

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM**

**श्री के.नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष  
BEFORE SHRI K. NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER**

**&**

**SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपीलसं./I.T.A.No.62/VIZ/2024  
(निर्धारण वर्ष/ Assessment Year: 2011-12)**

<b>ACIT</b> Stalin Corporate Auto Nagar Vijayawada – 520007 Andhra Pradesh	v.	<b>Sri Koundinya Educational Society</b> NH-5, Chaitanya Nagar Rajahmundry – 533296  [PAN: AAAAK1442R]
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

**सी.ओ सं. / C.O. No. 6/VIZ/2024**

**[आयक अपील सं. से उत्पन्न / ARISING OUT OF I.T.A. No. 62/VIZ/2024  
(निर्धारणवर्ष/ Assessment Year: 2011-12)]**

<b>Sri Koundinya Educational Society</b> NH-5, Chaitanya Knowledge City Rajahmundry – 533296  [PAN: AAAAK1442R]	v.	<b>ACIT (Exemption)</b> Vijayawada - 520007
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

करदाताकाप्रतिनिधित्व/ Assessee Represented by	:	Shri C. Subrahmanyam, AR
राजस्वकाप्रतिनिधित्व/ Department Represented by	:	Dr. Satyasai Rath, CIT(DR)
सुनवाईसमाप्तहोनेकीतिथि/ Date of Conclusion of Hearing	:	10.12.2024
घोषणाकीतारीख/Date of Pronouncement	:	20.02.2025

## **आदेश / O R D E R**

### **PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:**

1. This appeal is filed by the revenue against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short “Ld.CIT(A)”] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1058266061(1) dated 28.11.2023 for the A.Y.2011-12 arising out of order passed under section 143(3) of the Income Tax Act, 1961 (in short ‘Act’) dated 28.03.2014 and Cross objection is filed by the assessee in support of the order of the Ld. CIT(A).

2. First, we proceed to adjudicate the appeal of the revenue in ITA No. 62/VIZ/2024.

### **ITA NO. 62/VIZ/2024 (A.Y. 2011-12) (REVENUE APPEAL)**

3. Brief facts of the case are that, assessee is a society running an educational institution filed its return of income on 30.06.2011 for the A.Y.2011-12 claiming its income as exempt under section 11 of the Act. The return of income was summarily processed under section 143(1) of the Act dated 14.09.2012. Subsequently, the case was selected for scrutiny with the prior approval of CIT, Rajahmundry and statutory notices under section 143(2) and 142(1) of the Act dated 17.09.2012 were issued and served on the assessee along with the questionnaire. In response, assessee’s representative appeared

from time to time and submitted information required by the Assessing Officer. Ld. Assessing Officer [hereinafter in short "Ld. AO"] observed that assessee claimed exemption under section 11 of the Act whereas assessee has not derived any income from any property held under Trust. Ld. AO also observed that the only source of receipt is from the educational institution established by way of receipt in the form of fees. Ld. AO found that such receipt / income cannot be construed as derived from property / business held under Trust so as to claim exemption under section 11 of the Act. Further, he also observed that financial results of the assessee reflected surplus amounts year after year, thereby giving scope that it is a profit-oriented institution. The Ld. AO therefore asked the assessee to explain as to why income should not be assessed on commercial lines. In response, Ld.Authorised Representative of the assessee submitted that it is not into commercial or business activity to attract applicability of section 36, 43B and 40(a)(ia) of the Act. However, the Ld. AO did not accept the contention of the Authorised Representative of the assessee. Rejecting the submissions by the Authorized Representative, the Ld. AO proceeded to tax the income as income from business by making the following additions: -

1	Capitalization of interest	Rs.18,72,000/-
2	Disallowance under section 40(a)(ia) of the Act	Rs.37,95,902/-
3	Disallowances of interest	Rs.3,76,800/-
4	Ld. AO also denied the exemption claimed by the assessee under section 11 of the Act.	

4. On being aggrieved by the order of the Ld. AO, assessee preferred an appeal before Ld. CIT(A). Before Ld. CIT(A), authorized representative of the assessee submitted that assessee is a Registered Society under “The Societies Registration Act, XXI of 1860” with the objects of imparting education and running a Engineering College and educational institution without profit motive. It was also submitted that assessee was claiming exemption under section 10(23)(c)(vi) of the Act whereas subsequently it was cancelled by the Chief Commissioner of Income-tax, Visakhapatnam. Since assessee also had Registration under section 12A of the Act assessee claimed exemption from income under section 11(1) of the Act in the absence of exemption under section 10(23)(c)(vi) of the Act. Authorized Representative of the assessee also relied on the assessee’s own case for the earlier assessment years in ITA Nos. 99 to 104/VIZ/2017 dated 20.12.2018. Considering the submissions made by the assessee’s Representative, Ld. CIT(A) by judicially following the ratio laid down by the Tribunal in ITA Nos. 99 to 104/VIZ/2017 dated 20.12.2018 directed the Ld. AO to allow the exemption under section 11 of the Act, thereby allowing the appeal of the assessee.

5. Aggrieved by the order of the Ld. CIT(A), revenue is in appeal before us by raising the following grounds of appeal: -

*“(i) The Ld. CIT(A) erred in simply relying on the submissions of the assessee that the authors/directors/trustees/interested parties of the institutions have no interest in the Society.*

(ii) *The ld CIT(A) is not justified in accepting the assessee's plea that there are no violations of diversion of funds to the author/founder members of the Society in spite of the categorical assertion by the assessee that it had not charged interest on those loans.*

(iii) *The Ld. CIT(A) ought not to have concluded that there are no violations u/s. 13(1)(c) keeping in view of AO specific findings that the assessee violated the provisions of section 13(2)(a), 13(2)(g) and 13(2)(h) of the I.T.Act.*

(iv) *Any other grounds with the permission of the Hon'ble Tribunal.”*

**6.** The only issue contested by the revenue is with respect to diversion of funds by the society to its founder members / author thereby violating the provisions of section 13(1)(c), 13(2)(a), 13(2)(g) & 13(2)(h) of the Act. On this issue, Ld. Departmental Representative [hereinafter in short “Ld.DR”] fully supported the orders of the Ld. AO. Ld. DR also placed reliance on the following case laws: -

- i. Prathyusha Educational Trust v. Pr.CIT (108 taxmann.com 385 [Madras])
- ii. Pr.CIT v. Maharaja Educational Trust [2024] 166 taxmann.com 197 (Delhi).
- iii. Union of India v. Baba Banda Singh Bahadur Educational Trust [2023] 150 Taxmann.com 40 (SC).

**7.** Per contra, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that assessee has advances the following amounts: -

- |      |                              |                |
|------|------------------------------|----------------|
| i.   | M/s. GSL Educational Society | Rs.10,00,000/- |
| ii.  | Shri Bommana Rajkumar        | Rs.12,35,000/- |
| iii. | Sri Ganni Krishna            | Rs.9,05,000/-  |

**8.** Ld.AR further submitted that no payment was made to persons under section 13(1)(c) of the Act but they were made to institutions carrying out the same activity and other payments were made by the assessee in the regular course of business or for the specific purpose for the expenditure to be incurred in respect of the activity of the works relating to the assessee.

**9.** Further, in respect to disallowances of interest of Rs. 37,95,902/- under section 40(a)(ia) of the Act, Ld.AR submitted that the assessee has obtained loans and as per section 13(1)(c) of the Act, there are restriction on advancing the amounts to interested persons, but there are no restrictions to borrow the funds at times of requirement. He further submitted that interest rates are being paid at the market rates.

**10.** On the issue of capitalization of interest, Ld.AR submitted that since entire income is exempt under section 11 of the Act the interest capitalization does not arise.

**11.** On the issue of denial of exemption under section 11 of the Act, Ld.AR submitted that on similar issue in the assessee's own case for the A.Y. 2008-09, the Tribunal has held that the Ld. AO has erred in denying the exemption under section 11 of the Act. He pleaded that the same ratio may be followed for the instant year also.

12. We have heard both the sides and perused the material available on record including the orders of the lower authorities. The main contention of the revenue is that assessee had advanced sums to other institutions, individuals and borrowed funds from individuals thereby violated the provisions of section 13(1)(c) of the Act and section 11(5) of the Act and hence ineligible for exemption of its income under section 11 of the Act. The assessee's contention is that the advances were made to societies carrying on similar objects and other outstandings are incurred in the regular activity of the assessee's objects and there can be no violation of section 13(1)(c), 13(2)(a), 13(2)(g) & 13(2)(h) of the Act and therefore its income is eligible for exemption under section 11 of the Act. Section 13(1)(c) of the Act prescribes that if the funds are diverted for the purpose of personal benefit of any of the persons referred to in sub-section 3 of section 13 then in such case section 11 is not to be applied. However, in the instant case assessee has advanced sums to other institutions which are having Registration under section 12A and carrying on the similar objects. Other advances are to individuals for achieving specific purposes of the society. Further, with respect to borrowals of amounts cannot be considered as the violation of provisions of section 13(1)(c) of the Act, since the society has borrowed funds from various persons for the benefit of the society and as per the financial requirements of the society. Further the revenue has not brought

any material on record that excess interest is charged to any of the interested persons to hold violations.

**13.** Similar issue has come up before this Tribunal in assessee's own case for the A.Y. 2008-09, the Tribunal has held that the Ld. AO has erred in denying the exemption and accordingly directed the Ld. AO to allow the exemption under section 11 of the Act. For the ready reference we extract Para Nos. 10 to 15 of the order of this Tribunal in ITA No. 162/VIZ/2012 dated 17.06.2016.

*“10. The A.O. denied the benefit of exemption for the sole reason that the assessee society has diverted its funds to other societies and violated the provisions of section 13(1)(d) of the Act. According to the A.O., advancement of loans to other societies whether or not registered under the provisions of section 12A of the Act is a violation of section 13(1)(d) of the Act, consequently the society is not eligible for exemption u/s 11 of the Act. The question before us is whether loans advanced to other societies under the same management having similar objects and also registered under the provisions of section 12A of the Act is a violative of section 13(1)(d) of the Act, which render the assessee ineligible for exemption u/s 11 of the Act. The Hon'ble Delhi High Court, in the case of Director of Income Tax (Exemption) Vs. ACME Educational Society (supra), held that advancing interest free temporary loan by assessee society to another society having similar objects is not an investment or a deposit, hence there is no violation of the provisions of section 13(1)(d) r.w.s. 11(5) of the Act to render withdrawal of exemption u/s 11 of the Act. In the present case on hand, on perusal of the documents available on record, we find that the assessee has advanced loans to other societies under the same management having similar objects and also registered under the provisions of section 12A of the Act and charged interest. The assessee also proved that it has advanced loans out of the funds borrowed from founder members of the society. When the loans are given out of the funds borrowed from the society, the A.O. was not correct in holding that the assessee has diverted the funds in violation of the provisions of section 13(1)(d) of the Act. Therefore, we are of the view that advancing loans to other societies having similar object whether or not registered u/s 12A of the Act, is not a violation of the provision of section 13(1)(d) of the Act*

*11. Coming to the other observations of the Assessing Officer. The A.O. observed that the society's activities are not in accordance with the objects of the society. The society is existed for the purpose of imparting*

education, however, involved in the activity of let out of properties on commercial lines to telecom companies and also running hostels on commercial lines. The A.O. further observed that the assessee society is maintaining luxury cars like BMW and Volks Wagon, however failed to prove the purpose of maintaining luxury cars for the objects of the society. We do not see any merits in the findings of the A.O. for the reason that the A.O. has borrowed the findings of the Chief Commissioner of Income Tax, Visakhapatnam while withdrawing the exemption granted u/s 10(23C)(vi) of the Act. We further observed that the A.O. has not made out any specific observations with regard to the genuineness of the activities of the society for the period under consideration. The assessment of any trust/society claiming exemption under sec. 11 is to be examined in each year, so as to come to the conclusion that the entity has committed any violations referred to in any of the provisions of sec. 13 of the Act to deny the exemption. Therefore, we are of the opinion that without pointing out any specific violations referred to in section 13 of the Act, the A.O. was not correct in holding that the assessee objects are not charitable in nature and the activity carried out by the assessee are not in accordance with main objects of the society. In our considered opinion, the A.O. cannot borrow the findings of the Chief Commissioner of Income Tax in the order cancelling the registration u/s 10(23C) of the Act to deny the benefit of exemption u/s 11 of the Act, unless he had specifically points out the activities carried out by the assessee are not in accordance with the objects of the trust. As far as the observation of A.O. with regard to letting out of properties on commercial lines is concerned, we noticed that the assessee has let out its place to telecom companies for erection of telecom tower and used the proceeds for the objects of the society. Similarly, the assessee society has maintaining a hostel for the benefit of the students. Maintaining hostels for the benefit of the students and letting out properties cannot be considered has ingenuine activity to deny the benefit of exemption u/s 11 of the Act. In the present case on hand, on perusal of the facts, we noticed that the A.O. without pointing out any specific violations referred to in section 13(1)(c) or 13(1)(d) of the Act, simply rejected benefit of exemption.

12. It is pertinent to discuss here the case laws relied upon by the assessee. The assessee relied upon the decision of Hon'ble High Court of Delhi, in the case of Director of Income Tax (Exemption) Vs. ACME Education Society (2010) 326 ITR 146. The Hon'ble Delhi High Court, under similar circumstances held that advancing interest free temporary loan by assessee society to another society having similar objects is not an investment or a deposit, hence there was no violation of provisions of section 13(1)(d) of the Act. The relevant portion of the order is reproduced hereunder:

*“Advancing of interest-free temporary loan by assessee society to another society having similar objects is not an “investment” or a “deposit”, hence there was no violation of provision s. 13(1)(d) r.w.s. 11(5) to render withdrawal of exemption under s.11.”*

13. The assessee relied upon the decision of High Court of Delhi, in the case of Director of Income Tax (Exemption) Vs. Alarippu (2000) 244 ITR 358. The Hon'ble Delhi High Court, under similar circumstances held that advancing temporary loan to another similar society was neither an investment nor deposit. The relevant portion of the order is reproduced hereunder:

*The expressions used in both the provisions i.e. ss. 11(5) and 13(1)(d) are 'investment' and 'deposit'. Former expression means to lay out money in business with a view to obtain income on profit. Deposit, on the other hand, means that which is placed anywhere, as in any one's hands for safe-keeping, something entrusted to the care of another. These two expressions have been used in cognate sense and have to be understood as such. In order to constitute an investment the amount laid down should be capable of and result in any income, return or profit to the investor and in every case of investment the intention and positive act on the part of the investor should be to earn such income, returns, profit. In order to constitute an investment the monies shall be laid out in such a manner as to acquire some species of property which would bring in an income to the investor. Loan, on the other hand, is granting temporary use of money, or temporary accommodation. The words "investment" "deposit" and "loan" are certainly different. The word 'deposit' does not cover transaction of loan which can be more appropriately described as direct bailment. The essence of deposit is that there must be a liability to return it to the party by whom or on whose behalf has been made on fulfilment of certain conditions. In the commercial sense the term is used to indicate the aforesaid transaction as deposit of money for employment in business, deposits for value to initiate security for, deposit of title deeds, similar documents as security for loan, deposit of money bills in a bank in the ordinary course of business of current account and deposits a sum at interest at a fixed deposit in a bank. Amount given to M was neither for the purpose of investment nor for deposit more particularly in the factual background. The transaction with which the present dispute is linked cannot be treated as investment or deposit as has been factually found by the Tribunal. The conclusion being essentially factual, no question of law arises out of the order of the Tribunal*

14. The assessee relied upon the decision of Hon'ble High Court of Allahabad, in the case of CIT Vs. M/s. Kanpur Subhash Shiksha Samiti in (2013) Tax Pub (DT) 2655 (All HC). The Hon'ble High Court, while deciding the issue held that when loan given from out of 15% of income, section 13(1)(d) of the Act cannot be applied. The relevant portion of the order is reproduced hereunder:

*“In the present case we find that excess of income over expenditure in the relevant year was less than 15% of the gross*

*receipts. The loan was not given in the period relevant to assessment year. It was given between 20 th Feb. to 24 th Feb. 2003 and was repaid in the year 2009 and further the amount was given by way of loan to a society, which was later on registered under section 12A w.e.f. 1.4.2004 to 25.5.2005, with the same objects and purpose as that of the assessee. “*

*15. Considering the facts and circumstances of this case and also following the judicial precedents, we are of the opinion that the A.O. was erred in denying exemption u/s 11 of the Act. The CIT(A) without appreciating the facts has confirmed the order passed by the A.O. Therefore, we set aside the order passed by the CIT(A) and direct the A.O. to allow the exemption u/s 11 of the Act.”*

**14.** Therefore, respectfully following the view taken by this Tribunal in the assessee's own case, and as per our findings, we hold that there are no violations and the revenue did not make out any case to substantiate the violations in respect of 13(1)(c), 13(2)(a), 13(2)(g) and 13(2)(h) of the Act. Therefore, we do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld. The appeal of the revenue is dismissed.

**15.** In the result, appeal of the revenue is dismissed.

### **C.O. No.06/VIZ/2024**

**16.** Assessee has raised following grounds in its cross objection: -

*“1. The Ld. CIT(A) correctly held that the trustees of the assessee society have not derived any benefit and the society was run towards the objects for which it was formed.*

*2. The Ld. CIT(A) rightly held that there are no diversion of funds to the founders of the assessee society or any other third party.*

3. The Ld. CIT(A) rightly held that there are no violations of provisions of sec. 13(1)(C) or 13(2)(e) or 13(2)(g) or 13(2)(h) of the IT Act.”

17. The assessee filed cross objections in support of the order of the Ld.CIT(A). Since the grounds raised by the revenue are dismissed, the cross objection filed by the assessee becomes infructuous, hence, Grounds raised by the assessee are dismissed as infructuous.

18. To sum-up, appeal of the revenue as well as cross objection filed by the assessee are dismissed.

Order pronounced in the open court on 20<sup>th</sup> February, 2025.

Sd/-  
(के.नरसिम्हाचारी)

(K.NARASIMHA CHARY)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 20.02.2025

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :-

1. निर्धारिती/ The Assessee : **Sri Koundinya Educational Society**  
NH-5, Chaitanya Nagar  
Rajahmundry – 533296
2. राजस्व/ The Revenue : **ACIT**  
Stalin Corporate  
Auto Nagar  
Vijayawada – 520007  
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file  
//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam