(A) in his order reproduced above, whereby even it is not clear as to how there was tax evasion. We also observe that a similar controversy raised by department earlier in AY 2013-14 and 2014-15 has already been decided by Hon'ble Co-ordinate Bench of ITAT in assessee's favour. We also observe from the appellate order of Ld. CIT(A) that the assessments of the assessee for AY 2011-12, 2015-16 and 2016-17 have also been completed u/s 143(3) of the Act and no disallowance u/s 13 have been made in any of the assessments qua similar payments. The Ld. DR is not able to contradict these aspects. Faced with this situation, we are of the view that the Ld. CIT(A) has rightly reversed the action of Ld. AO and allowed relief to the assessee in the matter. Thus, we are inclined to dismiss the ground raised by revenue and we do so.

**Ground No. 3:**

18. In this ground, the revenue claims that the Ld. CIT(A) was not justified

in allowing exemption u/s11 and 12 of the Act to the assessee deleting the addition of Rs 2,93,49,953/- being the amount of surplus and Rs. 7,43,91,421/- being the amount of development fees not included in the total receipts, ignoring the finding of the AO that the society has violated the provisions u/s2(15) as well as section 13(1)(c) of the Act and assessee is not eligible for exemption u/s11 and 12 of the Act.

19. It is obvious that the Ld. AO has denied the exemption u/s 11 for two-fold reasons, (i) the activities of assessee being in the nature of business or commercial activities, are not in the nature of “charitable purpose” u/s 2(15), and (ii) the assessee has extended benefit to the persons specified in section 13(3) violating section 13(1)(c). Since we have already rejected both of these reasonings given by Ld. AO in our detailed discussion in the foregoing paragraphs, there is no reason to deny exemption u/s 11 / 12 to the assessee. Needless to mention that the Ld. CIT(A) has also given the same line of reasoning on the identical ground raised before him in the first-appellate proceeding. Thus, finding no infirmity in the order of Ld. CIT(A), we uphold his view and conclude that the assessee is eligible for exemption u/s 11 / 12. This ground is, therefore, dismissed.

**Ground No. 4:**

20. This ground is general in nature and no specific pleading is made by either side. Hence, this does not require any separate adjudication by us.

**21. In the result, this appeal of revenue is dismissed.**

*Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 31/01/2023.*

Sd/-

Sd/-

(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated :31.01.2023

Patel/Sr. PS

*Copies to: (1) The appellant*  
*(2) The respondent*  
*(3) CIT*  
*(4) CIT(A)*  
*(5) Departmental Representative*  
*(6) Guard File*

*By order*

*Sr. Private Secretary*  
*Income Tax Appellate Tribunal*  
*Indore Bench, Indore*

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	