

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 Nos. 696 to 698/Ind/2017

Assessment Years: 2011-12, 2012-13 & 2014-15

Income-tax Officer (Exemption), Indore	<u>बनाम/</u> Vs.	Rishiraj Singh Memorial Education and Welfare Society, Village-Rewati, Behind Aurobindo Hospital, Sanwer Road, Indore
(Revenue / Appellant)		(Assessee / Respondent)
PAN: AAATR 6468 F		
Revenue by	Ms. Simran Bhullar, CIT DR	
Assessee by	Shri Pankaj Shah and Shri Soumya Bumb, ARs	
Date of Hearing	05.10.2023	
Date of Pronouncement	24.11.2023	

आदेश / O R D E R

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

Feeling aggrieved by appeal-orders dated 24.07.2017 & 10.08.2017, both passed by learned Commissioner of Income-Tax (Appeals)-I, Bhopal ["Ld. CIT(A)"], which in turn arise out of respective assessment-orders dated 28.03.2014, 16.03.2015 & 26.12.2016, passed by learned ACIT/DCIT-2(1), Bhopal ["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Years ["AY"] 2011-12, 2012-13 & A.Y.2014-15, the Revenue has filed these appeals. The facts and issues of all these appeals are identical, hence they were heard together and are being decided by this common order.

2. The assessee is a society registered by Registrar of Societies, engaged in running educational institutions. It was also registered u/s 12A of Income-tax Act, 1961 by Income-tax Department on 27.09.2004 vide Registration No. 21/2004-05 w.e.f. 01.04.2004. Although its registration u/s 12A was subsequently cancelled by order dated 23.04.2014 of Commissioner of Income-tax, Bhopal but the said order was challenged by assessee before ITAT, Indore Bench in appeal No. ITA No. 386/Ind/2014. The said appeal was decided by ITAT vide order dated 17.05.2016 wherein the aforesaid order dated 23.04.2014 of Commissioner of Income-tax, Bhopal was quashed and registration u/s 12A was restored back from the original date of granting. Thus, the assessee continues to hold the registration u/s 12A from Income-tax Department.

3. The assessee filed returns of AY 2011-12, 2012-13 and 2014-15, involved in present appeals, declaring total income at Rs. Nil after claiming exemption u/s 11 of the Act. Those returns were subjected to scrutiny assessments wherein the AO made additions by denying exemption u/s 11. Being aggrieved, the assessee went in first-appeal to CIT(A) and succeeded. Now, the revenue has come in these appeals assailing the orders of CIT(A).

4. The revenue has raised following grounds in these appeals:

I.T.A. No. 696/Ind/2017 – AY 2011-12:

(1) *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition on account of surplus as per audited Income & Expenditure a/c Rs. 3,12,08,910/- made by the AO and allowing the benefits of exemption u/s 11 of the Income-tax Act, 1961 to the assessee especially when excessive payments were made/ benefits were provided to the interested parties u/s 13(3) of the Act and the trust was being run on the commercial lines by sharing of receipts with the interested parties?*

I.T.A.No. 697/Ind/2017 – AY 2012-13:

(1) *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition on account of surplus as per audited Income & Expenditure a/c Rs. 3,27,43,730/- made by the AO*

and allowing the benefits of exemption u/s 11 of the Income-tax Act, 1961 to the assessee especially when excessive payments were made/ benefits were provided to the interested parties u/s 13(3) of the Act and the trust was being run on the commercial lines by sharing of receipts with the interested parties?

I.T.A. No. 698/Ind/2017 - AY 2014-15:

(1) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition on account of surplus as per audited Income & Expenditure a/c Rs. 2,23,54,720/- made by the AO and allowing the benefits of exemption u/s 11 of the Income-tax Act, 1961 to the assessee especially when excessive payments were made/ benefits were provided to the interested parties u/s 13(3) of the Act and the trust was being run on the commercial lines by sharing of receipts with the interested parties?

5. Learned Representatives of both sides made vehement contentions and arguments at length. We have heard them peacefully and considered the material held on record.

6. During hearing, it emerges that a search u/s 132 was conducted upon assessee on 23.07.2009 and in pursuance thereof, the assessments were framed/re-framed u/s 153A read with section 143(3) for AY 2004-05 to 2010-11. During search proceeding, various documents and material were found on the basis of which the authorities observed certain adverse features in the working of assessee-society. Accordingly, the AO denied charitable status to society and disallowed exemption u/s 11 while framing assessments of those years. Thereafter, while conducting scrutiny-assessments of subsequent AYs 2011-12, 2012-13 and 2014-15 as are involved in present appeals, the AO carried the same tune and disallowed exemption u/s 11. Precisely stated, the AO denied exemption on the footing of following adverse features:

- (i) Agreements were found during search suggesting that the surplus of assessee was being shared by various entities and the rights in the society were being purchased and sold by parties. Thus, the assessee-society runs educational institutions as business-entity for the purpose of earning and sharing profits and not as a charitable entity.
- (ii) Interest-free advances have been given to various entities under the same management in violation of section 13(1)(c)(ii) r.w.s. 13(2)(a) r.w.s. 13(3).
- (iii) Vehicles of society were being used by members of society for their personal purposes in violation of section 13(1)(c)(ii) r.w.s. 13(2)(b) r.w.s. 13(3).
- (iv) Assessee-society was generating huge surplus from its activities, as inferred by AO from analysis of financial statements of assessee, which proves that it was operating like a business venture on commercial lines in the guise of charitable activities.

7. During first-appeal, Ld. CIT(A), however, reversed the action of AO and allowed exemption to assessee. For an immediate reference, we extract below the relevant portion of order of CIT(A):

7. I have carefully considered the facts of the case, assessment order and the submissions filed by the appellant. This orders under appeal for the A.Y. 2011-12 & A.Y. 2012-13, have been solely based by the A.O, on the search assessments u/s 153 A r.w.s. 143(3) of the Act in the case of the appellant society for the A.Ys 2004-05 to A.Y. 2009 - 10 and assessment order u/s 143(3) for A.Y. 2010-11. The appellant filed appeal against the assessment order with the CIT (A) -1, Bhopal and the Ld. CIT (A) passed the appellate order on 12.08.2013 vide appeal no. IT-105 to 111/12-13. Against this order of the CIT (A), the appellant went to the Hon'ble ITAT and the Hon'ble ITAT, Indore passed the following orders:-

- Hon'ble ITAT order No.386/Ind/2014 dated 17/5/2016 regarding cancellation of registration u/s 12AA of the Income Tax Act.
- Hon'ble ITAT order IT(SS) No.288 to 291/Ind/2013 (Assessee) and IT(SS) Nos. 318 to 321/Ind/2013 dated 17/5/2016 regarding legality u/s 153A of the Income Tax Act for the assessment years 2004-05 to 2007-08.
- Hon'ble ITAT order No. 268 to 269, 595/Ind/2013 (Assessee) and IT(SS) Nos. 316 to 317, 635/Ind/2013 (Department) for the assessment years 2008-09 to 2010-11 dated 17/5/2016 against quantum order.

8. The appellant during the appeal proceedings has relied on the decision given by the Hon'ble ITAT, in the case of the appellant itself as per the above. To put the issues in perspective and to appreciate the facts of the case with regard to the decision of the Hon'ble ITAT in the case of the appellant itself vide the above mentioned orders, the issues have been tabulated as under:



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CIT (A)-1/BPL/IT-59/14-15 & 209/15-16

<i>As per AO order</i>			<i>As per Hon'ble ITAT orders</i>	
Observations or additions made by AO	For A.Y. 2010-11 (Search Assessment) Page /Para	For A.Y. 2011-12 & 2012-13 Page /Para	Decision of Hon'ble ITAT	Page /Para
<p>Assessee society runs the educational institutions as business entity for the purpose of earning and sharing profits and not as charitable organization. Agreements found during search on 23.7.2009 were implemented and it supports above view. Rights in the societies/trust running educational institutions are being purchased and sold. Hence, assessee is not eligible for deduction u/s 11/12 of the Act.</p>	<p>Page 18-53</p> <p>Para 5 to 5.8</p>	<p>Page 2-16</p> <p>Para 6-20</p>	<p>Appeal no. ITA 386/Ind/2014 and others dtd. 17.5.2016 (12A order)</p> <p>Appeal no. ITA 268, 269 & 595/Ind/2013 and others dtd. 17.5.2016 (Quantum order).</p> <p><u>Broad observations/findings of Hon'ble ITAT in both cases:</u></p> <ol style="list-style-type: none"> 1. Allegation of CIT and AO that the educational institutions are run by the assessee as partnership firms for sole purpose of earning and sharing profit is found wrong, baseless, unproved and without any corroborative evidence. 2. Receipts / surplus have been utilized wholly and exclusively towards objects of the institution and nothing adverse was found by AO/ CIT. 3. Sharing or siphoning of the receipts / surplus /money of assessee-trust /society by office bearers/ trustees was only possible by inflating, that too exorbitantly, the capital as well as revenue expenditure. But no such evidence was brought by AO and no such allegation was made by him. 4. Huge surplus shown by assessee on year to year basis shows bona fides of the assessee. In case of siphoning out, there was no need to 	<p>Order Page No. 1-88</p> <p>Order Page No. 49-56</p>



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<i>As per AO order</i>			<i>As per Hon'ble ITAT orders</i>	
Observations or additions made by AO	For A.Y. 2010-11 (Search Assessment) Page /Para	For A.Y. 2011-12 & 2012-13 Page /Para	Decision of Hon'ble ITAT	Page /Para
			<p>show surplus in each year.</p> <p>5. No evidence of profit sharing by trustees/members was found in search.</p> <p>6. No corroborative evidence of implementation of agreements was found in search or brought out by AO.</p> <p>7. Entire funds / property of the assessee is lying in its name and not in the name of trustees / members.</p> <p>8. No allegation or evidence regarding diversion of money from assessee to trustees / members was there by AO or CIT since inception of institution.</p> <p>9. There was no adverse report or comment on functioning of assessee by AICTE.</p> <p>10. <u>Assessee institution</u> in not party to the impugned agreements and hence no adverse view could be taken against assessee which is an independent identity from its trustees/members.</p> <p>11. In case of any misapplication of funds or mismanagement, action could lie against the person responsible but it can not be viewed against the assessee which is charitable organization.</p> <p>12. Regarding payment of Rs.15,83,87,434/- out of agreed amount of Rs. 17 crores, this payment was made through cheques to societies registered u/s 12A,</p>	



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<i>As per AO order</i>			<i>As per Hon'ble ITAT orders</i>	
Observations or additions made by AO	For A.Y. 2010-11 (Search Assessment) Page /Para	For A.Y. 2011-12 & 2012-13 Page /Para	Decision of Hon'ble ITAT	Page /Para
			<p>due to dispute among trustees /office bearers to continue to run the charitable entities. The rationale and circumstances behind this payment explained by the assessee were not controverted or disproved by Department.</p> <p>13. No iota of corroborative evidence was found in search or brought on record by AO/CIT to support their allegations of implementation of impugned agreements. For this purpose, it was incumbent upon AO/CIT to have conducted post search investigation/inquiry by summoning the concerned parties and to bring on record clinching evidence to prove their allegations but it was not done despite clear cut denial with regard to subject agreement by assessee and office bearer.</p> <p>14. Burden was very heavy on AO/CIT to conclusively prove by cogent evidence that subject agreement was in fact acted upon and that the trustees/members have shared surplus of the institution and so also to ensure that trustees/members are brought to tax for such shared profits/surplus. But, nothing of the sort was done by AO/CIT and the cancellation</p>	



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CIT (A)-1/BPL/IT-59/14-15 & 209/15-16

<i>As per AO order</i>			<i>As per Hon'ble ITAT orders</i>	
Observations or additions made by AO	For A.Y. 2010-11 (Search Assessment) Page /Para	For A.Y. 2011-12 & 2012-13 Page /Para	Decision of Hon'ble ITAT	Page /Para
			<p>was made only on the basis of presumption, conjectures and surmises only. Also, nothing was taxed in the hands of concerned trustees/members for such alleged shared profits.</p> <p>15. Assessee is a charitable organization and its activities were genuine and in accordance with its objects as required by the law and is eligible for exemption u/s 11 r.w. sec. 12&13.</p> <p>16. It is nowhere provided in the by-laws that at the time of dissolution of Trust/society the funds will vest in the family of the trustees/office-bearers.</p> <p>17. Subject agreements dealt with by AO/ CIT were not found incase of Jai Narayan Shiksha Samiti and in Hai Hai Kshetriya Education Society and hence no adverse analogy could be drawn in these cases of these agreements.</p>	
			<p><u>CONCLUSION OF HON'BLE ITAT</u></p> <p>In view of above, we hold that the subject payment of Rs.15,83,87,434/- out of agreed amount of Rs. 17,00,00,000/- as per a letter found during search cannot be treated as payment made for purchase and sale of society.</p> <p>Therefore, considering that all the</p>	<p>Quantum Order Page No. 54 (Bottom Para)</p> <p>Quantum Order Page</p>

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As per AO order			As per Hon'ble ITAT orders	
Observations or additions made by AO	For A.Y. 2010-11 (Search Assessment) Page /Para	For A.Y. 2011-12 & 2012-13 Page /Para	Decision of Hon'ble ITAT	Page /Para
			incomes as stated above have to be assessed as income from charitable activities, AO is directed to recalculate the surplus/deficit of all these years i.e. for A.Y. 2004-05 to 2010-11 granting exemption u/s 11, 12 & 13 in respect of all above five assessees (including assessee).	No. 56 (1 st Para)
Interest free advances have been made to various other societies/entities under the same management in violation of provisions of sec.13.	Page 54-58 Para 6 to 6.16	Page 16-18 Para 21-24	There is no bar in advancing interest free advances to such charitable trust / societies registered u/s 12A as per the decision of Hon'ble MP High Court in the case of CIT v/s RKDF Education Society in ITA no. 151/Ind/2010 dated 01/08/2013.	Order Page No. 63 (Top Para)
Vehicles being property/income of the Trust/Society have been used for the benefit of interested person as provided u/s 13(3) of the I.T. Act 1961, the assessee has not produced log book of vehicles. Therefore, Trust/Society is not entitled for any deduction u/s 11 of the I.T. Act 1961.	Page 60-61 Para 8 to 8.7	Page 18-20 Para 25-30	Colleges of the societies are situated almost 10-12 Kms from the main city area in far flung areas, regular connectivity with them is possible only with the help of various vehicles. Maintenance of log book is not practicable for use of vehicles of the assessee society. CIT(A) has not commented on the above justification given by the assessee. He rather rested his conclusion on the basis that no vehicle is owned by Chouksey family and they are man of repute requiring use of vehicle. We agree with the contentions of the assessee that the Trustees/office bearers were expected to commute on day-to-day basis to various Govt. agencies, banks and	Order Page No. 63-64 (Second Para)

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9. Grounds No. 1 to 6 are being taken up together. From the above table and the facts it is seen that all the additions made by the A.O are based on the previous search assessments in the case of the appellant and which have been dealt with in detail by the Hon'ble ITAT in its orders in the case of the appellant as quoted above.

10. Vide order No. 386/Ind/2014 dated 17/5/2016, the Hon'ble ITAT, Indore has decided the issue of cancellation of registration u/s 12AA of the I.T Act. The operative part of the paras is reproduced as under:-

"17. We, respectfully, following the decision of Hon'ble Delhi High Court are of the view that the assessee trust was granted registration u/s 12 A on 12.03.2007 w.e.f 13.1.1999 after due satisfaction that assessee trust was established for charitable purposes to impart education and since then there is no change in objects whatsoever, therefore, from the above decision and CBDT circular (supra), it is clear that there was no statutory enabling powers u/s 12 AA(3) of the Act with the CIT to cancel the registration for the period prior to assessment year 2011-12 as it could be cancelled only from the assessment year 2011-12 and subsequent years in respect of registration obtained under old section 1A and any order containing such cancellation like the present one is liable to be quashed. Similarly, CIT had no enabling power to cancel registration on the condition of violation of provisions of sec 13 prior to 1.10.2014 as unlawfully done by him and there was no power to promulgate such condition in the notice(infra) which came to be subsequently incorporated w.e.f 1.10.2014 only by way of insertion of sec 4 of sec 12AA of the I.T. Act. On these grounds, cancellation order of CIT is liable to be quashed."

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.....
"20. We, respectfully, following the above decisions, and on the basis of CBDT circular are of the view that in the present case, CIT had no powers to cancel the registration, hence we allow the appeal of the assessee and hold that CIT had unlawfully cancelled the registration. Hence we allow the appeal on this ground."

.....
.....
"From the above decisions and on the basis of plethora of decisions quoted earlier, it is clear that the CIT has exceeded in his jurisdiction, even on merits, in cancelling the registration. He ought to have understood that registration and exemption operate in different field and realm. Registration is not a guarantee for exemption which has to be tested qua each assessment year during assessment proceedings by A.O. In any year, in which the institution does not fulfill the stipulated conditions u/s 11 & 13,



exemption for that year will be denied by A.O in the assessment and suppose in the very next year, all the requisite conditions are fulfilled, the exemption shall be given by him. But the, the adversity of non- fulfilling the requisite conditions of sec 11 & 13 will not deny or withdraw the registration which is only a gateway for exemption. This is because, there is no provision in the Act to grant registration u/s 12 AA on yearly or periodical basis. This is once in a lifetime and is just to identify an institution as being entitled for availing exemption.

In view of above, in our opinion, it cannot be said that the activities of the assessee are not charitable or not genuine or are not being carried out in accordance with the objects of the assessee- trust/society. If there is any contravention of sec 11 & 13, it is to be considered by the A.O at the stage of assessment for computing the income and for that reason and also for improper acts, if any, of trustees/members, registration of the institution u/s 12 A cannot be cancelled."

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.....
"23. On consideration of facts, submission and in the light of the aforesaid judicial pronouncements and in view of the reasons discussed hereinabove, we hold that the assessee is a charitable organization and the activities of the assessee trust were genuine and in accordance with its objects as required by the law, and is eligible for exemption u/s 11 r.w.s 12 and 13 and the registration withdrawn by the CIT was not as per the law. The allegation of CIT that the educational institutions are run by the institution as partnership firms for the sole purpose of earning and sharing profits, such allegation is not justified, inter-alia, being without any corroborative evidence. Thus, we allow all the grounds of the appeal except additional ground of the assessee. The registration u/s 12 A is restored back from the date of granting."

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.....
"32. So far as the ITA Nos. 387, 388, 390 & 386/Ind/2014 in cases of Hai Hay Kshetriya Education Society, Jai Narain Shiksha Samiti, Rishiraj Memorial Education & Welfare Society & Rishiraj Singh Memorial Welfare Society are concerned, both the parties submitted that grounds, facts & circumstances of these appeals are identical to that of H.K. Kalchuri Education Trust, decided above. Therefore, our finding given in the case of H.K. Kalchuri Education Trust will prevail in the cases of these four assessee societies too and these societies are also held to be charitable organizations eligible for exemption u/s 11 r.w.s. 12 & 13. The registration of these four societies as cancelled by the CIT is also held as unlawful and is restored back from the date of granting. Our above findings are without prejudice to and independent of our finding that the subject agreements dealt with by the CIT/Assessing Officer were not found in the case of Jai Narayan Shiksha Samiti (ITA No. 388/Ind/2014) and in Hai Hay Kshetriya Education Society (ITA No.



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387/Ind/2014) and hence, no adverse analogy could be drawn in these case of these agreements. By following our order in the case of H.K. Kalchuri Education Trust, we allow grounds of these four assessee's appeals also except additional ground in terms as indicated in the order of H.K. Kalchuri Education Trust."

11. Therefore, the Hon'ble ITAT in its orders have restored the registration of the appellat trust from the date of granting of registration and quashed the assessment orders from the assessment years 2004-05 to 2007-08 in the case of the appellat trust vide its order dated 17.05.2016 and also held them to be charitable organizations eligible for exemption u/s 11 r.w.s. 12 & 13. Therefore respectfully following the order of the Hon'ble ITAT, and as the facts of these two A.Ys in appeal are identical to the facts decided by the Hon'ble ITAT in the above order, in the case of the appellat, these grounds of appeal are allowed and the appellat is eligible for exemption u/s 11 r.w.s. 12 & 13.

8. Learned Representatives of both sides made a participative analysis of the order of CIT(A), as extracted above, and agreed that the CIT(A) has followed the findings/conclusions/views taken by ITAT in assessee's own cases in earlier years. It is further agreed that all of issues raised by Ld. AO for denial of exemption u/s 11 in current years are exactly same as had been resolved by ITAT in those earlier years in assessee's favour. In short, the CIT(A) has allowed exemption to assessee by following earlier orders of ITAT in assessee's own case. Faced with this situation, we hardly need to delve into those issues which are settled by ITAT; we must straightaway dismiss these appeals of revenue as a matter of consistency.

9. However, during the course of pleadings by parties, we found that one of the issues raised by AO for denial of exemption to assessee is such that the assessee-society has given interest-free loans to following entities in violation of section 13(1)(c)(ii) r.w.s. 13(2)(a) r.w.s. 13(3):

AY 2011-12:

S.No.	Name of the society	Amount outstanding as on 31.03.2011
1.	Chouksey Yadav Pichhra Varg Education & Welfare Society	25,00,000/-
2.	Dattatreya Enterprises	25,55,091/-
3.	Guru Govind Singh Education Welfare Society	35,00,000/-
4.	Rishiraj Memorial Education and Welfare Society	3,36,84,278/-
	H K Kalchuri Education Society	2,00,00,000/-

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5.	Shivam Builders	5,00,000/-
6.	CGS Dental College (Run by Guru Govind Singh Education Welfare Society)	11,416/-
7.	J.K. Hospital & Research Centre (Run by H.K. Kalchuri Education Trust)	64,00,000/-
8.	LNCT, Indore (run by H.K. Kalchuri Education Trust)	2,87,89,156/-
9.	State Academy of Technology (run by Chouksey Yadav Pichhra Varg Education & Welfare Society)	75,00,000/-

AY 2012-13:

S.No.	Name of the society	Amount (as on 31.03.2012)
1.	Chouksey Yadav Pichhra Varg Education & Welfare Society	25,00,000/-
2.	Rishiraj Singh Memorial & Welfare Society	3,36,84,278/-
3.	Guru Govind Singh Education Welfare Society	35,00,000/-
4.	LNCT, Gwalior run by Late Shri C.L. Chouksey Shri Nathu Singh Yadav Smiriti Education & Welfare Society	3,92,00,000/-
5.	H.K. Kalchuri Education Society	2,74,03,000/-

AY 2014-15:

S.No.	Name of the society	Amount (as on 31.03.2014)
1.	Guru G.S. Education Welfare Society	35,00,000/-
2.	Rishiraj Singh Memorial & Welfare Society	3,36,84,278/-
3.	H.K. Kalchuri Education Trust	2,74,03,000/-
4.	LNAT, Gwalior	3,92,00,000/-
5.	Rishiraj College of Pharmacy	8,70,000/-

6.	Rishiraj Institute of Technology	4,67,77,359/-
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On perusal of Page No. 16 of the order of CIT(A) *qua* this issue, it was noticed that the CIT(A) has referred to the following decision of ITAT in assessee's cases in earlier years and freed the assessee from the violation of section 13:

“There is no bar in advancing interest-free advances to such charitable trust/societies registered u/s 12A as per the decision of Hon'ble MP High Court in the case of CIT Vs. RKDF Education Society in ITA No. 151/Ind/2010 dated 01.08.2013”.

[Emphasis supplied]

When we examined authenticity of this observation of CIT(A) from the details of interest-free loans given by assessee, as noted above, it appeared from a cursory look itself that the some of the entities to whom loans had been given by assessee were not societies/trusts, much less registered u/s 12A. When we countered learned AR for assessee *qua* the nature of those entities, Ld. AR sought time to submit details. On next hearing, Ld. AR submitted Ledger A/c of two parties, namely (i) M/s Dattatre Enterprises and (ii) M/s Shivam Builders, and admitted that they were not societies/trusts. Ld. AR, however, claimed that the amounts to those two parties were given in earlier years and not during years under consideration, therefore the provisions of section 13 are not violated. We were, however, not impressed by such argument of Ld. AR because the provision of section 13(2)(a) clearly prescribes *“if any part of income or property of the trust or institution is, or continues to be, lent to any person ...”*, then it is a violation of section 13. The

assessee's case could very well fall within the words "continues to be" carefully mentioned by Parliament and hence there would be a violation of section 13. The Ld. AR, however, advanced another reasoning also to get out of section 13 i.e. the amounts were given to those entities for running hostels, which is a part of assessee's objective. This point raised by Ld. AR is a newer point and it has not been tested at lower-level. In any case, the assessee's submission is for two entities only but there are many other entities in the details of loans given by assessee and we are not sure whether they were really trusts/societies or not and even if they were trusts/societies, they were registered u/s 12A or not as accepted by Ld. CIT(A). Ld. DR forcefully submitted that these aspects have remained unverified at lower level and even the CIT(A) has wrongly given favourable verdict without having any material in this regard. That means, there is a serious fallacy in the order of CIT(A) qua this issue. Therefore, there is a strong need to make a detailed probe into each item of loans so as to ascertain the nature of entities to whom loans were given and the purposes of those loans in order to arrive at a correct conclusion as to whether or not the assessee was entitled to the benefit of decision of Hon'ble M.P. High Court in ***CIT Vs. RKDF Education Society (supra)***. As the AO did not have any opportunity to carry out such an exercise at initial stage, it must be done by AO himself. Therefore, in such a situation, we feel it appropriate to remit these appeals back to AO who shall conduct necessary verification and take a final decision. Needless to mention that the AO shall give proper

opportunities to assessee to make explanations in this regard and only thereafter, he shall pass order afresh.

10. Resultantly, all these appeals are allowed for statistical purposes.

Order pronounced in the open court on 24.11.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 24.11.2023.

CPU/Sr. PS

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

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore