आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 175/JPR/2024
निर्धारण वर्ष/Assessment Year : 2013-14

Assistant Commissioner of Income Tax, Exemptions, Circle, Jaipur	बनाम Vs.	Global Institute of Technology Society, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATG 3217 H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. S. L. Poddar, Adv.
राजस्व की ओर से/ Revenue by : Sh. Anoop Singh, (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 01/04/2024
उदघोषणा की तारीख/Date of Pronouncement: 27/06/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This appeal is filed by the revenue aggrieved from the order of the National Faceless Appeal Centre, Delhi [Here in after referred as (NFAC)] for the assessment year 2013-14 dated 21.12.2023, which in turn arises from the order passed by the DCIT (Exemption), Jaipur passed under Section 147 r.w.s. 143(3) of the Income tax Act, 1961 (in short 'the Act') dated 18.12.2019.

2. The revenue has taken following grounds in this appeal;

a. "Whether order passed by the Ld. CIT(A) is justified, ignoring the facts and circumstances of the present case and without applying the correct preposition of law."

b. "Whether Ld. CIT(A) is justified in holding entire reassessment is considered void and illegal while assessee had not truly and fully disclosed material facts necessary for assessment as per the first proviso to section 147 of the Income-tax Act, relevant to reassessment after expiry of four years and AO had new facts in possession after the regular assessment u/s 143(3) of Income-tax Act".

C. "Whether the Id. CIT(A) justified in holding that there was no failure on part of the assessee to disclose all material facts truly and correctly, while reasons recorded clearly mention that 147 has been done on the basis of report from Investigation Wing, which was not in possession of AO and facts available in that report like excess payment, part payment returned back, no execution of deed even after 6 years were not disclosed before the AO."

d. "Whether the Id. CIT(A) justified on the facts of the case that there was no failure on part of the assessee to disclose all material facts truly and correctly, while fact in present case clearly shows failure on part of the assessee, same has also been recorded by the AO".

e. "Whether Ld. CIT(A) is justified in holding re-opening of assessment invalid even when specific report has been received from Investigation Wing and CIT (A) himself accepted that AO has tangible material in possession".

f. "Whether Ld. CIT(A) is justified in holding entire reassessment is considered void and illegal without considering the explanation 1 below section 147 of the Income-tax Act for relevant AY".

g "Whether Id. CIT(A) is justified in holding entire reassessment is considered void and illegal without considering the fact that assessee violated provision of section 13(1) (c)Income-tax Act by giving interest free advances to persons covered u/s 13(3) Income-tax Act".

h. "Whether Id. CIT(A) is justified in holding entire reassessment is considered void and illegal without considering the merits of fact that benefit of the section 11/12 was denied, due to violation of section 13(1) (c)".

i. "Whether ld. CIT(A) justified in holding entire reassessment is considered void and illegal without considering the merits of the addition of disallowances from interest expenditure of Rs.47,13,333/-".

j. "Appellant craves the right to add, alter or amend any grounds of appeal before the Hon. ITAT in the interest of justice."

3. The fact as culled out from the records is that the assessee is registered as a society under the Registration on Societies Act, 1958. The assessee is also registered u/s 12AA of the Act, 1961 vide letter No. CIT / Recovery / S312(A(a) / 23/5/2000-2001 / 459 / dated 22.05.2005 issued by CIT, Jaipur. The object of the society/trust is to establish education institution, Social, Economic & Education Development of Backward classes, Women Empowerment etc. The assessee filed its original return of income for the A.Y 2013-14 at Rs. Nil/- on 30.09.2013. Assessment proceedings u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide order dated 31.03.2015 was completed at Rs. 97,78,300/-.

3.1 As per the information, of specified transaction report (STR) available with the office of DDIT-III, Jaipur who in turn informed to ld. AO that the assessee had given Rs.7.95 Cr on 18.08.2012 to Shri Rajkumar Kandoi, Director of M/s Perennial Real Estates Pvt.

Ltd., a company where trustees/specified persons u/s 13(3) of the Income Tax Act are directors and having substantial Interest. M/s Global Institute of Technology has given Rs.7,95,00,000/- to M/s Perennial Real Estates Pvt. Ltd. on 18.08.2012 as advance payment for purchasing of 26,720 square meter land situated at Kho-Nagoriyan, Jaipur. Further, GITS decided to purchase comparatively smaller land, therefore, Rs.2,90,00,000/- was transferred back to GITS on 24.08.2012. Therefore, Rs. 5,05,00,000/- was not re-paid to Global Institute of Technology Society and no interest on this advance was paid by M/s Perennial Real Estate.

3.2 Because of this information, the case was re-opened and assessment proceeding under section 147 of the IT. Act, 1961 were started and e-notice under section 148 of the I.T. Act, 1961 was issued on 28.03.2019 after recording reasons in writing and obtaining necessary approval from the prescribed authority. In response to E-notice issued u/s 148 of the LT. Act, 1961, the assessee filed return of income claiming exemption u/s 12A of the I.T. Act, 1961 on 25.11.2019. From the perusal of bank account

statement of the assessee Trust and M/s Perennial Real Estate Pvt. Ltd, the ld. AO noted that M/s Perennial Real Estate Pvt. Ltd. received Rs. 7,95,00,000/- from GITS in the lieu of advance money for the purchase of land and out of Rs. 2,90,00,000/- paid back on 24.08.2012 due to purchasing comparatively smaller land and remaining money amounting to Rs.5,05,00,000/- remains with the Company. For making further enquiries, summons u/s 131 of the Income-tax Act, 1961 was issued on 11.05.2015 to the Principal Officer of M/s Perennial Real Estate Pvt. Ltd. by the office of DDIT-III, Jaipur. In compliance to the summons, Shri Raj Kumar Kandoi appeared in the office of DDIT-III, Jaipur on 22.11.2018 with desired details and documents and his on-oath statement u/s 131 of the Act was recorded. From the statement of Shri Raj Kumar Kandoi, the ld. AO noted that for making repayment of outstanding interest-bearing unsecured loans in the books of the Company. The fund of the Trust amounting to Rs. 7,95,00,000/- was transferred in the bank account of the Company on 18.08.2012. On the very same day, the company repaid its outstanding interest-bearing unsecured loans of Rs. 2,15,00,000/- to Shree Niketan Promoters Pvt Ltd and Rs. 2,90,00,000/- to M/s Kandoi Metal

Power MGF Co. Pvt. Ltd and remaining fund of Rs. 2,90,00,000/- transferred on 24.08.2012 back to the bank account of the assessee Trust.

3.3 As Shri Raj Kumar Kandoi is a person covered u/s 13(3) of the Act as well as director of the company, therefore, to bypass and escaping from the rigorous provisions of the Act, he cooked up a fairy tale story of 'Sale agreement' dated 27.08.2012 which is nothing but an action of afterthought. The ld. AO further noted that the alleged 'Agreement to Sale' dated 27.08.2012 found to be only a misguiding document and was not meant to execute the sale deed. It is a mask to cover the genuineness of the transaction under question and is only an instrument which is used by M/s Perennial Real Estate Pvt. Ltd to utilize the funds of the Trust for its own benefits. Based on that facts e-Show Cause notice dated 14.10.2019 was issued to the assessee Trust. In response to the same written reply was furnished on 25.11.2019. The ld. AO from the copy of the purchase/sale agreement, noted following points:

(a) The agreement was made on 27.08.2012;

(b) The total sale consideration of the property involved was Rs. 8 Crores,

(c) The parties had to enter into a Definitive Agreement within 3 months of obtaining clearances, project approvals, plan maps, sanctions and licenses from the requisite authorities;

(d) No time-frame was fixed for the finalization of the Sale-purchase transaction;

(e) No success or progress was made towards achievement of clearances and sanction for Hostel Development for which the agreement to sale was formulated;

(f) Till the time of finalization of this assessment, no further progress had been made towards the object for which advances of Rs. 5,05,00,000/- were made;

The ld. AO also noted that the intention of purchasing land for developing a hostel is quite questionable. This is because the assessee society already has a huge and sufficient hostel within the college campus from which it is earning substantial receipts, and this can also be confirmed from its website. From the statistics of the past five years also, it is visible that the assessee trust has excess availability of hostel rooms vis-a-vis, the total strength of students availing hostel facilities. The assessee admitted that the total number of students seeking admission in the past three years has declined drastically, hence, the planned expansion has been delayed. Therefore, the assessee is not in the need of a new hostel for its students as itself accepted by the assessee society. Further, the assessee society itself accepted that it is in process of

discussion regarding the cancellation of this purchase/sale agreement. But the assessee has not cancelled its purchase agreement which shows that the founder trustees Shri Anand Singhal and Shri Rajkumar Kandoi are benefitted from the trust money / property as the same remains with them for more than five years without charging of any interest and also there is a breach of sale agreement. Thus, there is a violation of section 13(1)(c) r.w.s. 13(2)(b)/(g) of the I.T. Act, 1961. Therefore, the benefit of section 11/12 is denied to the assessee during the year under consideration.

3.4 The ld. AO based on that fact also noted that the assessee society paid interest of Rs.1,78,70,209/- on the unsecured loans taken including interest paid to ICICI and HDFC car loan (Rs.7,34,562/-) as per details filed during the course of original assessment proceedings the assessee paid interest @ rate of 14 to 16% to various persons on unsecured loans taken. On the other hand, it diverted interest free advances to the persons covered u/s 13(3) of the IT Act. Therefore, interest @ of 14% on the advances given to M/s Perennial Real Estate Pvt. Ltd. is calculated notionally

and this amount was the interest expenditure for an amount of Rs.47,13,333/-. The ld. AO noted that the assessee has also relied on the decision of ITAT in respect of AY 2015-16. In this connection it was contended that the department has not accepted the decision of the ITAT and further appeal has been filed.

4. Aggrieved from the said action of the Assessing Officer, assessee preferred an appeal before the ld. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the ld. CIT(A)/NFAC is reiterated here in below: -

> "5. Observations, Finding and Decisions
>
> 5.1 I have considered the case fact, assessing officer's order (hereinafter referred to as "the AO') order in pursuant to section 147 read with section 143(3) of the Income Tax Act, 1961 (in short the Act), and the comprehensive submission made by the appellant. The AO's order has been challenged by the appellant on two counts; the first is about the validity of the reassessment proceedings, and second is about the merits of the additions. I won't repeat the grounds of appeal, submission of the appellant and the order of the AO, unless it is absolutely necessary to decide the appeal, as these have already been discussed in this order. To maintain clarity and determine the appeal, I will limit my discussion to the main points of the subject.
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> 5.2 Before proceedings with the case, I need to determine whether the additional ground of appeal submitted by the appellant is admissible. The appellant has submitted additional ground of appeal mentioned above. The appellant had claimed that an inadvertent mistake prevented them from taking the ground of appeal at the time of filing of appeal. The reassessment order indicates that the appellant was denied the benefits of the section 11 and 12 of the Act because of violation of the provisions of section 13 of the Act. According to the

appellant the additional ground raised was based on the AO's order and it goes to the heart of the issue. The appellant has presented five grounds of appeal that dispute all the additions made by the AO except for the denial of benefits of section 12 and 13 of the Act. I think an oversight could have caused the omission and there was no intentionally involved From this perspective, there is no ground to deny the additional ground of appeal. Thus the additional ground submitted by the appellant is admitted for consideration.

6.1 The appellant's primary argument in the first ground of the appeal is that the reassessment proceedings were invalid because the AO improperly exercised jurisdiction under section 147 read with section 148 of the Act on a matter that was already covered in the appeal. The records show that the AO did not disallow interest of rupees 47,13,333/- in the original assessment order, so the appellant did not appeal. It is obvious that issue was not the subject matter of the appeal in so far as the current assessment year is concerned. It transpires that subject interest was disallowed for the first time in the reassessment.

6.2 The appellant has submitted that the AO disallowed interest in the subsequent assessment year in the appellant's case based on the same set of facts and the Hon'ble Tribunal deleted the disallowance before initiation of the reassessment proceedings for this assessment year. Thus, the appellant asserts that the matter was covered in the appeal, precluding the AO from exercising jurisdiction under section 147 read with 148 of the Act. In this circumstance, the AO should have followed the decision of the Hon'ble Tribunal. In this context, it is important to mention that the Hon'ble Supreme Court in the case of Kamalakshi Finance Corporation Ltd. (AIR 1992 sc 711,712 55,ELT 433(SC)} observed the following:

"It can not be too vehemently emphasized that it is utmost importance that in disposing quasi-judicial issues before them, revenue officers are bound by the decisions of the of the appellate authorities. The order of the appellate collectors is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that orders of the higher appellate authorities should be followed universally by the subordinate authorities. The mere fact that the order of the appellate authorities is not acceptable to the Department in itself an objectionable phrase and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be harassment to the assessee and chaos to in administration of tax laws".

The Hon'ble MP High Court in the case Agarwal Warehousing and Leasing Corporation Ltd vs CIT (257 ITR 235) held that the orders passed by the Tribunal are binding on all the tax authorities functioning under the jurisdiction of the Tribunal.

From the above, il can be seen that the Hon'ble Tribunal's order is binding upon the AO, who is an inferior authority to the Hon'ble Tribunal.

6.3 The appellant next concern is that the assessment was reopened after four years from the end of the relevant assessment year though the appellant did not fail to disclose all material facts necessary for it's assessment. As a result, the appellant claims that the AO erred in assuming jurisdiction under section 147 of the Act. The assessment was completed under section 143(3) of the Act in the present case and then reopened after expiry of a period of four years from the relevant assessment year. Two conditions need to be met to assume jurisdiction under section 147 of the Act where an assessment is completed under section 143(3) of the Act and where an regular assessment is sought to be reopened beyond four years from the end of the relevant assessment year first, there must be an escapement of income, and second, the assessee must not fail to disclose all material facts necessary for assessment.

6.4 The primary question is whether the AO had tangible material in his possession that would support a prima facia belief that income chargeable to tax had escaped assessment. The DDII(Inv)-III, Jaipur provided the AO with information the appellant's payment to rupees 7,95,00,000/- to Perennial Real Estate Pvt Ltd where the trustees Ispecified person were directors, who had substantial interest the said company. The payment was made during the financial year 2012-13. Due to the appellant's need for smaller land the company returned fupees 2,90,00,000/- and the balance of rupees 5,05,00,000/- was left with the company. Following through investigation the DDIT (Inv.)-III concluded that the appellant trust failed to make any effort to recover the remaining balance amount or take possession of the property, thereby allowing the said company to receive benefit of rupees 5,05,00,000/- for over five years, in vicilation of section 13 of the Act. Thus, it is evident that the AO got information that led him to believe that income chargeable to tax had escaped assessment. The information provided was concrete rather than vague or general. At this initiation stage the AO needs some prima facie material to form a reasonable belief that income has escaped assessment, but not make full proof case. The Hon'ble Supreme Court in the case of Raymond Woolen Mills Ltd vs ITO(1999) 236 ITR 34 held "In determining whether commencement of reassessment was valid, it has only to be seen whether there was prima facie some material on the basis of which the

Department could reopen the case The sufficiency or correctness of material is not a thing to be decided at this stage. Hence, I am of the opinion the AO had tangible material in his possession to conclude that there was escapement of incorne in the case in hand.

6.5 The question now is whether the appellant disclosed primary facts needed for its assessment during the course of the original assessment. The appellant submitted information about receipt of payment, balance sheet, list of debtors, list of creditors and loan advances in course of original assessment, as is evidenced by the facts. According to the appellant, the balance sheet displayed rupees 5, 5 ,00,000/- as outstanding against the company mentioned earlier as of 31/03/2013. The appellant also provided information about payment of interest. It is apparent from the above, that the appellant trust provided primary facts about payment of interest and payment to the aforementioned company which were indicated in the balance sheet as outstanding as of 31/3 / 2013 The appellant was required to provide basic facts for its assessment but not more than that. Thus, it can not be inferred from the facts stated above that the appellant failed to disclose primary facts necessary for its assessment. Further reasons recorded by the AO for issue of notice under section 148 of the Act were not clear which primary facts were suppressed by the appellant. The Hon'ble Calcutta High Court in the case of Rangalal Bagaria (HUF) vs ACIT 384 ITR 477(Cal) held that if the reasons do not indicate that any material fact relevant for the assessment had been suppressed of that any false assertion on the part of the assessee discovered a reassessment on the relevant ground can not be undertaken. Furthermore, The Hon'ble Delhi High Court in the case of Bharati Infratri Ltd vs DCIT held that where proviso to section 147 applies the AO must satisfy himself and state that there had been failure on the part of the assessee to to truly and fully disclose all material facts necessary for assessment

6.6 It is the responsibility of the AO to enquire from the primary facts in his possession and draw appropriate inferences once the assessee submits the basic facts necessary for assessment. In the current case, it seems that in course of the regular assessment the AO did not enquire about the purpose of payment to the company mentioned and whether any of the appellant's trustees had a substantial in interest in it. The AO may possess necessary material to reopen a completed assessment under section 143(3)of the Act after four years from the end of the relevant assessment year but he cannot exercise power to reopen it unless the assessee fails to disclose all material facts necessary for assessment. In the present case even though there was tangible material to reopen the assessment, the AO wrongly assumed the jurisdiction under section 147 read with section 148 of the Act in violation of proviso to section 147 of the Act because jurisdictional

requirement as provided in the proviso was not fulfiled. Thus, the AO's assumption of jurisdiction under section 147 read with section 148 of the Act was not valid because the appellant disclosed primary facts necessary for its assessment. Thus, the entire reassessment is considered void and illegal.

7.1 The question of whether the AO initiated proceedings under section 147 of the Act on borrowed satisfaction is no longer necessary as it has already been decided that the AO did not assume jurisdiction under section 147 validly.

7.2. There is no need to discuss the merits of the AO'S additions as the reassessment has been considered as void and illegal. In any case, the issue brought up by the AO in the reassessment were dealt with by the Hon'ble jurisdictional Tribunal in the appellant case for the assessment year 2015-16. Based on same set of facts, the Hon'ble Tribunal made a decision in favor of the appellant for the assessment year 2015-16. As stated above in this order, the AO is bound to follow the Hon'ble jurisdictional Tribunal's order, even if it is not accepted.

8. In the final result, the appeal filed by the appellant is treated as allowed."

5. Feeling dissatisfied from the order of the ld. CIT(A), revenue preferred the present appeal on the grounds as reiterated here in above in para 2. The ld. DR contended that based on the STR the case of the assessee was re-opened. As it is evident that M/s Perennial Real Estate Pvt. Ltd. received Rs. 7,95,00,000/- from GITS in the lieu of advance money for the purchase of land and out of Rs. 2,90,00,000/- paid back on 24.08.2012 due to purchasing comparatively smaller land and remaining money amounting to Rs. 5,05,00,000/- remains with the Company. The arguments and evidence is nothing but the after thoughts made by the assessee.

The ld. CIT(A) has decided the appeal of the assessee on technical ground and has not considered or discussed the peculiar facts of the case based upon which the notice u/s. 148 of the Act was issued and the ld. AO has passed the assessment order after making the proper investigation added the interest in the income of the assessee. That order of the ld. AO being reasoned order the same should be sustained. In the original assessment proceeding the transactions were not property disclosed. As it is very much clear from the facts placed on record that the funds of the trust has been used by the company where the trustees were director. In the earlier proceeding no such details were placed on record and therefore the detail of the agreement is an afterthought so in the absence of full material being not disclosed the ld. AO was within his power to conduct the proceedings u/s. 148 of the Act and so the ld. DR supported the order of the ld. AO.

6. Per contra, the ld. AR of the assessee supported the findings recorded in the order of the ld. CIT(A). The ld. AR of the assessee also filed a detailed written submission in support of the finding so

recorded in the order of the ld. CIT(A). The written submission so filed by the ld. AR of the assessee is reproduced here in below :

> "The assessee is a society running educational institution in the name and style of M/s Global Institute of Technology. The society is registered u/s 12AA of the Income Tax Act, 1961. Return was filed return on 30.09.2013 declaring Nil income. The Learned Assessing Officer has completed the assessment u/s 143(3)/153B(1)(b) of the Income Tax Act, 1961 on 31.03.2015 determining total income of Rs. 97,78,302/- after giving set off of earlier losses of Rs. 1,33,54,931/- by making following addition –
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> (i) Income over expenditure Rs. 1,11,49,815/-
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> (ii) Addition of Rs. 20,31,150/- registration receipts treating as revenue receipts.
>
> (iii) Addition of Rs. 3,90,400/- book bank income treating as revenue receipts.
>
> (iv) Addition of Rs. 94,86,767/- late fees receipts and form receipts treating as revenue receipts.
>
> (v) Addition of Rs. 75,101/- on account of late deposit of ESI u/s 36(1)(va) of the Act.
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> The learned AO has also not allowed the benefit of registration u/s 12AA of the Income Tax Act and not granted the exemption u/s 11 & 12 of the Income Tax Act 1961. Copy of order is placed on paper book page no. 1 to 5.
>
> Aggrieved with the order of the Learned Assessing Officer the assessee has preferred appeal before CIT(A)-4. Who has granted the benefit of registration u/s 12AA of the Income Tax Act and also allowed benefit of section 11 & 12. The order of the CIT(A) was confirmed by ITAT by dismissing the appeal of the department in ITA No. 43/JP/2017 order dated 30.10.2017. Copy of CIT(A) order is placed on paper book page no. 6 to 17 and ITAT order is placed on paper book page no. 18 to 26. As per CIT(A) and ITAT order there is receipts of Rs. 27,72,06,233/- against expenditure of Rs. 38,44,17,857/- so there is loss of Rs. 10,72,11,620/- and no addition can be sustained. The assessee is also eligible for exemption u/s 11 & 12 of the IT Act, 1961. The order of the ITAT becomes final as no appeal was preferred against the order of the ITAT. Now the learned AO has issued notice u/s 148 of the IT Act on 28.03.2019. The notice could not be served to the assessee. Copy of notice is placed on paper book page no. 27.

Subsequently the learned AO has issued a notice u/s 142(1)/144 of the IT Act dated 14.10.2019 and copy of which is placed on paper book page no. 28 to 32. In response to this notice the assessee filed computation of income placed on paper book page no. 33 to 34. The learned AO has completed the re-assessment proceedings by making addition of Rs. 47,13,333/- which has already been considered by the assessee in computation and also by disallowing exemption u/s 11 of Income Tax Act on total taxable income of Rs. 2,77,71,470/- as AOP status.

Aggrieved by the order of the learned AO the assessee preferred appeal before your honour. With this background the individual grounds of appeal of the revenue are discussed as under: -

Ground No. 1:-
Under the facts and circumstances of the case the Assessing Officer has erred in issuing the notice u/s 147/148 of the Income Tax Act, 1961 which is void ab-initio deserves to be quashed even after passing the order on the issue by learned CIT(A)/ITAT.

The learned AO has issued the notice u/s 148 of the Income Tax Act 1961 for the reason mentioned in the notice dated 14.10.2019 as under –

"4. In this case information was received from DDIT(Inv)-III, Jaipur. As per information, the assessee Society has given Rs.7.95 Cr on 18.08.2012 to Shri Rajkumar Kandoi, Director of M/s Perennial Real Estates Pvt. Ltd., a company where trustees/specified persons u/s 13(3) of the Income Tax Act are directors and having substantial interest. The assessee Society i.e. M/s Global Institute of Technology(GITS) has given Rs.7,95,00,000/- to M/s Perennial Real Estates Pvt. Ltd. on 18.08.2012 as advance payment for the purchase of 26,720/- sq. mtr. Land. Further, as GITS decided to purchase smaller land, an amount of Rs.2,90,00,000/- was transferred back to GITS on 24.08.2012 and Rs. 5,05,00,000/- still remained unpaid and no interest on this advance is being paid by M/s Perennial Real Estate to the assessee Society. As per STR information , bank statements of M/s Perennial Real Estate Pvt. Ltd. and statements of Mr. Raj Kumar Kandoi recorded u/s 131 of the IT Act on 22-11-2018, it is gathered that M/s Perennial Real Estate Pvt. Ltd. received Rs. 7,95,00,000/- from GITS for the purchase of land and out of Rs. 2,90,00,000/- paid back on 24.08.2012 and remaining money of Rs.5,05,00,000/- was neither re-paid to assessee nor given any immovable property till date. Global Institute of Technology Society is a trust, whose funds are used by the company, M/s Perennial Real Estate Pvt. Ltd. for its personal benefits. Thus the funds of Society were diverted for purpose other than its specified objects.

The trust has made advances without any justification for achieving the objects of the trust. The aforementioned accounts have not yet been settled. So these are the investments which are not in prescribed modes as per section 11(5) of the I.T. Act, 1961. Thus, it is evident that the trustees of the trust have diverted the trust money for their personal benefit. The funds of the trust have been misused which caused loss of interest to the trust on the funds has diverted. Thus the trust has violated provisions of section 11(5) r.w.s. 13(1)(d) of the I.T. Act, 1961. The funds of the GITS are being not used for charity purpose which is violation of section 11 and 12.

Therefore the Society is not eligible for exemption u/s 11 of the Act.

5.1 In view of above facts the case was reopened and notice u/s148 was issued after taking due approval of the competent authority. Since neither the assessee has filed ROI nor submitted any reply income is assessed on the basis of information available on record. Since the Society is not eligible for exemption u/s 11 of the Act, its income shall be assessed taking the assessee as a commercial entity.

5.2 The assessee society paid interest of Rs.1,78,70,209/- on the unsecured loans taken including interest paid to ICICI and HDFC car loan (Rs.734562/-) as per details filed during the course of original assessment proceedings the assessee paid interest @ rate of 14 to 16 % to various persons on unsecured loans taken . On the other hand it diverted interest free advances to the persons covered u/s 13(3) of the I T Act. Therefore, interest @ of 14% on the advances given to M/s Perennial Real Estate Pvt. Ltd. is calculated notionally and this amount is proposed to be disallowed from the interest expenditure this will result in addition of Rs47,13,333/-".

The submission of the assessee for objecting the reassessment proceedings are as under: -

1. <u>All the material facts were disclosed full and truly at the time of original assessment completed u/s 143(3) of the Income Tax Act, 1961 -</u>

The learned AO has imitated the re-assessment proceedings after completion of five years. The original assessment was completed u/s 143(3)/153B(1b) of the IT Act on 31.03.2015. Copy of order is placed on paper book page no. 1 to 5. During the course of original assessment proceedings the assessee has submitted all the necessary documents including receipt & payment account, balance sheet, list of debtors, list of creditors, loans & advances and thereafter the assessment was completed. The assessee has made full and true disclosure of all the material facts which are necessary to compute the correct income of the assessee. There is no failure on the part of the assessee because the assessee has disclosed that the assessee has

made advanced of Rs. 5,05,00,000/- to Perennial Real Estate Pvt Ltd and is outstanding on 31.03.2013 is duly disclosed in the balance sheet. So the reopening of the assessment after passing four years is not justified.

In the recent judgment of the Supreme Court in case of New Delhi Television Limited v. CIT *Civil Appeal No. 1008 of 2020 dated 03.04.2020, set aside the notice for reopening the assessment on the ground that there was no failure to disclose all material facts fully and truly. In other words, the Supreme Court held that the first proviso to section 147 did not apply. Consequently, the decision of the Delhi High Court was also reversed. While this was indeed a correct ruling, the most important issue in this case was not considered either by the Delhi High Court or the Supreme Court.*

*Section 147 enables an Assessing Officer (AO) to reopen an assessment if he has reason to believe that there was "*any income chargeable to tax *that has escaped assessment". In other words, it is fundamental that there must be an amount or income that should have been taxed in the assessment initially but such income had escaped assessment. It is only then that the four year period will apply. The larger period of six years can be invoked if the escapement of income was due to non-disclosure of all material facts as mentioned in the second proviso to section 147. Therefore, the first question that has to be asked is: "Whether the amount that "escaped assessment" is actually income that was chargeable to tax?"*
It is therefore necessary to briefly narrate the facts that arose before the Delhi High Court and the Supreme Court.
NDTV had a UK subsidiary that had issued coupon bonds for USD 100 million which were to be redeemed after five years. The bond issue was managed by a well-known American bank and some of the subscribers were also well-known companies/entities. Due to the financial crisis in 2008, the bond-holders wanted premature redemption of bonds, which was agreed to at a discounted price of USD 72 million. The net gain of USD 28 million was included as the income of the UK subsidiary in its assessment proceedings. Thus, a sum of money had been borrowed by a subsidiary which was then repaid.
In the assessment proceedings of NDTV, the parent company, it was argued in the transfer pricing proceedings that no one would have lent money to the subsidiary unless there was an implied guarantee by the parent company. (The loan agreement did have a clause for a corporate guarantee to be provided if required by the lenders but, on facts, no such guarantee was called for.)
However, the TPO made an addition of 4% on the basis of implied guarantee and this was confirmed by the DRP. The addition was Rs18.75 crores. As on date, the matter is still pending before the Tribunal. In a nutshell, in the original assessment proceedings for AY 2008-09, NDTV is the deemed guarantor of the loan and the addition of

this guarantee commission is now pending before the ITAT for AY 2008-09. No doubts were raised about the genuineness of the loan; indeed, in the assessment proceedings against the UK subsidiary under the Indian Income-tax Act, 1961, the loans were accepted as genuine.

On the last date of the six year period, on March 31, 2015, the assessment was suddenly reopened on the ground that the loan of USD 100 million was a sham transaction and represented the money of NDTV. Most important, the notice did not indicate any material fact had not been disclosed fully and truly.

In this background, the primary question that should have been asked by the Delhi High Court and the Supreme Court was: whether a genuine loan taken by a subsidiary and repaid, can be treated as the income of the holding company? For example, if a person takes a loan for purchasing of a flat and his father had stood guarantee, the repayment of the loan by the son brings an end to the transaction. Thereafter, after six years, it will be absurd to reopen the assessment of the father and assess the repaid loan as his income. This is precisely what was sought to be done in the NDTV case.

In our case the transaction of advancing of Rs. 5,05,00,000/- was duly disclosed. The advances are reflected in the balance sheet of the assessee filed at the time of original assessment proceedings. The fact of payment of interest on borrowed money was also there. Therefore under such circumstances no reassessment proceedings can be initiated after the expiry of four years.

2. Borrowed Satisfaction –

As mentioned by the learned AO the reopening was based on information received from DDIT Wing. The learned AO did not inquire further or make verification of the information to reach on satisfaction that actually income was under assessment or not. Therefore it is based only borrowed satisfaction and no case or completed assessment can be reopened on borrowed satisfaction. We relying on the following case laws –

(i) CIT Vs. Shree Rajasthan Syntex Ltd. (2008) 217 CTR 209 (Raj)
Reopening of assessment on borrowed satisfaction by Assessing Officer of lesser on the basis of opinion arrived at by the Assessing Officer of lessee on the same set of documents was invalid.

(ii) SIGNATURE HOTELS (P) LTD. vs. INCOME TAX OFFICER (2011) 338 ITR 51 (Delhi)

Reassessment—Reason to believe—Information received from Director of IT (Inv.) vis-a-vis accommodation entry—For reopening an assessment the AO must have "reason to believe" that certain income chargeable to tax has escaped assessment and such reasons are

required to be recorded in writing by the AO.. Company SS Ltd. had applied for and was allotted shares in the assessee company on payment of Rs. 5 lacs by cheque—SS Ltd. is an incorporated company and it has been allotted PAN—Facts on record do not show that SS Ltd. is a non-existing and a fictitious entity—Proceeding under s. 147 quashed.

(iii) Pr. CIT vs. G & G Pharma India Ltd (Delhi High Court) dated 08.10.2015
Reopening only on the basis of information received that the assessee has introduced unaccounted money in the form of accommodation entries without showing in what manner the AO applied independent mind to the information renders the reopening void
(iv) ITO vs. M. B. Jewellers P. Ltd (ITAT Delhi)dt. 14.11.2014
A perusal of the above reasons demonstrate that the reasons recorded by the AO are not reasons acceptable to law. There is no independent application of mind. The AO had mechanically issued notices u/s 148 of the Act, on the basis of information allegedly received by him from the CIT, New Delhi 2.
(v) ACIT vs. Devesh Kumar (ITAT Delhi)dt. 31.10.2014
Reopening solely on the basis of information received from the investigation wing & without independent application of mind is void.
(vi) Unique Metal Industries vs Income Tax Officer (ITAT Delhi) dated 28.10.2015
Reopening solely on the basis of information received from another AO that the assessee has booked bogus bills but without independent application of mind to the information renders the reopening void.
(vi) CIT Vs. SFIL Stock Broking Ltd. (2010) 41 DTR 98 (Del)
Reassessment-Reason to believe-Reopening on directions of superior officers-50-called reasons recorded by the AO for reopening assessee's assessment comprises mere information received from Dy. Director of IT (Inv.) followed by directions of the very same officer and the Addl. CIT to initiate proceedings under s. 147- These cannot be the reasons for proceeding under s. 147/148-From the so-called reasons it is not at all discernible as to whether the AO has applied his mind to the information and independently arrived at a belief on the basis of the material before him that income had escaped assessment-Proceedings under s. 147/148 rightly quashed by Tribunal-No substantial question of law arises for consideration.

3. Same issue was settled by the Hon'ble ITAT in assessee's own case in subsequent years –

The same issue is also arisen during the assessment year 2015-16 and the matter went to the Hon'ble ITAT. The learned AO has made the addition of Rs. 60,60,000/- on account of notional interest for advance made to M/s Perennial Real Estate Pvt Ltd. (On the basis of same issue which is subject matter of reopening). The learned CIT(A) has

confirmed the addition. The Hon'ble ITAT in ITA No. 1066/JP/2018 order dated 05.11.2018 has deleted the same addition by holding that the assessee trust has taken over the possession and enjoying the land in question then the advance paid under the agreement for purchase of land cannot be treated as benefit to the specified person. The learned AO has added the notional interest whereas the assessee has not paid any interest on the said amount as it was out of the assessee's own fund/corpus fund. Once the assessee has not incurred any expenditure on account of interest then the addition made by the AO as notional interest is not justified the decision on this issue by the Hon'ble Supreme Court in the case of CIT vs. Excel Industries Limited (2013) 358 ITR 295 (SC) has been relied upon. So once the issue was settled by ITAT than reopening of assessment is not tenable. Copy of ITAT order is placed on paper book page no. 35 to 47.

Therefore the issue was settled in favor of the assessee prior to initiation of reassessment proceedings. So the reassessment proceedings deserves to be quashed.

Ground No. 2:-
Under the facts and Circumstances of the case and in Law, the learned Assessing Officer has erred in making the addition of Rs. 47,13,333/- by disallowing interest expenditure which has already been decided by the higher authorities in the subsequent years.

During the year under consideration the assessee has made an advance of Rs. 5,05,00,000/- to M/s Perennial Real Estate Pvt Ltd for purchase of land under the agreement dated 27.08.2012 and possession was taken over by the assessee society/trust. The registered sale deed could not be executed because of the permissions from authorities for change of land use. Subsequently the agreement was cancelled and money was returned to the trust. Copy of agreement dated 27.08.2012 as well as cancellation agreement and ledger account of payment received are enclosed. The same issue was there in the assessment year 2015-16. The learned AO has made the addition of Rs. 60,60,000/- on account of notional interest for advance made to M/s Perennial Real Estate Pvt Ltd. The learned CIT(A) has confirmed the addition. The Hon'ble ITAT in ITA No. 1066/JP/2018 order dated 05.11.2018 has deleted the same addition by holding that the assessee trust has taken over the possession and enjoying the land in question then the advance paid under the agreement for purchase of land cannot be treated as benefit to the specified person. The learned AO has added the notional interest whereas the assessee has not paid any interest on the said amount as it was out of the assessee's own fund/corpus fund. Once the assessee has not incurred any expenditure on account of interest then the addition made by the AO as notional interest is not justified the decision on this issue by the Hon'ble Supreme Court in the case of CIT vs. Excel Industries Limited

(2013) 358 ITR 295 (SC) has been relied upon. So once the issue was settled by ITAT than reopening of assessment is not tenable. Copy of ITAT order is placed on paper book page no. 35 to 47.

Before the ITAT the assessee has made the submission in assessment year 2014-15 which is relevant due to same facts and circumstances are as under –

"(A) <u>GIST OF THE ISSUE: -</u>

It is submitted that the trust advanced a sum of Rs. 5,05,00,000/- against purchase of land vide agreement dated 27.08.2012 with Perennial Real Estate Pvt Ltd. The land has not been purchased nor the amount has been refunded and nor any interest has been charged. Therefore the Learned Assessing Officer has applied the provisions of section 13(2) on the ground that Shri Anand Singhal and Raj Kumar Kandoi both trustees of the trust are directors in the company. It is submitted that the Learned Assessing Officer is wrong in applying the provisions of section 13(2). The same are not applicable. The provisions of section 13(2) are applicable only in case where any part of income or property of the trust is used or applied during the year directly or indirectly for the benefit of any person mentioned in section 13(3) which in the case is none. The provisions of section 13(3) are reproduced here under: -

Section 13(3)

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

(a) the author of the trust or the founder of the institution;

(b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;

(c) where such author, founder or person is a Hindu undivided family, a member of the family;

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

(d) any relative of any such author, founder, person, member, trustee or manager as aforesaid;

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

While making the addition the Learned Assessing Officer has no where mentioned in the assessment order (relevant para 4) as how the provisions of section 13(3) are applicable. In fact while making the addition of Rs. 60,60,000/- on account of advance for purchase of land of Rs. 5,05,00,000/- to Perennial Real Estate Pvt Ltd the relevant

provisions of section 13(3) have not been cited at all, what to speak of their applicability. The provisions of section 13(3) have six clauses (a) to (e) referring to various persons. The Learned Assessing Officer has not specified as how the case of the assessee comes within the mischief of section 13(3) or how any of the clauses (a) to (e) are applicable to the facts of the case. The Learned Assessing Officer has made the addition on the ground that two of the trustees namely Shri Anand Singhal and Raj Kumar Kandoi happened to the director of M/s Perennial Real Estate Pvt Ltd, therefore in the view of the Learned Assessing Officer the directors have obtained indirect benefit.

In fact the Learned Assessing Officer has acted beyond the provisions of the Act. It is submitted that in a taxing statue one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about tax. There is no presumption to tax. Nothing is to be read in. Nothing is to be implied. One can look fairly at the language used. No tax shall be levied or collected except by the authority of law. (Article 265 of the constitution) In the case of the assessee before applying section 13(3) the Learned Assessing Officer did not go through them. The provisions of section 13(3)(a) to (d) are not at all applicable as the assessee trust has not allowed any benefit to the founder or the author of the trust, any trustee or manager of the trust or any relative or such found or author of the trust. In the instant case the amount was advanced to a corporate body namely Perennial Real Estate Pvt Ltd. and in this company the founders or the authors of the trust or the trustees of the trust or any relative of these had no substantial interest. The Learned Assessing Officer has not brought on record any material to establish that the provisions of section 13(3)(e) were applicable in the case of the assessee trust. Therefore it is submitted that for the applicability of section 13(3)(e) the persons mentioned in section 13(3)(a), (b), (c), (cc) and (d) are required to possess substantial interest in the company which is the not case here. In view of this it is submitted that the Learned Assessing Officer erred in making the addition. The Learned CIT(A) also failed to appreciate the facts of the case.

It is also established position of law that addition cannot be made on notional interest. The Learned CIT(A) disregarded the detailed submission of the assessee erroneously. The submissions made before the Learned CIT(A) are reproduced verbatim:-

"1. <u>Facts of the case:</u> -

It is submitted that during the year under consideration the assessee trust executed an agreement on 27.08.2012 with M/s Perennial Real Estate Pvt Ltd. for purchase of a plot of land at Kho Nagarian Village measuring 26720 square meters for a sum of Rs. 8,00,00,000/- against which as an advance Rs. 5,05,00,000/- was paid. A copy of the

agreement is enclosed herewith. A copy of the relevant ledger account displaying payment of Rs. 5,05,00,000/- is also enclosed herewith. This plot of land was purchased for the purposes of the objects of the trust. The plot in question is still in the possession of the assessee and due to unavoidable circumstances no further payment could be made and the conveyance deed could also not be registered.

It is apparent from the aforesaid facts that the trust did not make advance of Rs. 5,05,00,000/- for no consideration. The provisions of section 13(2) are not applicable as against the advance given by the assessee the plot of land was taken into possession. The provisions of section 13(2) are reproduced herewith: -

Section 13(2) of the Income Tax Act, 1961

(2) Without prejudice to the generality of the provisions of clause (c) and clause (d) of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—

(a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3) for any period during the previous year without either adequate security or adequate interest or both;

(b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;

(c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;

(d) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;

(e) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;

(f) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate;

(g) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3):

Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed one thousand rupees;

(h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971), in any concern in which any person referred to in sub-section (3) has a substantial interest.

The above provisions speaks that if the income or the property of the trust is allowed to be used for the benefit of the specified person as per section 13(3) without adequate consideration/ compensation and interest then disallowance shall be made. It is submitted that in the case of the assessee the amount of Rs. 5,05,00,000/- has been given against purchase of plot and hence it cannot be said that the funds of the trust have allowed to be used without any consideration or interest. Thus the provisions of section 13(2) are not applicable and the Learned Assessing Officer was wrong in making addition of Rs. 60,60,000/- by charging interest notionally on the amount of advance of Rs. 5,05,00,000/-.

2. Advance made out own capital –

It is further submitted that trust had its own funds and these were advanced for purchase of piece of land. The trust has not paid interest to third parties for raising loans. It is not a case where loans were raised on interest and then advanced without charging interest. The assessee trust has its own funds and advance has been made for purchase of land. Therefore the Learned Assessing Officer has erred in charging interest in making addition. The Learned Assessing Officer is wrong in charging interest because it is not a case where the assessee had advanced interest free funds. The advance was made for purchase of land.

3. Interest cannot be charged notionally :-

It is submitted that in the case of the assessee the Learned Assessing Officer has made addition by charging notional interest on the advance made of Rs. 5,05,00,000/- for purchase of piece of land. It is settled position of law that no addition can be made on notional basis. In the case of the assessee there is no claim of interest which the Learned Assessing Officer could have disallowed. As such the addition made by the Learned Assessing Officer has no legs the same deserves to be disallowed. The following case laws are quoted in support: -

(i) COMMISSIONER OF INCOME TAX vs. EXCEL INDUSTRIES LTD. (2013) 358 ITR 295 (SC)

Income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only

then can it be said that for the purposes of taxability that the income is not hypothetical and it has really accrued to the assessee.

(ii) Mrs. Sushila Mallik Vs. ITO (2011) 61 DTR 437 (Lucknow)

(iii) Kesri Chand Jai Sukh lal Vs. CIT 248 ITR 47 (Guwahati)

No addition can be made on notional basis, if the assessee has not charged interest on advances the Assessing Officer cannot decide that he should have charged the interest.

(iv) Kishanchand Jaisukh Lal Vs. CIT 248 ITR 47 (Guwahati)

No addition can be made on notional basis. If the assessee has not charged interest on advances, the Assessing Officer cannot decide that he should have charged the interest.

(v) CIT Vs. Asian Hotels Ltd. (2010) 323 ITR 470 (Del)
Notional interest is not assessable as business income.
(vi) CIT vs. Shoorji Vallabh Das & Co. 46 ITR 144 (SC)
(vii) CIT vs. Balbir Singh Mani (2017) 398 ITR 531 (SC)"
(B) CONCLUSION: -

In view of the aforesaid submission and the facts of the case it is submitted that the Learned Assessing Officer has erred in making the addition without appreciating the provisions of section 13(3) and similarly the Learned CIT(A) has erroneously confirmed the additions.

By considering the reply of the assessee and giving specific finding in the order the Hon'ble ITAT has deleted the addition. Since all the facts are similar, therefore the addition made by the learned AO deserves to be deleted.

Ground No. 3:-
Under the facts and Circumstances of the case and in Law, the learned Assessing Officer has erred in not allowing the set off of losses of earlier year remain unutilized.

Since some brought forward losses are there which needs to be set off against the receipts of this year. Therefore the issue of set off of earlier year losses should be remanded back to the AO with specific direction to allow set off of earlier years losses.

Ground No. 4:-
Under the facts and Circumstances of the case and in Law, the learned Assessing Officer has erred in taking the gross receipts at Rs. 28,91,14,554/- which has been wrongly submitted by the assessee in return filed u/s 148 of the Income Tax Act, 1961.

If we go by the computation of income revised by the assessee during the reassessment proceedings which is placed on paper book page no. 33. The assessee himself has made addition of Rs. 47,13,333/- on account of this disallowance of interest. Therefore there is no question of making the same addition again for the sake of addition. This tantamount the double addition as the assessee has made adjustment in computation for Rs. 47,13,333/- and again the learned AO has made addition in assessment. Therefore this double addition deserves to be deleted.

Ground No 5:-
Under the facts and Circumstances of the case and in Law, the learned Assessing Officer has erred in not allowing the capital expenditure as application out of receipts for the year.

Not pressed.

Additional Ground :-

The learned AO has wrongly disallowed the claim of benefit u/s 11 & 12 of the Income Tax Act, 1961 for violation of section 13(1)(c) r.w.s. 13(2)(b)/(g) of the Income Tax Act, 1961.

The assessee has not taken this ground in original appeal memo due to inadvertent mistake at the time of filing the appeal. Now requested to admit this ground as arising out of the assessment order under appeal and goes to the root of matter.

It is submitted that while passing the order u/s 147/143(3) on 18.12.2019 the Learned Assessing Officer observed in para 2 of page 5 as under: -

"*Further the assessee society itself accepted that it is in process of discussion regarding the cancellation of this purchase/sale agreement. But the assessee has not cancelled its purchase agreement which shows that the founder trustees Sh. Anand Singhal and Sh. Raj Kumar Kandoi are benefitted from the trust money/property as the same remains with them for more than five years without charging of any interest and also there is a breach of sale agreement. Thus, there is a violation of section 13(1)(c) r.w.s. 13(2)(b)/(g) of the IT Act, 1961. Therefore, the benefit of section 11/12 is denied to the assessee during the year under consideration.*"

It is submitted that the position of additions made by the Learned Assessing Officer by taking resort to provisions of section 13 are that all the additions made were deleted or set off was given and no addition remain sustained.

In view of the facts and position of issues discussed above it is submitted that the Learned Assessing Officer was wrong in disallowing

exemption u/s 11 on account of violation of section 13. The learned AO has also disallowed the claim in the original assessment proceedings but the same claim was allowed by the CIT(A) and confirmed by Hon'ble ITAT. Copy of both the orders are placed on paper book page no. 6 to 26.

The other additions made by the Learned Assessing Officer also do not stand the test of law. Hence the Learned Assessing Officer has erred in disallowing the exemption u/s 11 of the Income Tax Act, 1961 claimed by the assessee .The assessee has not violated any condition laid down in provisions of section 13 of the Income Tax Act, 1961. The provisions of section 13 are quoted below-

Section 11 not to apply in certain cases.

Section 13. (1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

(a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;

(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;

(bb) [***]

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in sub-section (3) :

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

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

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

(d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year—

(i) any funds of the trust or institution are invested or deposited after the 28th day of February, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11; or

(ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 continue to remain so invested or deposited after the 30th day of November, 1983; or

(iii) any shares in a company, other than—

(A) shares in a public sector company ;

(B) shares prescribed as a form or mode of investment under clause (xii) of sub-section (5) of section 11,

are held by the trust or institution after the 30th day of November, 1983:

Provided that nothing in this clause shall apply in relation to—

(i) any assets held by the trust or institution where such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973;

(ia) any accretion to the shares, forming part of the corpus mentioned in clause (i), by way of bonus shares allotted to the trust or institution;

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation) acquired by the trust or institution before the 1st day of March, 1983;

(iia) any asset, not being an investment or deposit in any of the forms or modes specified in sub-section (5) of section 11, where such asset is not held by the trust or institution, otherwise than in any of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1993, whichever is later;

(iii) any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year commencing on the 1st day of April, 1984 or any subsequent assessment year.

Explanation.—Where the trust or institution has any other income in addition to profits and gains of business, the provisions of clause (iii) of this proviso shall not apply unless the trust or institution maintains separate books of account in respect of such business.

Explanation.—For the purposes of sub-clause (ii) of clause (c), in determining whether any part of the income or any property of any trust or institution is during the previous year used or applied, directly or indirectly, for the benefit of any person referred to in sub-section (3), in so far as such use or application relates to any period before the 1st day of July, 1972, no regard shall be had to the amendments made to this section by section 7 [other than sub-clause (ii) of clause (a) thereof] of the Finance Act, 1972.

Section 13(3)

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

(*a*) the author of the trust or the founder of the institution;

(*b*) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;

(*c*) where such author, founder or person is a Hindu undivided family, a member of the family;

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

(*d*) any relative of any such author, founder, person, member, trustee or manager as aforesaid;

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

The thrust of section 13(1)(c)(ii) is that income shall not be exempt u/s 11 in the case where any part of income or property of the trust is used or applied during the year directly or indirectly for the benefit of any person mentioned in section 13(3) which in the case is none. The benefits which can be derived from the income and property of the trust have been enumerated in section 13(2) and the persons to whom such benefit may be given are enumerated in section 13(3). The Learned Assessing Officer has wrongly held that the income of the trust has been applied/ diverted for the benefit of a person mentioned in section 13(3). The Learned Assessing Officer has nowhere spelled out how the provisions of section 13(3) are applicable in the case of the assessee. In the case of the assessee there is no direct or indirect application of income for a person mentioned in section 13(3). The income or property of the assessee trust has not been used or applied for the benefit of persons mentioned in section 13(3) enumerated below: -

Section 13(3)

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

(*a*) the author of the trust or the founder of the institution;

(*b*) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;

(*c*) where such author, founder or person is a Hindu undivided family, a member of the family;

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

(*d*) any relative of any such author, founder, person, member, trustee or manager as aforesaid;

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

The fact in this year was identical to the earlier years. This year there is also a deficit and brought forward losses. The Honorable ITAT has allowed the setoff of brought forward losses in ITA no. 647/JP/2017 for assessment year 2014-15 on page 8 of the order in para 6 that there was no violation of section 13(1) of the act and exemption u/s 11 and 12 of the Act is allowable. The assessee is also allowed the carried forward losses to be setoff with the income of the assessee. Therefore the whole issue is covered by the decision of the Honorable ITAT Jaipur Bench, Jaipur in its own cases. Specially when the revenue has not preferred any appeal against the order of the Honorable ITAT. Therefore all the grounds including this ground are squarely covered by the decision of the Honorable ITAT.

With regard to the addition made for notional interest payment for advance payment against land purchased to M/s Perennial Real Estate Pvt Ltd. The same issue was came up for the decision before ITAT and the same was decided in favour of assessee. The detailed submission in this regard is submitted in reply to ground no. 1 and 2 of appeal where the same has been explained in detailed and the Hon'ble ITAT has held that this addition is not sustainable and it is not a ground for disallowing claim/benefit u/s 11 and 12 of the Income Tax Act, 1961 and the assessee society is eligible for claiming benefit u/s 11 & 12 of the Income Tax Act, 1961. Therefore the order of the learned AO deserves to be set aside.

Ground No. 6:-

The assessee craves leave to add, amend and modify all or any ground of appeal on or before the date of hearing.

Additional ground has been taken.

Your Honor is requested to decide the appeal in favour of the assessee by considering the above submission and oblige."

7. To support the contention raised in the written submission the ld. AR also filed paper book containing following evidence / records / decisions:

Sr.No.	Particulars	Page No.
1.	Copy of assessment order passed u/s 143(3) r.w.s. 153B(1)(b) dated 31.03.2015 for assessment year 2013-14	1-5
2.	Copy of CIT(A)'s order dated 30.11.2016 for assessment year 2013-14	6-17
3.	Copy of ITAT order dated 30.10.2017 for assessment year 2013-14 & 2014-15	18-26
4.	Copy of notice u/s 148 dated 28.03.2019	27
5.	Copy of notice u/s 142(1) dated 14.10.2019	28-32
6.	Copy of computation filed u/s 148	33-34
7.	Copy of ITAT order dated 05.11.2018 for assessment year 2015-16	35-47

8. The ld. AR of the assessee in addition the written submission so filed vehemently argued that the order of the ld. CIT(A) considered all the aspect of the matter placed before him and the same has been considered while passing the order. As regards the contention of the assessee, not proceeding on the project was because of the competent authority i.e. Jaipur Development Authority (JDA) has not approved the project. In the first round of litigation the ld. AO has not allowed the benefit of registration u/s. 12AS of the Act and not granted the exemption u/s. 11 & 12 of the

Act. That order of the assessment was challenged before the ld. CIT(A)-4, who allowed that benefit. Revenue challenged that order of the ld. CIT(A) before the ITAT and the appeal of the revenue was dismissed by the ITAT. Copy of both the order placed on record in the paper book filed by the assessee. The present proceeding invoking the provision of section 148 of the Act was initiated after four years. In the original proceeding the assessee has disclosed all material facts related to the computation of income. Thus, there is no failure on the part of the assessee and this aspect of the matter has not been established by the revenue while issuing notice u/s. 148 of the Act. To drive home to this contention the ld. AR of the assessee relied upon the decision of the Hon'ble Supreme Court in the case of New Delhi Television Limited Vs. CIT. In that case apex court has set aside the notice of re-opening the assessment on the ground that there was no failure to disclose all material facts fully and truly by the assessee. The assessee has disclosed and reported the transaction of advancing the money of Rs. 5,05,00,000/-. The fact of the payment of interest on borrowed money as also there. Thus, the re-opening of the assessment after four years rightly quashed by the ld. CIT(A).

9. We have heard the rival contentions and perused the material placed on record. As it is evidently clear that in the year under consideration first round of litigation were completed based on the assessment order passed u/s. 143(3) r.w.s. 153(B)(1)(b) on 31.03.2015. Thereafter, information of specified transaction report (STR) was available with the DDIT-III, Jaipur, who in turn informed to ld. AO that the assessee had given Rs.7.95 Cr on 18.08.2012 to Shri Rajkumar Kandoi, Director of M/s Perennial Real Estates Pvt. Ltd., a company where trustees/specified persons u/s 13(3) of the Income Tax Act are directors and having substantial Interest. M/s Global Institute of Technology (GITS) has given Rs.7,95,00,000/- to M/s Perennial Real Estates Pvt. Ltd. on 18.08.2012 as advance payment for purchasing of 26,720 square meter land situated at Kho-Nagoriyan, Jaipur. Further, GITS decided to purchase comparatively smaller land, therefore, Rs.2,90,00,000/- was transferred back to GITS on 24.08.2012. Therefore, Rs. 5,05,00,000/- was not re-paid to Global Institute of Technology Society and no interest on this advance was paid by M/s Perennial Real Estate. These was the basis for recording the reasons for re-opening of the assessment and ultimately the same was issued to

the assessee u/s. 148 of the Act on 28.03.2019. During this assessment proceeding the ld. AO noted that the assessee society paid interest of Rs.1,78,70,209/- on the unsecured loans taken including interest paid to ICICI and HDFC car loan (Rs.7,34,562/-) as per details filed during the course of original assessment proceedings. The assessee paid interest @ rate of 14 to 16% to various persons on unsecured loans taken. On the other hand, it diverted interest free advances to the persons covered u/s 13(3) of the IT Act. Therefore, interest @ of 14% on the advances given to M/s Perennial Real Estate Pvt. Ltd. is calculated nationally and added as income of the assessee. While doing so ld. AO noted that the assessee has also relied on the decision of ITAT in respect of AY 2015-16. In this connection he contended that the department has not accepted the decision of the ITAT and further appeal has been filed and accordingly the re-assessment completed on 18.12.2019.

10. Assessee challenged that order for the ld. AO before the ld. CIT(A), wherein the ld. CIT(A) has observed as under:

> There is no need to discuss the merits of the AO'S additions as the reassessment has been considered as void and illegal. In any case, the issue brought up by the AO in the reassessment were dealt with by

the Hon'ble jurisdictional Tribunal in the appellant case for the assessment year 2015-16. Based on same set of facts, the Hon'ble Tribunal made a decision in favor of the appellant for the assessment year 2015-16. As stated above in this order, the AO is bound to follow the Hon'ble jurisdictional Tribunal's order, even if it is not accepted

11. In the case of the assessee similar issue was taken up and the ITAT in ITA no. 1066/JP/2018 dated 05/11/2018 while dealing with the disallowance of interest on the same set of facts held as under:

"8. We have considered the rival submissions as well as relevant material on record. Though, the advance of Rs. 5,05,00,000/- was paid to the company in which the trustees of the assessee are also Director and therefore, they are having substantial interest in the said company. However, since the advance in question was given under an agreement dated 27/08/2012 for purchase of land measuring 26,720 Sq. Meters for a total consideration of Rs. 8.0. crores then it is not a simple case of applying the income or property for the benefit of the specified persons. It is part consideration for purchase of land and in absence of any allegation that the consideration was more than the fair market rate or the prevailing price of the land, payment made under the agreement for purchase of land cannot be considered as the income or property of the trust is used or applied for the benefit of the specified persons. The assessee has clearly made out a case that the land in question was in the possession of the assessee and therefore, the payment made under the agreement for purchase of land. Once the possession of land was already transferred to the assessee then the payment in question was evidently for purchase of land. Therefore, merely because the conveyance deed was not registered as the assessee has not paid the balance payment of purchase consideration would not lead to the conclusion or any inference that the said payment was made for the benefit of the specified persons. The assessee is in possession of the land of Rs. 8.00 crores against which only Rs. 5,05,00,000/- was paid, therefore, we do not find any substance in the opinion of the Assessing Officer as well as the Id. CIT(A) holding that the said payment is falling in the category of application of income or property for the benefit of specified persons. Even otherwise the Assessing Officer has made the

addition of notional interest whereas there was no corresponding expenditure incurred by the assessee. In any case when the payment was made as a consideration for purchase of land, possession of which was already transferred to the assessee under the agreement dated 27/08/2012 then the said amount will not partake the character of income or property of the Trust applied or used for the benefit of specified persons. Hence, we delete the addition made by the Assessing Officer on this account."

12. The ld. AO at time of hearing of this appeal through ld. DR neither presented any other case law having higher judicial strength nor any stay or decision on the appeal filed by revenue before the Hon'ble High Court, therefore, considering the binding precedent on the same issue in the case of the assessee, we do not find any merits in the grounds of appeal no 7, 8 & 9 so raised by the revenue devoid of merits and same are dismissed.

13. Ground no. 1 to 6 raised by the revenue related to the re-opening of the assessment. It is not under dispute that the notice for re-opening of the assessment in this case has been given after the expiry of four years and the assessment in this case was originally completed on 31.03.2015. In that proceeding the assessee made full and true disclosure of all the material facts which are necessary to compute the correct income and the revenue did not demonstrate before us any failure on the part of

the assessee. The assessee has already disclosed the advance of money to Perennial Real Estate P. Ltd., and no failure on the part of the assessee is observed. The allegation of the transaction and disallowance thereof is also covered by the decision of the ITAT in the subsequent year. The bench also noted that notice u/s. 148 of the Act was issued on 28.03.2019 and the order of ITAT on the same issue was passed on 05.11.2018 and the same was available before the ld. AO to justify the re-opening. Considering over all facts of the case and considering the decision of the apex court in the case of New Delhi Television Limited Vs. DCIT 116 taxmann.com 151 (SC), held that ;

> *Conclusion*
>
> **44**. We accordingly allow the appeal by holding that the notice issued to the assessee shows sufficient reasons to believe on the part of the assessing officer to reopen the assessment but since the revenue has failed to show non-disclosure of facts the notice having been issued after a period of 4 years is required to be quashed. Having held so, we make it clear that we have not expressed any opinion on whether on facts of this case the revenue could take benefit of the second proviso or not. Therefore, the revenue may issue fresh notice taking benefit of the second proviso if otherwise permissible under law. We make it clear that both the parties shall be at liberty to raise all contentions with regard to the validity of such notice. All pending application(s) shall stand(s) disposed of.

Since, revenue could not demonstrate failure on the part of the assessee notice having been issued after a period of 4 years is

required to be quashed based on the decision of the apex court and therefore, ground no. 1to 6 raised by the revenue are dismissed.

In the results the appeal of the revenue stands dismissed.

Order pronounced in the open court on 27/06/2024.

Sd/-	Sd/-
(संदीप गोसाई)	(राठौड कमलेश जयंतभाई)
(Sandeep Gosain)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 27/06/2024
*Ganesh Kumar, Sr. PS
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Assistant Commissioner of Income Tax, Exemptions, Circle, Jaipur
2. प्रत्यर्थी / The Respondent- Global Institute of Technology Society, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA Nos. 175/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar