

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.162/Ind/2022
(Assessment Years:2016-17)

The Nimar Educational Society Harsud Road, Civil Lines East Nimar, Khandwa	Vs.	CIT(E) Bhopal
(Appellant / Assessee)		(Revenue)
PAN: AABTT 1409 K		
Assessee by	Shri S.N. Agrwal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	12.04.2023	
Date of Pronouncement	14.06.2023	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 30.03.2022 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for Assessment Year 2016-17. The assessee has raised following grounds of appeal:

“1.That on the facts and in the circumstances of Legal the case and in law, the Ld CIT(A) erred in holding that the assessee society is not registered under section 12A of the Income- tax Act, 1961 even when the said society is duly registered under section 12A of the Income Tax Act.

2. That on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in maintaining the addition of Rs. 1,51,15,325/- to the total income of the appellant on account of surplus of Rs.

57,18,672/- from M/s Arvind Kumar Nitin Kumar Montassory School and Rs. 93,96,653/- from M/s Poonamchand Gupta Vocational College without allowing the deduction of common/ indirect expenses as claimed by the appellant in the consolidated income and expenditure account.

3. That on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in maintaining the disallowance of proportionate interest on account of interest free loans given to M/s Gupta Trading Company without properly appreciating the facts of the case and submission made before him even when the said loan was given by the appellant out of interest free funds as available with the appellant.

4. That on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in disallowing the interest of Rs. 1,28,781/- as claimed by the appellant without properly appreciating the facts of the case.

5. The appellant reserves the right to add, alter and modify the grounds of appeal as taken by it.”

2. The assessee society filed its return of income on 26.03.2016 declaring total income at nil after claiming exemption u/s 11 & 12 as well as u/s 10(23C)(iiiad) of the Act. During the course of assessment the AO noted that the assessee is not registered u/s 12A nor was granted approval u/s 10(23C)(vi) of the Act but the assessee has claimed exemption. The AO accordingly denied the claim of exemption claimed by the assessee u/s 11 & 12 as well as u/s 10(23C)(iiiad) of the Act. Further the AO noted that the assessee has shown secured loan from bank on which interest was claimed whereas the assessee has also given loan to Gupta Trading Company (a relative concern) and sum of Rs.118,87,306/- is outstanding as on 31.03.2016 but no interest has been charged from the relative concern. Accordingly, the AO made proportionate disallowance on account of interest expenditure. The AO while passing the scrutiny assessment order u/s 143(3) of the Act dated 05.12.2018 assessed the total income of Rs.2,94,84,953/-. The assessee challenged the action of the AO before the Ld. CIT(A) who has granted part relief of exemption u/s 10(23C) (iiiad) of the Act in respect of four educational institutions where the gross receipt was less than of Rs.1 cr each. Aggrieved by the order of Ld. CIT(A) the assessee has filed the present appeal.

3. Ground no.1 is regarding denial of the benefit of section 11 & 12 for want of registration certificate u/s 12A of the Act. Ld. AR of the assessee has submitted that the assessee was granted registration u/s 12A vide registration No.Khandwa 1/83 dated 07.03.1983. The said registration no. has been duly available with the assessee and used in every receipt issued by the assessee society. He has pointed out that the certificate of registration granted u/s 12A of the Act was destroyed due to the incident of fire as occurred in the premises of the assessee and was not available with the assessee. However, the assessee requested the AO to collect the information directly from the office of the CIT(Exemption) for the year 1983. He has referred to the letter dated 14.09.1988 issued by the ACIT-Circle 2(2) Khandwa in respect of the approval u/s 80G and submitted that the approval u/s 80G cannot be granted in the absence of registration u/s 12A of the Act. He has also referred to the registration granted by the Pr. CIT u/s 12A(1)(ac)(i) of the Act in form No.10AC dated 24th September 2021 placed at page no.113 to 115 of the paper book. Ld. AR has referred to the sub-clause (i) to clause (ac) of section 12A and submitted that the registration under this sub-clause is granted only when the trust or institution is already registered u/s 12A. Thus, the department has accepted the fact that the assessee was already granted registration u/s 12A(1) and this fresh registration granted in form No.10AC corroborates the claim of the assessee that the assessee was already granted registration u/s 12A vide order dated 07.03.1983.

4. On the other hand, Ld. DR has submitted that the assessee has failed to produce the registration certificate before the AO in support of its claim of exemption u/s 11 & 12 and therefore, the AO has rightly denied the claim of exemption u/s 11 & 12 of the Act. He has further submitted that the onus is on the assessee to produce relevant details and registration certificate for claiming exemption u/s 11 & 12 of the Act. The assessee has admittedly not produced alleged registration certificate

granted u/s 12A and explained the reasons that the same was destroyed in fire incident. The assessee has not produced or given any details of the fire incident i.e. the date of incident, any report or FIR of the incident etc. In these facts and circumstances the claim of the assessee cannot be accepted. He has relied upon the order of the assessing officer.

5. We have considered the rival submission as well as relevant material on record. Since the assessee has not produced the registration certificate u/s 12A nor the assessee was granted approval u/s 10(23C(vi) of the Act therefore, the AO refused to entertain the claim of exemption u/s 11 & 12 as well as u/s 10(23C)(iiiad) of the Act. So far as the claim of exemption u/s 11 & 12 is concerned no details are discussed by the AO in the assessment order regarding the reason of non-availability of the certificate u/s 12A. Further the Ld. CIT(A) has not even adjudicated this issue while passing the impugned order. We find that the assessee has not even produced the details of registration granted u/s 12A before the AO and this claim of earlier registration u/s 12A was first time taken by the assessee before the Ld. CIT(A), however, the Ld. CIT(A) has not adjudicated this issue. We find that now the assessee has been granted registration u/s 12A(1)(ac)(i) of the Act in form no.10AC on 24.09.2021. The said order of registration is produced as under:

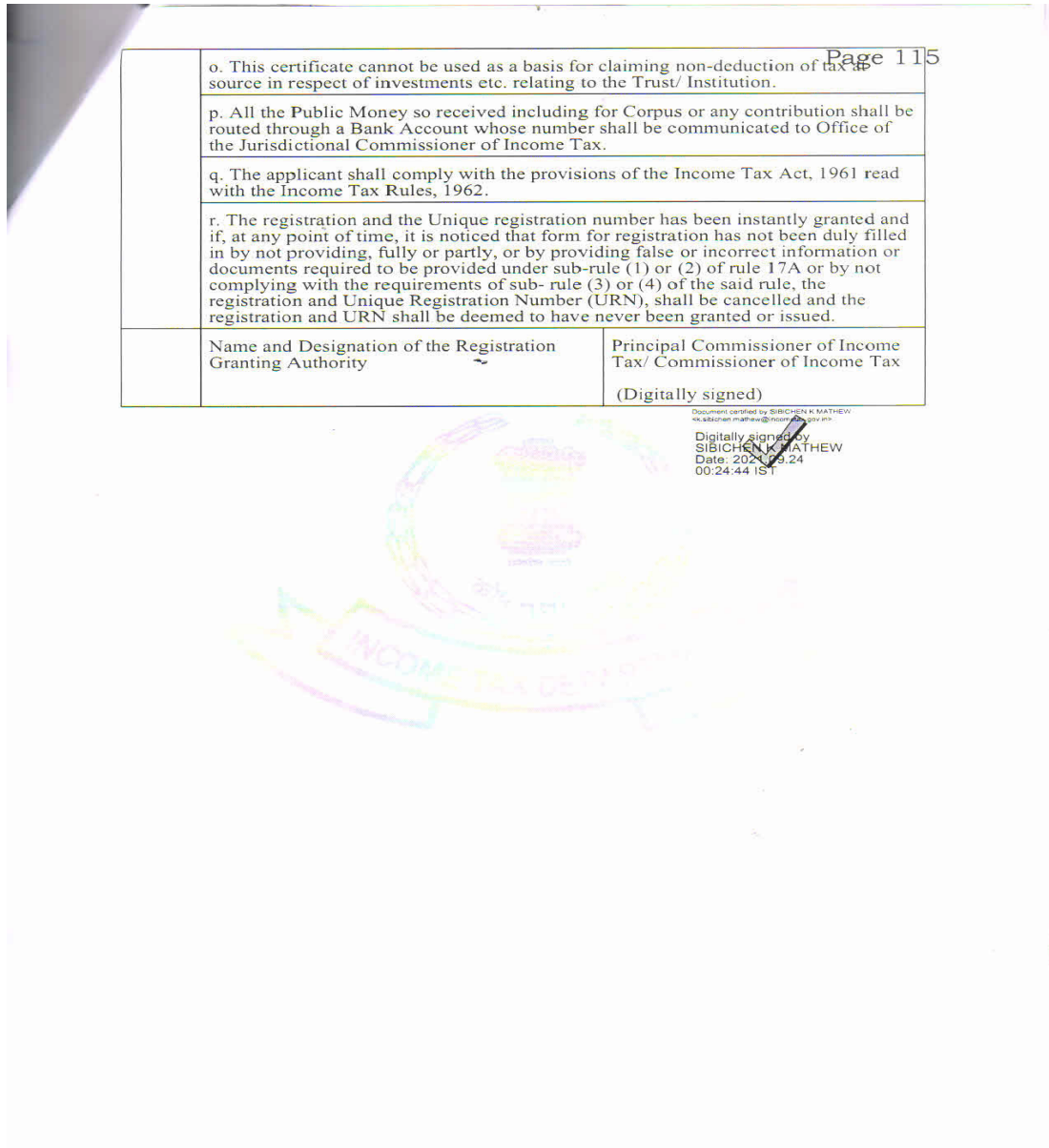
FORM NO. 10AC

(See rule 17A/11AA/2C)
Order for registration

1	PAN	AABTT1409K
2	Name	THE NIMAR EDUCATIONAL SOCIETY
2a	Address	
	Flat/Door/Building	0
	Name of premises/Building/Village	HARSUD ROAD
	Road/Street/Post Office	civil lines
	Area/Locality	EAST NIMAR
	Town/City/District	
	State	Madhya Pradesh
	Country	INDIA
	Pin Code/Zip Code	450001
3	Document Identification Number	AABTT1409KE2021901
4	Application Number	296876460150821
5	Unique Registration Number	AABTT1409KE20219
6	Section/sub-section/clause/sub-clause/proviso in which registration is being granted	01-Sub clause (i) of clause (ac) of sub -section (1) of section 12A
7	Date of registration	24-09-2021
8	Assessment year or years for which the trust or institution is registered	From AY 2022-23 to AY 2026-27
9	Order for registration:	
	a. After considering the application of the applicant and the material available on record, the applicant is hereby granted registration with effect from the assessment year mentioned at serial no 8 above subject to the conditions mentioned in row number 10.	
	b. The taxability, or otherwise, of the income of the applicant would be separately considered as per the provisions of the Income Tax Act, 1961.	
	c. This order is liable to be withdrawn by the prescribed authority if it is subsequently found that the activities of the applicant are not genuine or if they are not carried out in accordance with all or any of the conditions subject to which it is granted, if it is found that the applicant has obtained the registration by fraud or misrepresentation of facts or it is found that the assessee has violated any condition prescribed in the Income Tax Act, 1961.	
10	Conditions subject to which registration is being granted	
	The registration is granted subject to the following conditions:-	

Page 14

<p>a. As and when there is a move to amend or alter the objects/rules and regulations of the applicant, prior approval of the Commissioner of Income Tax shall be sought along with the draft of the amended deed and no such amendment shall be effected until and unless the approval is accorded.</p>
<p>b. In the event of dissolution, surplus and assets shall be given to an organization, which has similar objects and no part of the same will go directly or indirectly to anybody specified in section 13(3) of the Income Tax Act, 1961.</p>
<p>c. In case the trust/institution is converted into any form, merged into any other entity or dissolved in any previous year in terms of provisions of section 115TD, the applicant shall be liable to pay tax and interest in respect of accreted income within specified time as per provisions of section 115TD to 115TF of the Income Tax Act, 1961 unless the application for fresh registration under section 12AB for the said previous year is granted by the Commissioner.</p>
<p>d. The Trust/ Institution should quote the PAN in all its communications with the Department.</p>
<p>e. The registration u/s 12AB of the Income Tax Act, 1961 does not automatically confer any right on the donors to claim deduction u/s 80G.</p>
<p>f. Order u/s 12AB read with section 12A does not confer any right of exemption upon the applicant u/s 11 and 12 of Income Tax Act, 1961. Such exemption from taxation will be available only after the Assessing Officer is satisfied about the genuineness of the activities promised or claimed to be carried on in each Financial Year relevant to the Assessment Year and all the provisions of law acted upon. This will be further subject to provisions of section 2(15) of the Income Tax Act, 1961.</p>
<p>g. No change in terms of Trust Deed/ Memorandum of Association shall be effected without due procedure of law and its intimation shall be given immediately to Office of the Jurisdictional Commissioner of Income Tax. The registering authority reserves the right to consider whether any such alteration in objects would be consistent with the definition of "charitable purpose" under the Act and in conformity with the requirement of continuity of registration.</p>
<p>h. The Trust/ Society/ Non Profit Company shall maintain accounts regularly and shall get these accounts audited in accordance with the provisions of the section 12A(I)(b) of the Income Tax Act, 1961. Seperate accounts in respect of each activity as specified in Trust Deed/ Memorandum of Association shall be maintained. A copy of such account shall be submitted to the Assessing Officer. A public notice of the activities carried on/ to be carried on and the target group(s) (intended beneficiaries) shall be duly displayed at the Registered/ Designated Office of the Organisation.</p>
<p>i. The Trust/ Institution shall furnish a return of income every year within the time limit prescribed under the Income Tax Act, 1961.</p>
<p>j. Seperate accounts in respect of profits and gains of business incidental to attainment of objects shall be maintained in compliance to section 11(4A) of Income Tax Act, 1961.</p>
<p>k. The registered office or the principal place of activity of the applicant should not be transferred outside the jurisdiction of Jurisdictional Commissioner of Income Tax except with the prior approval.</p>
<p>l. No asset shall be transferred without the knowledge of Jurisdictional Commissioner of Income Tax to anyone, including to any Trust/ Society/ Non Profit Company etc.</p>
<p>m. The registration so granted is liable to be cancelled at any point of time if the registering authority is satisfied that activities of the Trust/ Institution/ Non Profit Company are not genuine or are not being carried out in accordance with the objects of the Trust/ Institution/ Non Profit Company.</p>
<p>n. If it is found later on that the registration has been obtained fraudulently by misrepresentation or suppression of any fact, the registration so granted is liable to be cancelled as per the provision u/s section 12AB(4) of the Act.</p>



6. From this order of registration dated 24.09.2021 it is manifest that the registration was granted u/s 12A(1)(ac)(i) of the Act which means that the registration is granted in the category where the assessee was already granted registration u/s 12A of the Act. Therefore, this subsequent registration granted by the competent authority corroborates the claim of the assessee that the assessee was already granted registration. Since this issue is neither adjudicated by the AO nor by the Ld. CIT(A) therefore, in the facts and circumstances of the case, we set aside this issue to the record of the AO for considering the claim of the assessee u/s 11 & 12 of

the Act as per law. Needless to say assessee be given an appropriate opportunity of hearing before passing the fresh order.

Ground No.2 is regarding additions sustained by the Ld. CIT(A) in respect of surplus received from M/s Arvind Kumar Nitin Kumar Montessori English School as well as M/s. Poonamchand Gupta Vocational College without allowing the deduction of expenses as claimed by the assessee. The Ld. AR of the assessee has submitted that the AO has assessed the gross receipts without allowing the expense. The AO has not disputed the genuineness of the various expenses as claimed by the assessee against the gross receipt. Therefore, the expenses claimed by the assessee in the consolidated profit and loss account is required to be allowed against the gross receipt while taxing income of the assessee so far as not eligible for deduction u/s 10(23C)(iiad) of the Act. The Ld. CIT(A) has though allowed the claim of exemption u/s 10(23C)(iiiad) in respect of four educational institutions where the gross receipt was less than Rs.1 cr. However, in respect of two educational institute M/s Arvind Kumar Nitin Kumar Montessori English School as well as M/s. Poonamchand Gupta Vocational College where the addition made by the AO of gross receipt has been confirmed.

7. Ld. AR has relied upon the decision of Hon'ble Delhi High Court in the case of *DCIT(E) vs. Petroleum Sports Promotion Board 362 ITR 235* and submitted that once the exemption u/s 11 is denied, the assessment has to be completed in accordance with provision of Income Tax Act and the expenditure incurred by the assessee for the purpose of its activities is to be allowed. He has also relied upon the decision of Coordinate Bench of this Tribunal in case of *DCIT(E) Bhopal vs. Shri Vaishnav Polytechnic College 186 ITD 378* and submitted that in case the assessee is not eligible for exemption u/s 10(23C)(iiiad) of the Act the income of the assessee has to be assessed as per the provision of the Act after allowing the expenditure incurred for the purpose of earning the said income. He has also relied upon the decision in the case of *Kund Kund Kahan Digamber Jain vs. ITO(E), Kota Chhawani dated 29.05.2019 ITANo.165 &*

others/JP/2019 The Ld. AR has submitted that the income of the assessee is required to be assessed after allowing corresponding expenditure incurred by the assessee as the genuineness of which is not disputed by the AO.

8. On the other hand, Ld. DR has relied upon the orders of authorities below.

9. We have considered the rival submissions as well as relevant material on record. It is settled proposition of law that even if the claim of exemption u/s 11 & 12 as well as section 10(23C(iiiad)) is denied the income of the institution or trust is required to be assessed as per the provision of the Act and the expenditure incurred wholly and exclusively for the purpose of earning income of the trust which is not eligible for exemption is required to be allowed while computing total income of the assessee. The Hon'ble Delhi High Court in case of *DCIT(E) vs. Petroleum Sports Promotion Board (supra)* has held as under:

“ 7. The learned standing counsel for the revenue submitted that the order of the Tribunal is untenable since it indirectly confers the benefit of [Section 11](#) upon the assessee. We are, however, not inclined to accept the contention. The CIT (Appeals) has actually not held so. He never examined the question whether the assessee was eligible for the exemption under [Section 11](#) since there was no ground before him, taken by the assessee, to that effect. All that the assessee claimed before the CIT (Appeals) was that the entire expenditure should be allowed as a deduction since it was incurred for the very objects for which the assessee was established in 1979 i.e. promotion of sports and, therefore, the assessing officer was not justified in restricting the allowance of expenditure to Rs.1,20,000/- only for all the three years. It was this claim that was accepted by the CIT (Appeals). The objection of the learned standing counsel for the revenue that since the grants were assessed under the residual head, there was no scope for allowing the expenditure incurred on the promotion of the sports activities is not acceptable since even under [Section 57\(iii\)](#), any expenditure incurred for the purpose of making or earning the income is allowable as a deduction. It is open to the income-tax authorities to deny the exemption under [Section 11](#) of the Act in the absence of registration under [Section 12A](#) and if they do so, then the assessment has to be completed in accordance with the provisions of the [Income Tax Act](#); if the income is assessed under the residual head full play must be allowed to [Section 57\(iii\)](#).

Though prima facie it would appear that the phraseology employed in Section 57(iii) is different from Section 37(1), it has been held by the Supreme Court in CIT vs. Rajendra Prasad Moody, 115 ITR 519 that Section 57(iii) must be construed broadly and the somewhat wider language of Section 37(i) should not affect the interpretation of Section 57(iii). The assessee in the present case was created in 1979 with the object of promoting sports; there was no other object and all its constituents were giving grants/ funds only for that purpose. In truth and reality the assessee was merely acting as a custodian or conduit to the constituents for the purpose of promoting sports activity inside and outside the country. The expenditure incurred by the assessee is only for the purpose of promoting the sports events and activities and in this respect there is no challenge to the finding of fact recorded by the Tribunal. If such expenditure is not allowed, it may amount to taxing the gross receipts of the assessee and not the income, which is not permissible under the income tax law. Moreover, upto the assessment year 2002-03 the assessee was exempt from tax under Section 10(23C); from the assessment year 2006-07 it has been granted registration or a charitable institution under Section 12A making it eligible for the exemption under Section 11.”

10. The Honble High Court has held that in case the exemption u/s 11 of the Income Tax Act is denied in the absence of registration u/s 12A the assessment has to be completed in accordance with provision of the Act and income is to be assessed u/s 56 of the Act after allowing the expenditure as per the section 57(iii) of the Act. Therefore, the expenditure incurred by the assessee only for the purpose of activities are to be allowed. The Coordinate Bench of this tribunal in case of *DCIT(E) Bhopal vs. Shri Vaishnav Polytechnic College (supra)* has considered this issue as under:

“10. We will first take up the second issue raised by the revenue regarding the allowability of the expenses claimed in the return of income. We find that the assessee filed its return of income on 14.8.2014 showing gross total income at Rs.5,98,24,898/- and claiming expenditure of Rs.7,27,11,645/- as an amount applied to charitable or religious purposes in India during the previous year. The net income for the year is a loss of Rs.1,28,86,747/-. The ITA No.469/Ind/2018 Shri Vaishnav Polytechnic College return was processed u/s 143(1) of the Act and a communication was sent to the assessee denying the claim of expenses of Rs.7,27,11,645/- on the ground that the assessee is not registered u/s 12A of the Act and

thus the amount applied to charitable or religious purposes are disallowed. Against this intimation assessee filed rectification applications u/s 154 of the Act which were rejected and assessee also tried to file revised return of income within the statutory time limit provided in the Act but the same could not be uploaded due to technical error. It was also brought to our notice that in the return form there is no specific column to claim the exemption u/s 10(23C)(iiiab) of the Act. Assessee's case was not selected for scrutiny u/s 143(3) of the Act. Books of accounts and expenditure details were never called for examination.

There is no observation of the revenue authorities at any stage of the proceedings to show that the expenditure claimed by the assessee were not genuine. It is also not disputed that the books of accounts of the assessee were audited and major portion of the grant is received from Madhya Pradesh Government and the Chairman of the governing body of the society is Collector, District, ITA No.469/Ind/2018 Shri Vaishnav Polytechnic College Indore. As provided in the bye laws funds received by the society are to be deposited in any such bank or invested in such manner as approved by the State Government and the fund to be applied only towards meeting the expenses of the society. All these facts are sufficient enough to show that the assessee's claim of expenses of Rs. 7,27,11,645/- has not been found to be bogus or excessive at any stage and looking to the constitution of governing body and the control of the State Government for realizing and spending of funds prime facie no doubt can be raised for the genuineness of the expenses incurred. Even for a while it is presumed that the assessee is not eligible for exemption u/s 10(23C)(iiiab) of the Act then also in view of the judgment of Hon'ble High Court of Delhi in the case of Petroleum Sports Promotion Board (supra) if the income is assessed under the residual head as the A.O denied exemption u/s 11 of the Act full play must be allowed to [Section 57\(iii\)](#) of the Act towards any expenditure incurred for the purpose of making or earning income.”

11. The Tribunal following the judgment of Hon'ble Delhi High Court in the case of *DCIT(E) vs. Petroleum Sports Promotion Board (supra)* held that in case the assessee is denied the exemption u/s 11 or u/s 10(23C)(iiiad) of the Act the income of the assessee is required to be assessed after allowing the expenditure incurred for the purpose of earning the said income. A similar view has been taken by the Jaipur Bench of the Tribunal in case of *Kund Kund Kahan Digamber Jain vs. ITO(E), (supra)*. Accordingly, we direct the AO to allow the expenditure incurred by the

assessee wholly and exclusively for the purpose of earning income which is not eligible for deduction u/s 11 & u/s 10(23C)(iiiad) of the Act.

12. Ground No.3 & 4 are regarding disallowance of proportionate interest on account of interest free loan given to M/s. Gupta Trading Company sister concern of the assessee.

13. We have heard the Ld. AR as well as Ld. DR and considered the relevant material on record. The Ld. AR has vehemently contended that the assessee was having its own interest free fund sufficient for giving the interest free advances, therefore, no disallowance of interest is called for on this ground. This issue arises only when the claim of exemption u/s 11 & 12 of the Act is denied in toto to the assessee otherwise it would be taken care of by section 13 of the Act. Since we have set aside the issue of exemption u/s 11 and 12 of the Act to the record of the AO for fresh adjudication, therefore this issue is also set aside to the record of the AO for fresh adjudication after deciding the issue of claim of exemption u/s 11 & 12 of the Act as well as after considering the relevant facts regarding the availability of non-interest bearing fund with the assessee for advance interest free loan to the sister concern. Needless to say the assessee shall be given an appropriate opportunity of hearing before passing the fresh order.

14. In the result, the appeal of assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 14.06.2023.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 14.06.2023

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