



ITA No.457/Ind/2016  
A.Y. 2011-12

Rishiraj Memorial Education & Welfare Society,  
Bhopal

PAN – AAAAR 5568 F :::: Appellant

Vs

ACIT-2(1), Bhopal :::: Respondent

Appellants by	Shri Yashwant Sharma
Respondent by	Shri Mohd. Javed
Date of hearing	20.12.2016
Date of pronouncement	17.01.2017

**O R D E R**

**PER BENCH**

These appeals filed by the above assessee emanate from the different orders of the learned CIT(A)-1, Bhopal, dated 31.3.2016.

**ITA No.456/Ind/2016 in the case of H.K. Kalchuri Education Trust**

The grounds of appeal raised by the assessee read as under:

1. That on the facts and in the circumstances of the case, the assessment made by the learned A.O. and sustained by Ld. CIT(A) is contrary to law, materially incorrect, and unsustainable in law as well as on facts. And that all the adverse findings recorded therein are opposed to facts, equity, and law.
2. That on the facts and in the circumstances of the case and in law, the assessee trust is not an association of person and, therefore, the assessment made by Ld. AO and sustained by Ld. CIT(A) in the status of AOP is bad in law and without jurisdiction and, therefore, be cancelled.

3. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) grossly erred in their findings that the activities of the assessee are in the nature of business and, therefore, erred in assessing the surplus shown in the income & expenditure account as the business income of the assessee. Such findings of the AO and Ld. CIT(A) be quashed and it be held that the assessee has no income from business assessable u/s 28 of the I.T. Act.
4. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) grossly erred in their findings that the activities of the assessee were not charitable within the meaning of section 2(15) and were for the sole purpose of earning profits. That, on the facts of the circumstances and of the case and in law, it be held that the activities of the assessee are charitable within the meaning of section 2(15) of the act and are genuine and, therefore, the denial of section u/s 11 & 12 is wholly injudicious and unlawful. The deduction/exemption u/s 11 as claimed in the return, therefore, may kindly be allowed.
5. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) erred and were not justified in their findings that the property/income of the trust have been used for the benefit of interested persons as provided u/s 13(3) and, therefore, the assessee is not entitled for any exemption u/s 11 of the act. Such injudicious and unlawful findings be quashed and it be held that no benefits have been provided to the persons u/s 13(3) and the assessee is fully eligible for exemption/benefits u/s 11 of the I.T. Act.
6. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) erred and were not justified in their findings that the society/trust/entities to whom interest free advances were given by the assessee are the concerns mentioned in section 13(3)(e) of the I. Tax Act and giving interest free loan to various societies/entities of the same management and other parties without any security is in violation of provisions of section 13(1)(c)(ii) r.w.s 13(2)(a)/13(2)(h) r.w.s. 13(3) of the I.T.Act and, therefore, the assessee is not eligible for benefits u/s 11 and 12 of the I.T. Act. Such unlawful & injudicious findings be quashed and it be held that the said provisions are not applicable and, therefore, the benefit of section 11 & 12 be kindly allowed.
7. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) erred and were not justified in their findings that the assessee has given benefits to its members in the form of user of vehicles for personal purposes and, therefore, the assessee is not eligible for exemption u/s.11 & 12 of the I.T. Act. Such findings of the Ld. A.O. and Ld. CIT(A) be quashed and it be held that no such benefits had been provided to the members/office bearers and thus there is no violation of section 13(1)(c)(ii) r.w.s. 13(2)(b) r.w.s. 13(3) and thus the assessee is fully eligible for exemption u/s.11 & 12 of the I.T. Act.

8. That on the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in sustaining the following additions/disallowances. Such additions/disallowances are wholly unlawful and injudicious hence be deleted :-

S.No.	Nature of additions/disallowances	Amount (Rs.)
i)	Surplus as business income as per Income and Expenditure A/c	13,95,58,634
ii)	Donation	5,54,071

9. That on the facts and in the circumstances of the case and in law, the learned A.O. and Id. CIT(A) erred and were not justified in not allowing the deduction for the application of income on acquisition of fixed assets. Such deduction be kindly allowed as an application of income.
10. That on the facts and in the circumstances of the case and in law and without prejudice to above, the learned A.O. may kindly be directed to workout and allow the deduction/application of income on the total income finally assessed.
11. That on the facts and in the circumstances of the case and in law, the deficits of the earlier years be kindly given set off against the income of the current year as an application of income.
12. That on the facts and in the circumstances of the case and in law, the Id. AO be directed to allow repayment of loans from banks as application of income.
13. That on the facts and in the circumstances of the case and in law, the levy of interest u/s.234A, 234B and 234C is unlawful and hence be cancelled.

### **ITA No.458/Ind/2016 in case of Hai Hay Kshetriya Education Society**

The grounds of appeal raised by the assessee read as under:

1. That on the facts and in the circumstances of the case, the assessment made by the learned A.O. and sustained by Ld. CIT(A) is contrary to law, materially incorrect, and unsustainable in law as well as on facts. And that all the adverse findings recorded therein are opposed to facts, equity, and law.
2. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) grossly erred in their findings that the activities of the assessee are in the nature of business and, therefore, erred in assessing the surplus/(deficit) shown in the income & expenditure account as the business income of the assessee. Such findings of the A.O. and Ld. CIT(A) be quashed and it be held that the assessee has no income from business assessable u/s.28 of the I.T. Act.

3. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) grossly erred in their findings that the activities of the assessee were not charitable within the meaning of section 2(15) and were for the sole purpose of earning profits. That, on the facts and in the circumstances of the case and in law, it be held that the activities of the assessee are charitable within the meaning of section 2(15) of the Act and are genuine and, therefore, the denial of exemption u/s 11 & 12 is wholly injudicious and unlawful. The deduction/exemptions u/s 11 as claimed in the return, therefore, may kindly be allowed.
4. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) erred and were not justified in his findings that the property/income of the trust have been used for the benefit of interested persons as provided u/s.13(3) and, therefore, the assessee is not entitled for any exemption u/s.11 of the Act. Such injudicious and unlawful findings be quashed and it be held that no benefits have been provided to the persons u/s. 13(3) and the assessee is fully eligible for exemption/benefits u/s.11 of the I.T. Act.
5. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) erred and were not justified in their findings that the society/trust/entities to whom interest free advances were given by the assessee are the concerns mentioned in section 13(3)(e) of the I. Tax Act and giving interest free loan to various societies/entities of the same management and other parties without any security is in violation of provisions of section 13(1)(c)(ii) r.w.s 13(2)(a)/13(2)(h) r.w.s. 13(3) of the I.T.Act and, therefore, the assessee is not eligible for benefits u/s 11 and 12 of the I.T. Act. Such unlawful & injudicious findings be quashed and it be held that the said provisions are not applicable and, therefore, the benefit of section 11 & 12 be kindly allowed.
6. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) erred and were not justified in their findings that the assessee has given benefits to its members in the form of user of vehicles for personal purposes and, therefore, the assessee is not eligible for exemption u/s.11 & 12 of the I.T. Act. Such findings of the Ld. A.O. and Ld. CIT(A) be quashed and it be held that no such benefits had been provided to the members/office bearers and thus there is no violation of section 13(1)(c)(ii) r.w.s. 13(2)(b) r.w.s. 13(3) and thus the assessee is fully eligible for exemption u/s.11 & 12 of the I.T. Act.
7. That on the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in sustaining the following additions/disallowances. Such additions/disallowances are wholly unlawful and injudicious hence be deleted :-

S.No.	Nature of additions/disallowances	Amount (Rs.)
i)	Deficit as business income as per Income and Expenditure A/c	(-) 66,89,019
ii)	Donation	12,402

8. That on the facts and in the circumstances of the case and in law, the learned A.O. and Id. CIT(A) erred and were not justified in not allowing the deduction for the

application of income on acquisition of fixed assets. Such deduction be kindly allowed as an application of income.

9. That on the facts and in the circumstances of the case and in law, the Id. AO be directed to allow repayment of loans from banks as application of income.

### **ITA No.455/Ind/2016 in case of Jai Narain Shiksha Samiti**

The grounds of appeal raised by the assessee read as under:

1. That on the facts and in the circumstances of the case, the assessment made by the learned A.O. and sustained by Ld. CIT(A) is contrary to law, materially incorrect, and unsustainable in law as well as on facts. And that all the adverse findings recorded therein are opposed to facts, equity, and law.
2. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) grossly erred in their findings that the activities of the assessee are in the nature of business and, therefore, erred in assessing the surplus shown in the income & expenditure account as the business income of the assessee. Such findings of the A.O. and Ld. CIT(A) be quashed and it be held that the assessee has no income from business assessable u/s.28 of the I.T. Act.
3. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) grossly erred in their findings that the activities of the assessee were not charitable within the meaning of section 2(15) and were for the sole purpose of earning profits. That, on the facts and in the circumstances of the case and in law, it be held that the activities of the assessee are charitable within the meaning of section 2(15) of the Act and are genuine and, therefore, the denial of exemption u/s 11 & 12 is wholly injudicious and unlawful. The deduction/exemptions u/s 11 as claimed in the return, therefore, may kindly be allowed.
4. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) erred and were not justified in his findings that the property/income of the trust have been used for the benefit of interested persons as provided u/s.13(3) and, therefore, the assessee is not entitled for any exemption u/s.11 of the Act. Such injudicious and unlawful findings be quashed and it be held that no benefits have been provided to the persons u/s. 13(3) and the assessee is fully eligible for exemption/benefits u/s.11 of the I.T. Act.
5. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) erred and were not justified in their findings that the societies/trusts/entities to whom interest free advances were given by the assessee are the concerns mentioned in section 13(3)(e) of the I.Tax Act in giving interest free

loan to various societies/entities of the same management and other parties without any security is in violation of provisions of section 13(1)(c)(ii) r.w.s 13(2)(a)/13(2)(h) r.w.s. 13(3) of the I.T.Act and, therefore, the assessee is not eligible for benefits u/s 11 and 12 of the I.T. Act. Such unlawful & injudicious findings be quashed and it be held that the said provisions are not applicable and, therefore, the benefit of section 11 & 12 be kindly allowed.

6. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) erred and were not justified in their findings that the assessee has given benefits to its members in the form of user of vehicles for personal purposes and, therefore, the assessee is not eligible for exemption u/s.11 & 12 of the I.T. Act. Such findings of the Ld. A.O. and Ld. CIT(A) be quashed and it be held that no such benefits had been provided to the members/office bearers and thus there is no violation of section 13(1)(c)(ii) r.w.s. 13(2)(b) r.w.s. 13(3) and thus the assessee is fully eligible for exemption u/s.11 & 12 of the I.T. Act.

7. That on the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in sustaining the following additions/disallowances. Such additions/disallowances are wholly unlawful and injudicious hence be deleted :-

S.No.	Nature of additions/disallowances	Amount (Rs.)
i)	Surplus as business income as per Income and Expenditure A/c	5,74,59,773
ii)	Donation	7,24,540

8. That on the facts and in the circumstances of the case and in law, the learned A.O. and Id. CIT(A) erred and were not justified in not allowing the deduction for the application of income on acquisition of fixed assets. Such deduction be kindly allowed as an application of income.

9. That on the facts and in the circumstances of the case and in law the deficits of the earlier year be kindly given set off against the income of the current year as an application of income.

10. That on the facts and in the circumstances of the case and in law, the Id. AO be directed to allow repayment of loans from banks as application of income.

11. That on the facts and in the circumstances of the case and in law, the levy of interest u/s. 234A and 234B is unlawful and hence be cancelled.

**ITA No.457/Ind/2016 in case of Rishiraj Memorial Education & Welfare Society**

The grounds of appeal raised by the assessee read as under:

1. That on the facts and in the circumstances of the case, the assessment made by the learned A.O. and sustained by Ld. CIT(A) is contrary to law, materially incorrect, and unsustainable in law as well as on facts. And that all the adverse findings recorded therein are opposed to facts, equity, and law.
2. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) grossly erred in their findings that the activities of the assessee are in the nature of business and, therefore, erred in assessing the deficit shown in the income & expenditure account as the business income of the assessee. Such findings of the A.O. and Ld. CIT(A) be quashed and it be held that the assessee has no income from business assessable u/s.28 of the I.T. Act.
3. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) grossly erred in their findings that the activities of the assessee were not charitable within the meaning of section 2(15) and were for the sole purpose of earning profits. That, on the facts and in the circumstances of the case and in law, it be held that the activities of the assessee are charitable within the meaning of section 2(15) of the Act and are genuine and, therefore, the denial of exemption u/s 11 & 12 is wholly injudicious and unlawful. The deduction/exemptions u/s 11 as claimed in the return, therefore, may kindly be allowed.
4. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) erred and were not justified in his findings that the property/income of the trust have been used for the benefit of interested persons as provided u/s.13(3) and, therefore, the assessee is not entitled for any exemption u/s.11 of the Act. Such injudicious and unlawful findings be quashed and it be held that no benefits have been provided to the persons u/s. 13(3) and the assessee is fully eligible for exemption/benefits u/s.11 of the I.T. Act.
5. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) erred and were not justified in their findings that the societies/trust/entities to whom interest free advances were given by the assessee are that concerns mentioned in section 13(3)(e) of the I. Tax Act and giving interest free loan to various societies/entities of the same management and other parties without any security is in violation of provisions of section 13(1)(c)(ii) r.w.s 13(2)(a)/13(2)(h)r.w.s. 13(3) of the I.T.Act and, therefore, the assessee is not eligible for benefits u/s 11 and 12 of the I.T. Act. Such unlawful & injudicious findings be

quashed and it be held that the said provisions are not applicable and, therefore, the benefit of section 11 & 12 be kindly allowed.

6. That on the facts and in the circumstances of the case and in law, the learned A.O. and Ld. CIT(A) erred and were not justified in their findings that the assessee has given benefits to its members in the form of user of vehicles for personal purposes and, therefore, the assessee is not eligible for exemption u/s.11 & 12 of the I.T. Act. Such findings of the Ld. A.O. and Ld. CIT(A) be quashed and it be held that no such benefits had been provided to the members/office bearers and thus there is no violation of section 13(1)(c)(ii) r.w.s. 13(2)(b) r.w.s. 13(3) and thus the assessee is fully eligible for exemption u/s.11 & 12 of the I.T. Act.
7. That on the facts and in the circumstances of the case and in law, the Id.CIT(A) erred in sustaining the following additions/disallowances. Such additions/disallowances are wholly unlawful and injudicious hence be deleted :-

S.No.	Nature of additions/disallowances	Amount (Rs.)
i)	Deficit as business income as per Income and Expenditure A/c	46,76,829
ii)	Donations	23,802

8. That on the facts and in the circumstances of the case and in law, the learned A.O. and Id. CIT(A) erred and were not justified in not allowing the deduction for the application of income on acquisition of fixed assets. Such deduction be kindly allowed as an application of income.
9. That on the facts and in the circumstances of the case and in law, the Id. AO be directed to allow repayment of loans from banks as application of income.
2. Both the parties submitted that identical facts are involved in these appeals and the lead case is of H.K. Kalchuri Education Trust, therefore, we are taking the facts from the case of H.K. Kalchuri Education Trust.
3. Facts, in brief, are that the assessee trust/societies were granted registration u/s 12A of the I.T. Act on various dates as under: -

S.No	Name	PAN	Registration u/s 12A granted from the date
1	HK Kalchuri Education Trust	AAATH3738E	13.1.1999
2	Rishiraj Memorial Education & Welfare Society	AAAAR5568F	17.7.2000
3	Jai NarainShikshaSamiti	AAAAJ2542F	01.4.2003
4	Hai Hay Kshatriya Education Society	AAAAH1557N	01.4.1996

There was a search on the assessee group including above societies/trust on 23.7.2009, except Rishiraj Memorial Education & Welfare Society which was covered u/s 153C of the Income Tax Act. All the assessees are running educational institutions/hospitals. Consequent to search, CIT cancelled the registration u/s. 12A of all the above assessees on 23.4.2014, post search assessment orders, from the date of granting. Search Assessment period was from A.Y. 2004-05 to 2010-11. Present appeals in hand are relating to A.Y. 2011-12, the immediate next year after search assessment period. In the search, some agreements were found in case of HK Kalchuri Education Trust and Rishiraj Memorial Education & Welfare Society on the basis of which all above four trust/societies were treated by CIT as business organisation running for the purpose of personal benefits of its office bearers/members/trustees and not as charitable organisations. However, no such agreements were found in case of Jai Narain Shiksha

Samiti and Hai Hay Kshatriya Education Society though similar analogy was drawn by the CIT, while cancelling registration, of those agreements in these cases also. Additions were also made by AO in order u/s. 153A/153C dt. 14.8.2013, for A.Y. 2004-05 to 2010-11, on various issues treating the above assessees as business organization, and disallowing the claim of the assessee u/s. 11 and assessing the total income as business income. In the meantime, recently, this Bench has restored registration u/s 12A from the date of granting vide appeal no. ITA 389/Ind/2014 dt. 17.5.2016. Similarly, it has also deleted practically all the quantum additions vide appeal no. IT(SS)A 273, 274 & 275/Ind/2013 dt. 17.5.2016.

4. The Id. AR of the assessees filed written submissions and submitted that all the issues are covered in favour of the assessees vide ITAT's two orders dated 17.5.2016. The Id. DR supported the order of AO and CIT(A), however, could not controvert the submission of the Id. AR of the assessees.

5. We have considered the rival submissions of both the parties and gone through the material available on the file. We find that in the present appeals, the AO has practically repeated all the observations of his earlier orders u/s 153A/153C without bringing any evidence or corroboration against the assessee, treated the assessee as business organisation and disallowed the claim of the assessee u/s 11 and

assessed the total income as business income. We find that the Id. CIT(A), in all the four appellate orders in present appeals, has simply reproduced the earlier findings and decisions of his predecessor delivered against the search assessment orders u/s 153A/153C which have been subsequently reversed by the ITAT, Indore in two orders, as stated earlier. While doing so, the CIT(A) has also not brought on record any evidence or corroboration against the assessee in support of the impugned agreements having been implemented and for treating the assessee as business organisation and for disallowing the claim of the assessee u/s 11 on various grounds. In our view, such findings of CIT(A) cannot be accepted and are rejected in view of our earlier above decisions in search cases and in view of our decision in the subsequent paragraphs of this order.

5.1 We find that the facts of present appeal in hand for A.Y. 2011-12 are exactly similar to the facts of the search assessment orders for all above four assessees, without any change in the circumstances of the case. We find that the AO during the subject year also has not brought on record any evidence or corroboration against the assessee in support of the impugned agreements having been implemented and for treating the assessee as business organisation, which was inescapable. Hence, in our considered view, we find ourselves in agreement with the contentions of the Id. AR that all the issues are squarely covered in

favour of assessee by the above two orders of ITAT vide appeal no. ITA 389/Ind/2014 dt. 17.5.2016 of 12AA and vide appeal no. IT(SS)A 273,274 & 275/Ind/2013 dt. 17.5.2016 of quantum order, as the AO has simply repeated all the observations of his earlier order, without proving anything against the assessee to support his case. Copies of the aforesaid two orders of Indore Bench have been filed before us. Before proceeding further, we hold that since no such impugned agreements were found in case of Jai Narain Shiksha Samiti and Hai Hay Kshatriya Education Society, hence no adverse view or analogy could be drawn in case of the assessee of these agreements as held by Indore Bench of Tribunal at pg. 83 on last para of 12AA order, as done by AO and CIT(A) in the present case. We also find that similar observations and findings have been given by the AO in all the above four assessment orders. HK Kalchuri Education Trust being the leading case, we have taken facts from HK Kalchuri Education Trust. Hence, consolidated order is passed by us covering all the issues and our issue-wise decision shall apply to all the four assesses, as above. The issue-wise additions made by AO and our decision, as also covered by our above two earlier orders, are tabulated below:

<b>Observations and findings of AO</b>	<b>Our findings</b>
Assessee society runs the educational institutions as business entity for the purpose of earning and sharing profits	1. Allegation that the educational institutions are run by the assessee as partnership firms for sole purpose

<p>and not as charitable organization. Agreements for sharing profits were found during search on 23.7.2009 were implemented and it supports above view. Rights in the societies/trust running educational institutions are being purchased and sold. Hence, assessee is not eligible for exemption u/s 11/12 of the Act.</p>	<p>of earning and sharing profit is found wrong, baseless, unproved and without any corroborative evidence.</p> <ol style="list-style-type: none"> <li>2. Receipts / surplus have been utilized wholly and exclusively towards objects of the institution and nothing adverse was found by AO.</li> <li>3. Sharing or siphoning of the receipts / surplus /money of assessee-trust /society by office bearers/ trustees was only possible by inflating, that too exorbitantly, the capital as well as revenue expenditure. But no such evidence was brought by AO and no such allegation was made by him.</li> <li>4. Despite scrutiny assessments done u/s 143 (3) after verifying in detail the books of accounts, there is no such assertion or claim of Revenue of having inflated capital or revenue expenditure. That in itself proves beyond doubt that the allegations of the Revenue are totally fallacious, unsubstantiated, wrong and conjectural only.</li> <li>5. Huge surplus shown by assessee on year to year basis shows bona fides of the assessee. In case of siphoning out, there was no need to show surplus in each year.</li> <li>6. No evidence of profit sharing by trustees/members was found in search or brought on record by AO in subject year.</li> <li>7. No corroborative evidence of implementation of agreement was found in search or brought out by AO in subject year.</li> <li>8. Entire funds / property of the assessee is lying in its name and not in the name of trustees / members.</li> <li>9. No allegation or evidence regarding diversion of money from assessee to trustees / members was there by the deptt., as stated by assessee, since inception of institution.</li> <li>10. There was no adverse report or comment on functioning of assessee by AICTE.</li> <li>11. Assessee institution in not party to</li> </ol>
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	<p>the impugned agreements and hence no adverse view could be taken against assessee which is an independent identity from its trustees/members.</p> <p>12. In case of any misapplication of funds or mismanagement, action could lie against the person responsible but it can not be viewed against the assessee which is charitable organization.</p> <p>13. Regarding payment of Rs. 15,83,87,434/- out of agreed amount of Rs 17 crores/- as per a letter found in search, this payment was made through cheques to societies regd.u/s 12A, due to dispute among trustees /office bearers to continue to run the charitable entities. The rationale and circumstances behind this payment explained by the assessee were not controverted or disproved by Deptt. The subject payment of Rs. 15,83,87,434 cannot be treated as payment made for purchase and sale of society.</p> <p>14. No iota of corroborative evidence was found in search or brought on record by AO to support their allegations of implementation of impugned agreements. For this purpose, it was incumbent upon AO to have conducted post search investigation/inquiry by summoning the concerned parties and to bring on record clinching evidence to prove their allegations but it was not done despite clear cut denial with regard to subject agreement by assessee and office bearer.</p> <p>15. Burden was very heavy on AO to conclusively prove by cogent evidence that subject agreement was in fact acted upon and that the trustees/members have shared surplus of the institution and so also to ensure that trustees/members are brought to tax for such shared profits/surplus. But, nothing of the sort was done by him and the observations made and conclusions</p>
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	<p>drawn by him were made only on the basis of presumption, conjectures and surmises only. Also, nothing was taxed in the hands of concerned trustees/members for such alleged shared profits.</p> <p>16. Assessee is hence a charitable organization and its activities were genuine and in accordance with its objects as required by the law and is eligible for exemption u/s 11 r.w. sec. 12&amp;13.</p> <p>17. It is nowhere provided in the by-laws that at the time of dissolution of Trust/society the funds will vest in the family of the trustees/office-bearers.</p> <p>18. Subject agreements dealt with by AO were not found in case of Jai Narayan Shiksha Samiti and in Hai Hay Kshetriya Education Society and hence no adverse analogy could be drawn in these cases of these agreements.</p> <p>19. Therefore, considering that all the incomes as stated above have to be assessed as income from charitable activities, AO is directed to recalculate the surplus/deficit granting exemption u/s 11, 12 &amp; 13 in respect of all above five assesseees .</p>
<p>Advances have been given to various other societies/entities under the same management. It is violation of sec. 13.</p>	<p>There is no bar in advancing interest free advances to such charitable trust/societies registered u/s 12A as per the decision of Hon'ble MP High Court in the case of CIT v/s RKDF Education Society in ITA no. 151/Ind/2010 dated 01/08/2013.</p>
<p>Assessee is generating huge surplus from its educational activities, every year. This proves that the assessee Society is operating like a business venture and carrying out commercial activities in the guise of charitable activities so as to claim benefit of exemption under the Income Tax Act. The assessee society is thus running only with the motive of earning profits and not for charitable purposes and</p>	<p>The issue of generation of surplus vis-à-vis charitable has been set at rest by Hon'ble Supreme Court in the case of Queens Educational Society vs CIT [2015] 372 ITR 699 (SC) holding that where a surplus was made by educational institution which was ploughed back for educational purposes, said institutions was held to be existed solely for educational purposes and not for purpose of profit.</p>

<p>hence its activities can not be said to be for objects of Society and can not said to be genuine as well. Hence assessee is not eligible for deduction/exemption u/s 10 or 11/12 of IT Act. Hence surplus in the income and expenditure account is treated as business income.</p>	
<p>Donation is debited in the income and expenditure account. The said expenditure is gratuitous in nature. It is not for purpose of business of assessee and hence not allowed as deduction.</p>	<p>Since we have treated the assessee as charitable organisation eligible exemption u/s 11, hence in our view addition made by AO in A.Y. 2007-08 to 2010-11 are not correct because donation has been given towards charitable purposes only.</p>
<p>Vehicles being property/income of the Society have been used for the benefit of interested person as provided u/s 13(3) of the I.T. Act 1961 and therefore the assessee has not produced log book of vehicles. Society is not entitled for any deduction u/s 11 of the I.T. Act 1961.</p>	<p>Colleges of the societies are situated almost 10-12 Kms from the main city area in far flung areas, regular connectivity with them is possible only with the help of various vehicles. Maintenance of log book is not practicable for use of vehicles of the assessee society. CIT(A) has not commented on the above justification given by the assessee. He rather rested his conclusion on the basis that no vehicle is owned by Chouksey family and they are man of repute requiring use of vehicle. We agree with the contentions of the assessee that the Trustees/office bearers were expected to commute on day-to-day basis to various Govt. agencies, banks and other places scattered all over the vast city of Bhopal and assessee is expected to extend such minimum facilities to its trustees. Therefore, in our view this can not be said that the trustees have been provided with excessive amenities violating provisions of sec. 13.</p>

In view of above, we hold that our findings and observations given in above two decisions of Bench in Appeal no. ITA 389/Ind/2014 and others dt. 17.5.2016 (12A order) and Appeal no. IT(SS)A 273,274 & 275/Ind/2013 and others dt. 17.5.2016 (Quantum order) squarely apply in favour of assessee and the present four appeals are fully covered by the above decisions of Indore Bench of Tribunal, more particularly set

out in the above table. The AO and Id. CIT(A) are also not found justified in their findings that the property/income of the trust have been used for the benefit of interested persons as provided u/s 13(3). No violation of sec. 13 is found from the facts of the cases, as stated above in all four cases. Therefore, all the above four assessees are treated as charitable organisation and not business organisation and are eligible for exemptions/benefits u/s 11, 12 and 13 of the Income Tax Act. The AO is directed to allow the exemptions/benefits u/s 11, 12 and 13 to all the four assessees and re-compute accordingly.

6. A ground was also taken for allowing investment in capital assets as application of income for computing exemption u/s 11. Since we have held that assessee is a charitable organisation eligible for exemption u/s 11, the AO is directed to allow investment in capital assets as application of income.

7. Another ground raised by the assessee regarding set off of deficit of earlier year against income of the current year as application of income, is also allowed in view of the decision of Honble jurisdictional MP High Court in the case of CIT vs. Gujrati Samaj (2012) 349 ITR 559(MP). AO is directed to allow the same accordingly.

8. The assessee has also raised ground regarding allowance of repayment of loans from banks as application of income. The same is also found allowable in view of the decision of Hon'ble Karnataka High

Court in the case of CIT v. Janmabhumi Press Trust (2000) 242 ITR 457, 703. The AO is directed to allow the same accordingly.

9. The assessee has also raised ground that assessee is not an AOP and hence the assessment made by the AO in the status of AOP may kindly be held as bad in law and the AO may kindly direct it to treat the assessee as Artificial Juridical Person. This ground of the assessee is also found allowable in view of our decision in ITA No. 273/2013, as above, and AO is directed to treat assessee as Artificial Juridical Person.

10. The ground of assessee regarding levy of interest u/s 234A, 234B and 234C is consequential and hence AO is directed to compute interest, if any, on the basis of assessed income after giving effect to our findings in this order.

11. All additions made by AO are hence hereby deleted in case of all the four assessees, consequently, grounds of appeals of the assessees are allowed.

12. In result, all the appeals of all the four assessees are allowed.

Order was pronounced in the open Court on 17.01.2017.

Sd/-

(O.P. MEENA)  
ACCOUNTANT MEMBER

Sd/-

(D.T.GARASIA)  
JUDICIAL MEMBER

Dated: 17.01.2017