

IT: Where registration of assessee educational society under section 12AA was cancelled on ground that huge cash amount belonging to assessee in old denomination notes was found during search on premises of assessee's bank where management of assessee had effective control and same was kept there with an intention to get it exchanged with new currency, since source of such cash was established to be fees collected from students and such fees was recorded in books of account and cash was physically found in possession of assessee's bank, impugned withdrawal of registration was unjustified

IT: Where assessee educational society had given scholarship to several students and had produced several documents in support of said scholarship payments, mere non-appearance of certain students for verification could not be a sole basis to held that scholarship payments were not genuine so as to withdraw registration granted to assessee under section 12AA

IT: Where assessee educational society had purchased a plot of land and built a school building thereon and carried on its educational activities and fees so received was reflected in its books of account, it could not be said that assessee had made investment in contravention of section 11(5) so as to withdraw registration granted under section 12AA

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IN THE ITAT JAIPUR BENCH

St. Wilfred Educational Society

v.

Principal Commissioner of Income-tax (Central), Rajasthan*

**VIJAY PAL RAO, JUDICIAL MEMBER
AND VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
IT APPEAL NOS. 09 & 10 (JP) OF 2019
[ASSESSMENT YEAR 2014-15]
MARCH 18, 2019**

I. Section [12AA](#), read with sections [11](#) and [13](#), of the Income-tax Act, 1961 - Charitable or religious trust - Registration procedure (Cancellation of registration) - Assessment year 2014-15 - Assessee-society was engaged in providing educational services through 19 educational institutes - During course of search conducted at premises of one IUC bank, cash amounting to Rs. 1.56 crores in old denomination of Rs. 500 was found - In statement recorded under section 131, employees of bank stated that such amount belonged to SW, an educational institute ran by assessee-society - Simultaneously, a survey under section 133A was conducted at SW in which it was found that assessee was collecting fees in old denomination of Rs. 500, even after notification of demonetization and said fee collected in cash was regularly being transferred to premises of IUC Bank - Principle Commissioner held that assessee had collected fees in old denomination notes illegally with an intention to get it exchanged by routing it through IUC bank where management of assessee-society had effective control and that assessee had not recorded cash receipt in its books of account which clearly showed

that funds were being diverted for personal purposes - On basis of same, he cancelled registration of assessee under section 12AA - It was noted that it was clear that source of cash found in possession of bank was amount of fees collection of SW - It was further found from statements of accountants of assessee that fee receipts were issued to students at time of receiving fees from them, these receipts were updated in individual student register maintained online in computer system, daily cash collection summaries and related vouchers were prepared - Fee receipts and vouchers were very much part of books of account maintained by assessee in regular course of its activities - Whether once source of cash was established to be fees collected from students, such fees were recorded in books of account and cash had physically found in possession of assessee's bank, there was no basis to hold that there was any diversion of funds of assessee for personal benefit - Held, yes - Whether, therefore, impugned withdrawal of registration under section 12AA was unjustified - Held, yes [Paras 18 and 23] [In favour of assessee]

II. Section [12AA](#) of the Income-tax Act, 1961 - Charitable or religious trust - Registration procedure (Cancellation of registration) - Assessment year 2014-15 - During year, assessee educational society paid total scholarship of Rs. 25.83 lakhs to 301 students - To verify same, Assessing Officer issued notices under sections 133(6) to 25 students to ascertain whether they had received scholarship from assessee - Out of 25 students, replies of 16 students were not received; in two cases, notices were returned unserved; and three students had denied receiving scholarship - On basis of such proceedings conducted by Assessing Officer, Pr. Commissioner was of view that assessee had misused funds of trust for personal benefits and claimed same as expenses in guise of scholarship payments - Thus, he withdrew registration under section 12AA granted to assessee - It was noted that assessee had produced documents in support of scholarship payments which were not considered - Confirmation letters filed by students were placed on record and contents thereof were not disputed - Payments were made through account payee cheques to all these students and all cheques were cleared (except in case of one student) and said payments were duly reflected in assessee's bank account - Whether mere non-appearance of certain students for verification could not be a sole basis to raise a question mark on genuineness of scholarship payments to over 301 students and to arrive at a finding that assessee had misused funds which were claimed as expenses in guise of scholarship payments - Held, yes - Whether, therefore, impugned withdrawal of registration was unjustified - Held, yes [Paras 32 and 33] [In favour of assessee]

III. Section [12AA](#), read with sections [11](#) and [13](#), of the Income-tax Act, 1961 - Charitable or religious trust - Registration procedure (Cancellation of registration) - Assessment year 2014-15 - Assessee-society had purchased a plot of land from one, AGVS and made payment of Rs. 6.73 crores towards said purchase - Principal Commissioner was of view that AGVS and assessee had three common members/trustees and, therefore, AGVS was related entity within meaning of section 13(3) and it was a case of use of society fund for benefit of AGVS, a related entity, which was in violation of provisions of section 13(3)(c) - Further, this payment was neither a loan nor a donation but it appeared to be an investment not allowable under section 11(5) - Accordingly, he withdrew registration granted to assessee under section 12AA - It was noted that clauses from (a) to (cc) of section 13(3) were not applicable in instant case as there was nothing on record that suggest that common members were benefited in their individual capacity by such transaction - Further, assessee had built a school building on land and

carried on its educational activities thereon and fees so received was reflected in its books of account; therefore, it could not be said that assessee made investment in contravention of section 11(5) - Whether, therefore, impugned withdrawal of registration under section 12AA was unjustified - Held, yes [Paras 47, 51, 55 and 57] [In favour of assessee]

FACTS-I

- The assessee-society was engaged in providing educational services through 19 educational institutes. A search action was conducted at the office premises of IUC bank. During the course of search proceedings, cash amounting to Rs. 1.56 crores was found in an almirah in the 'clearing house' room of the IUC bank. As per Pr. Commissioner this entire cash was not found recorded in the books of account of the bank and out of this cash of Rs. 1.56 crores, majority of amount *i.e.*, Rs. 1.38 crores (6904 notes) comprises of 2000 rupees notes and out of which 2289 notes totalling to Rs. 45.78 lakhs were in new series and which was taken out of the banking system in an illegal manner since such huge withdrawals were not yet permitted by the RBI from any account. This cash of Rs. 1.56 crores was claimed to be belonging to SWC, an institution of assessee-society.
- Simultaneously, a survey under section 133A was conducted at SWC. During the course of survey, the Pr. Commissioner stated that it was observed on the basis of evidences collected and statements recorded that the assessee was collecting fees in old denomination of Rs. 500, even after notification of demonetization by the Government of India. Cash of Rs. 2.21 lakhs was found in old denominations during the course of survey proceedings while reported cash-in-hand as on date was Rs. 6.94 lakhs. It was also claimed by the assessee that approximately Rs. 2 crores was collected as fee from 1-12-2016 till 9-12-2016 while only cash amounting to Rs. 54,186 was deposited in the bank account of the assessee and that no cash deposit was made thereafter in the bank account of the assessee. As per Pr. Commissioner, this clearly implied that the assessee indeed collected fees in old denomination notes illegally with an intention to get it exchanged by routing it through the IUC bank where the management of the assessee had effective control and further not recording of the cash receipt in its books of account clearly showed that the funds were being diverted for personal purposes and therefore the activities of the assessee was not genuine. The Pr. Commissioner further held that the assessee and the IUC Bank were not two independent entities, but share common management and the GM of IUC Bank had stated on oath that difference in denominations on these two sheets was on account of exchange of currency on the instructions of KB, CEO of IUC Bank, who was also the key person and main trustee of assessee. The management of the assessee which was also controlling the operations of IUC Bank abused the official position and exercised undue influence over officials of the Bank. Both the assessee-society and the IUC Bank were controlled by the 'B' family and, thus, the provisions of section 13(3) were clearly attracted and once the funds of the assessee-society were found in possession of the bank, it was a clear case of attracting the provisions of section 13(1)(c).
- On assessee's appeal to the Tribunal:

HELD-I

- During the course of search operations conducted at the premises of IUC Bank, cash amounting to Rs1.56 crores has been found in possession of the Bank at its clearing house room. The statement of General Manager of the bank, HG was recorded under section 131. He has stated that the said amount has been received during last 4-5 days. In response to question as to who has sent the said amount to the Bank, he has stated that the said amount is the fees collection of SWC and has been sent by KB. In response to a question he has stated that the said amount has been kept in the custody of Branch Manager, DM and cashier, VSS. The statement of VSS was also recorded under section 131 and he has also been asked specific questions regarding the source of said amount of Rs 1.56 crores. In response to a question, he has stated that the said amount has been received in 2-4 times in the first week of december, 2016. He has stated that the said amount has been received from SWC. Therefore, there is a consistency in the statement of bank's employees wherein they have confirmed that the source of cash of Rs 1.56 crores found in possession of the Bank at its premises is the amount of fees collection of SWC.
- Now, coming to the statement of accountant of the assessee-society, GNG recorded under section 131. He has stated that SWC has only one bank account in form of current account maintained with Branch of IUC Bank. He has stated that approx. Rs 2 crores fees have been collected in cash during the period 1-12-2016 to 9-12-2016. Further, the tax authorities during the course of survey have gone through the receipt vouchers issued by the SWC to its students towards receipts of fees and other charges collected from students as is evident from question raised by the survey team to GNG wherein there is reference to vouchers and receipts as per which fees and other related charges have been collected in cash amounting to Rs 2.15 crores from the students. Further, the statement of SM, another accountant of the assessee-society was recorded under section 131. He has stated that they issue receipt to the students against deposit of their fees and subsequently, he has again confirmed that students have been given receipt against deposit of their fees and the same is recorded in the computers. Further, he was asked the status of cash in hand, he has stated that they prepare a daily collection sheet and based on the same, the daily collection is deposited in the bank. Further, he has stated that they update the books later as and when they get time. He has further stated that books have been updated till 30-11-2016 and for the remaining days, vouchers have been prepared but they couldn't do the entry. [Para 18]
- If the said statements of accountants of the assessee-society is correlated with the statements of the bank's employees, it is found that the said statements corroborates the fact that the source of cash found in the possession of the bank is the fees collected from students by SWC. It is also clear on close examination of these statements that the fee receipts are issued to the students at the time of receiving the fees from them, these receipts are updated in the individual student register maintained online in the computer system, daily cash collection summaries and relates vouchers are prepared. The said fee receipts and vouchers were available on record at the time of survey and has in fact been examined by the survey team and are very much part of books of account maintained by the assessee-society in regular course of its activities. Therefore, once the source of cash has been established to be fees collected from the students, such fees have been recorded in the books of account and the cash has been physically found in possession of the assessee's bank, there is no basis to hold that there is any diversion of funds of the assessee-society. In

fact, the Pr Commissioner has also not recorded any categorical finding that funds of the assessee-society have actually been diverted, rather he has only cast suspicion regarding intended application and diversion of funds by the assessee-society for the personal benefit of the 'B' family. The basis of such suspicion, as noted from his findings is the non-recording of fee receipts in the books maintained by the assessee-society as found at the time of survey and the involvement of KB in the functioning of the assessee-society and the Bank. [Para 18]

- In ordinary course where there is movement of cash, once the cash is deposited in the bank account, necessary entries are made in the cash book. In the instant case, there seems to be certain slippages on part of the assessee-society in terms of not updating its cash book when the cash was received and sent for deposit in its bank account and at the time of survey, it was not updated. At the same time, as noted above, the fact of the matter is that fee received from the students is recorded in the books of account as corroborated by fee receipts, individual student register maintained online in the computer system, daily cash collection summaries and related vouchers. These documents are written/printed documents available on record and are very much part of books of account maintained in the regular course and clearly fall in the inclusive definition of books of account so defined under section 2(12A). Such fee receipts and related vouchers have been examined by the survey team at the time of survey as evident from the question raised to GKG, the accountant of the assessee-society where the tax official has asked a question that based on perusal of vouchers, it is apparent that after 21-11-2016, fees and other related charges have been collected in cash amounting to Rs 2.15 crores. Therefore, though the cash book has not be updated at the time of survey in terms of recording the movement of cash for deposit in its bank account, cash inward in form of fees collected from the students have been duly recorded in the books of account as demonstrated by fee receipts, individual student register, daily cash collection sheets and related vouchers prepared by the assessee-society. Therefore, there was suspicion in the mind of authorities that assessee's funds have been diverted as the cash book doesn't reflect any outward movement of cash. Further, even the Bank has not recorded such funds and there are allegations regarding exchange of old currency notes with new notes. Once the cash is found in possession of the bank where the assessee maintains its bank account and it is confirmed by the Bank officials that the cash so found belong to the assessee-society, there is no basis to hold onto such suspicion as far as the assessee-society is concerned. [Para 18]
- Now, in terms of involvement of KB and intended benefit of such funds so found in the possession of the bank for the personal benefit of the 'B' family, the assessee drew reference, during the course of hearing, at the constitution of the executive committee of SWES where it is found that SKB holds the post of the Secretary and his uncle, SK is the President of the society. Further, reference was drawn to the list of board of directors of the IUC Bank and it is found that none of these two persons or any other 'B' family member is holding the post of directors. Further, the assessee has stated at the bar that neither KB nor any other members of the 'B' family hold any stake or financial interest/shareholding in IUC Bank. Therefore, the only common linkage between the two entities is the involvement of KB who is holding the post of secretary in the assessee-society and also holding the post of chief executive officer in the IUC Bank from where he is drawing his remuneration and the question is whether the provisions of section 13(3) are attracted in the instant case. [Para 19]

- As per clause (cc) to section 13(3), it talks about any trustee of the trust or manager (by whatever name called) of the institution. KB is the secretary of the assessee-society and involved in its administrative affairs and thus falls under clause (cc) of section 13(3) as a related person in relation to the assessee-society. The clause (e) to section 13(3) talks about any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest. If to read the said clause (e) in the context of present facts, it means IUC Bank, being a concern in which members/trustees of the assessee-society have a substantial interest. The term 'substantial interest in a concern' has been defined in *Explanation 3*. [Para 20]
- That is, members and trustees of the assessee-society either individually or collectively are entitled at any time during the previous year, to not less than twenty per cent of the profits of such concern *i.e.* IUC bank. In the present case, the said condition is not satisfied as none of the members and trustees of the assessee-society including that of 'B' family holds any financial interest in the IUC Bank. Merely on account of KB, being the chief executive officer of the IUC Bank and also holding the post of the Secretary to the assessee-society, will not make the IUC Bank and the assessee-society as related entity in terms of section 13(3). [Para 21]
- Now, in order to invoke the provisions of section 13(1)(c), the question that arise for consideration is whether KB, being a related person in relation to the assessee-society has actually benefited directly or indirectly by virtue of cash belonging to the assessee-society found in the possession of the IUC Bank where he hold the position of chief executive officer. The provisions of section 13(1)(c) states that if any part of the income during the previous year used or applied directly or indirectly for the benefit of any person referred to sub-section (3) to section 13. It thus talks about the usage or application *i.e.* there has to be actual utilization or application of funds for the benefit of the related person. It doesn't contemplate a situation of intended or future application of such funds for the benefit of such person. In the instant case, firstly the funds belonging to the assessee-society have been physically found in the possession of the Bank at its strong room and not in possession of KB. Secondly, such funds have not been used or applied and have been physically found and thus, there is no benefit which can be said to have actually been gained by KB either directly or indirectly in his individual capacity by having such funds in the possession of the Bank. In light of above, the provisions of section 13(1)(c) are not attracted in the instant and the contentions so advanced by the revenue and the Commissioner cannot be accepted. [Para 22]
- Therefore, it was merely a suspicion gathered through the preliminary enquiry conducted during the survey and search operations. A suspicion howsoever strong cannot be a basis to deny a legible claim of the assessee unless and until it is supported by verifiable evidence on record brought out through the process of detailed investigation. In the hands of the IUC Bank where the cash was physically found in its premises, no addition has been made on account of unaccounted cash and there is also no finding regarding illegal exchange of old currency *vis-à-vis* new currency as evident from the assessment order passed in case of the IUC Bank for assessment year 2017-18. The same rather supports the case of the assessee-society that the cash so found belongs to the assessee-society and the department has thus accepted the said fact and it has attained finality. Further, it is not the case of the revenue that old currency which is not a legal tender cannot be brought to tax. Therefore, unless and until there is a finding by the appropriate authority that there

was any illegality in the act of the assessee in accepting the fees in old currency, the same cannot be held against the assessee-society. Therefore, it is a case of mere suspicion and not a conclusive finding and even the Department itself has given a clean chit to the Bank. As far as the assessee-society is concerned, bank officials as well as the assessee's records conclusively prove that the funds so found are fees collected from the students duly recorded in the books of account and in fact, such amount has been seized by the department which further proves that there was no diversion of funds and no application for personal benefit of any person. Therefore, there is no basis to sustain the findings of the Pr. Commissioner. Only in a scenario, where it is proved beyond doubt that the funds of the assessee-society have actually been diverted for purposes other than the stated objects of the assessee-society, it can be said that such funds have not been utilized for the purposes the exemption under the Income-tax Act has been granted to the assessee-society and to the extent of such diversion, the provisions of sections 11 and 12 shall not apply. Further, where the revenue through its investigation finds that there is actual diversion of funds of the assessee-society and such diversion has actually resulted in direct/indirect benefit of the related persons so defined under section 13(3), the activities and the conduct of the assessee-society will surely come under the cloud. In the instant case, the cash has been physically found in possession of the assessee's bank and the said cash belongs to the assessee-society as corroborated by the statements of the bank employees, there is thus no basis to hold that there is any diversion of funds of the assessee-society for the personal benefit of 'B' family and the same cannot be a basis to withdraw the exemption so granted to the assessee-society under section 12AA. [Para 23]

FACTS-II

- During year, the assessee-society had claimed to have paid total scholarship of Rs. 25.83 lakhs to 301 students. To verify the claim of the assessee, the Assessing Officer issued notices under section 133(6) to 25 students to ascertain whether they have received the scholarship from the assessee-society. Out of total 25 students, replies of 16 students were not received. Letters sent to two students were returned back unserved by the postal authorities and three students denied to receive any scholarship from the assessee-society.
- Based on these proceedings by the Assessing officer, the Pr. Commissioner held that the letters sent under section 133(6) were received back unserved even though the addresses of the students were provided by the assessee-society. Further, three students were examined on oath and they had stated that they had not received any scholarship. Mere filing of confirmation letters was not sufficient to prove that scholarship was actually received by students, especially when some of them had denied receiving the same on oath. The fact that scholarship money was transferred through banking channels was also not conclusive proof that the scholarship payments were genuine and were actually encashed by the real beneficiaries. He held that in absence of physical examination, such confirmation letters could not be treated as conclusive proof of the genuineness of scholarship payment. It was accordingly concluded that the assessee had misused funds which were claimed as expenses in the guise of scholarship payments. It withdrew registration under section 12AA granted to the assessee.
- On the assessee's appeal to the Tribunal:

- The Pr. Commissioner has raised certain apprehension about non-verifiability and genuineness of the scholarship payments made by the assessee-society to its 301 students during the financial year 2013-14. The basis of such apprehension is that notices under section 133(6) issued by the Assessing officer to sixteen students were not complied with and in two cases, notices were returned unserved, and three students have denied receiving the scholarship during the financial year 2013-14. Further, these students were not produced for verification and it was concluded that the assessee has misused funds which were claimed as expenses in the guise of scholarship payments. In response, the assessee-society has submitted that all scholarship payments have been paid through account payee cheques and except in case of one student who didn't present the cheque, all the cheques have been cleared and payments are duly reflected in the assessee's bank account. Further, students were produced for verification before the ITO and an affidavit of assessee's accountant who accompanied the students for verification has been placed on record and confirmation letters from the students have also been filed. [Para 31]
- Firstly, the apprehension raised by the Pr. Commissioner is based on proceedings conducted by the Assessing officer for assessment year 2014-15 whereby the Assessing Officer has issued the summons to the students and basis that, he has reached certain preliminary findings as the Assessing officer has finally passed the assessment order for assessment year 2014-15 much after the conclusion of the present proceedings before the Pr. Commissioner. Therefore, the Pr. Commissioner has proceeded on the preliminary findings arrived at by the Assessing officer. Thereafter, even though he has issued the show-cause to the assessee during the impugned proceedings, however, his findings reflect that he was guided solely by the initial and preliminary findings so arrived by the Assessing officer and has not carried out any independent examination and verification of the transactions under consideration. There is nothing in law which prevents the Pr. Commissioner to rely on the findings of the Assessing officer, at the same time, he should carry out independent examination and verification and the final findings so arrived at should reflect his thought process and the reasoning. However, in the instant case, Pr. Commissioner is guided by the findings of the Assessing officer and such findings which have even not attained finality as far as passing of the assessment order for assessment year 2014-15 is concerned which was passed subsequent to passing of the impugned order. [Para 32]
- Having said that, though there have been contradictory claims regarding production of students for verification before the Assessing officer. At the same time, mere non-appearance of certain students for verification cannot be a sole basis to raise a question mark on the whole scheme and genuineness of scholarship payments to over 301 students on a sample survey size of around 8 per cent and basis the same, to arrive at a finding that the assessee has misused funds which were claimed as expenses in the guise of scholarship payments. The documents produced by the assessee-society in support of the scholarship payments have not been considered. The scholarship payments have been paid to the regular students who are enrolled in various courses conducted by the educational institutions run by the assessee-society. During the course of hearing, the assessee stated at the Bar that the criteria for such scholarship has been well laid down in terms of economic condition of the students

and their parents, past academic results, *etc* and there is a well laid down process for seeking application from the students and after due verification and approval from the Head of the educational institution, scholarship payments are sanctioned and subsequently disbursed to the students. It is also not the case of the revenue that these are not regular students which were enrolled with the assessee's educational institutions and that they were not eligible to receive the scholarship as per the policy framed by the assessee's educational institutions. The confirmation letters filed by the students have been placed on record and the contents thereof have not been disputed. The payments have been made through account payee cheques to all these students and all the cheques have been cleared (except in case of one student) and the said payments has been duly reflected in the assessee's bank account. In respect of three students who have denied receiving the scholarship, the assessee has submitted due explanation in terms of one of the student (YS) having not presented the cheque for payment of Rs 3306 and the entry for such payments been reversed in the books of account on 31-3-2015, and in respect of other two students namely AA and PKJ, copy of their scholarship forms duly approved by the Principal, copy of account payee cheques issued in their favour for Rs 3,180 cleared on 10-2-2014 and cheque for Rs 3,180 cleared on 17-2-2014 respectively and copy of their confirmations addressed to Deputy Commissioner (Exemptions) are available on record. Therefore, there is nothing on record to suggest that the scholarship payments are not genuine and the amount has been withdrawn by the assessee-society in the guise of scholarship expenses. Further, there is nothing on record which remotely suggests that the amount so claimed by the assessee-society as scholarship expenses have reached back in the hands of the assessee-society and the latter has misused such funds. Therefore, the apprehension so raised by the Pr. Commissioner based on preliminary enquiries drawn by the Assessing officer are not tenable and sustainable in the light of clear evidence on record brought by the assessee-society that these are genuine payments of scholarship to its students as per well laid down scholarship policy and therefore, such apprehension has no legal legs to stand and the same cannot be a basis to disallow the claim of the scholarship expenses. [Para 33]

- Further, seeking confirmations from the students as to whether they have received the amount is no doubt part of an investigation exercise and the officer is duly authorized under law, however solely guided by non-receipt of confirmation and that too, from few students cannot be sole basis for denial of claim in the hands of the assessee-society. Even where certain scholarship expenses remains unverified, the same at best may be a basis to disallow the said expenses limited to the extent it remain unverified, how the same can be basis to hold that the assessee-society has misused the funds of the society in garb of whole of the scholarship expenses and if the said analogy is accepted, then every expense claim where the same is not proved by personal appearance of the person to whom such payment has been made would be a basis to hold that the assessee-society has misused the funds of the society. As the assessee-society has documentation to support its claim, such apprehension is ill-founded and is not supported by well established legal proposition and rule of law. [Para 34]
- Further, the revenue authorities have to appreciate that a student studying in a College or University cannot be equated with a regular vendor or a service provider. A student involvement is limited to the educational sphere and to a limited extent where he/she and their parents/guardians are required to pay his fees and receive

scholarship wherever he/she is eligible for the same and nothing beyond that. As against that, a vendor or a service provider is in the business of supply of goods and provision of services and is running a commercial establishment where he maintains its records and reports his receipts and expenses and is subject to scrutiny of the tax authorities. Therefore, the latter is in a position and is expected to timely respond and co-operate in the proceedings before the taxing authorities and in case of non-compliance, he can be fastened with appropriate penalty actions. However, a student who is studying or has recently passed out of his/her college or University and who is issued summons under section 131, he or she is not expected to appreciate and respond in the manner as expected from any other service provider. Therefore, where there is a non-compliance on part of certain students to respond to such notices/summons in a timely manner and in some cases, where they have responded though with wrong facts, the authorities have to appreciate the same in a more realistic manner rather than in a ritualistic manner and their conclusions should not be guided solely by non-appearance of certain students before them. In other words, unless the revenue authorities are ceased of sufficient material or information and such material/information is credible enough to prove that the assessee-society is withdrawing the funds of the society in the guise of scholarship expenses systematically over a period of time and such funds are not reaching the students concerned in whose name the scholarship payments have been shown to have been made, in such a case, the authorities have all the right and the jurisdiction to proceed against the society. However, in the instant case, there is nothing on record which has been brought on record to prove such mismanagement and diversion of society funds. [Para 35]

- In light of above discussions and in the entirety of facts and circumstances of the case, scholarship payments are genuine payments made by the assessee-society and there is no basis to hold that the assessee-society has misused the society funds in guise of scholarship payments. Therefore, the said findings of the Pr. Commissioner cannot be sustained and cannot be made a basis to hold that the assessee-society is not carrying out its activities as per its objects and the exemption granted under section 12AA should be withdrawn. [Para 36]

FACTS-III

- One, AGVS was allotted an institutional plot by State Housing Board *vide* allotment letter on leasehold basis for a period of 99 years subject to payment of Rs 7.54 crores and Rs 34.45 lakhs as annual lease payment. The said allotment letter talked about payment of lease money within stipulated time frame in absence of which the allotment would be cancelled besides stating other terms and conditions of allotment including the fact that the land so allotted would not be transferred. AGVS was unable to arrange the funds and make payment to State Housing Board to the extent of Rs 6.73 crores after making the initial payment of Rs 80.46 lakhs and therefore had approached the assessee-society to make payment to State Housing Board and in consideration, had agreed to sell the aforesaid property to the assessee-society for a total consideration of Rs 7.54 crores.
- The assessee had made a payment of Rs. 6.73 crores to State Housing Board towards allotment of land by State Housing Board to AGVS and had shown the same in its financial statements as part of land purchased during the year. For the purposes, the assessee entered into an 'agreement to sell' with AGVS. The

conveyance-cum-perpetual lease deed though was executed by State Housing Board in favour of AGVS, however, no registry or title transfer was done in favour of the assessee-society.

- The Pr. Commissioner, referring to the conditions of allotment held that as per allotment letter issued by State Housing Board to AGVS, a person to whom the land was allotted could not transfer it to any other person. Accordingly, the claim of the assessee-society that it had purchased the land is patently false as it was illegal for AGVS to sell/transfer the land to the assessee. It was further observed that AGVS and the assessee-society had three common members/trustees and therefore, AGVS was a related entity within the meaning of section 13(3). The Pr. Commissioner held that it was a case of 'use of society fund' for the benefit of AGVS, a related entity, which was in violation of the provisions of section 13(3). Further, this payment to State Housing Board on behalf of AGVS was neither a loan nor a donation but it appeared to be an investment not allowable under section 11(5). Thus, he withdrew registration granted to the assessee under section 12AA.
- On the assessee's appeal:

HELD-III

- On perusal of terms and conditions of the conveyance-cum-perpetual lease deed, it is found that it contains enabling provisions for transfer of leasehold land by the lessee *i.e.*, AGVS to assessee with the previous consent of the lessor *i.e.*, State Housing Board and the latter shall be entitled to refuse such transfer at its discretion. It is a settled legal proposition that the latter agreement supercedes any earlier agreement/understanding between the two parties. When the said terms and conditions of the conveyance-cum-perpetual lease deed containing the enabling provisions for transfer are read in comparison to the terms of the earlier allotment letter wherein the transfer was not permitted, the terms of conveyance-cum-perpetual lease deed shall supersede the terms of initial allotment. Further, where both the parties have contractually agreed to the terms of conveyance-cum-perpetual lease deed, in the context of present proceedings, one cannot be guided by the initial allotment letter which stands subsumed and merged/modified by conveyance-cum-perpetual lease deed. Therefore, the findings of the Pr. Commissioner that AGVS cannot legally transfer or sell the land to the assessee-society cannot be agreed with as there are enabling provisions, in the conveyance deed which allows such transfer subject to approval and sanction of State Housing Board. [Para 47]
- Now, in terms of seeking approval and permission of State Housing Board to transfer the land in favour of the assessee-society, a letter has been written by AGVS to Deputy Housing Commissioner available on record. [Para 48]
- Further, Dy. Commissioner (BP) has sought certain information regarding the impugned plot of land from State Housing Board and the latter *vide* letter of Deputy Housing Commissioner, Housing Board, available on record has replied. [Para 49]
- On perusal of above communications and the contents thereof, the permission of State Housing Board has been sought for the intended transfer of the impugned land in favour of the assessee-society and the revenue authorities are equally ceased of the matter. Given that the approval of State Housing Board has not been received, the conveyance deed has not been executed in favour of the assessee-society. [Para 50]
- Therefore, the assessee-society has entered into an agreement to sell with AGVS

wherein the former has agreed to purchase an institutional plot of land which has been allotted to the latter *vide* conveyance-cum-perpetual lease deed for 99 years by the State Housing Board. There are enabling provisions in the conveyance-cum-perpetual lease deed which allows such transfer subject to approval and sanction of State Housing Board. Necessary permission has been sought from the State Housing Board for such transfer in favour of the assessee-society and the same is currently awaited and on receipt thereof, formal sale deed shall be executed in favour of the assessee-society. The assessee-society has already paid substantial amount of Rs 6.73 crores, out of total purchase consideration of Rs 7.54 crores in terms of agreement to sell, directly to State Housing Board. Further, the assessee-society is in effective possession of the said plot of land as it has since built a school building thereon and carrying on its educational activities and the fees so received have been reflected in its books of account. [Para 51]

- In light of above factual matrix, as far as proximate and immediate benefit of such payment of Rs 6.73 crores is concerned, it is the assessee-society which is benefitted whereby it has built a school building wherein it is carrying on its educational activities. At the same time, it cannot be ruled out that AGVS is not benefitted by such payment by the assessee-society on its behalf to State Housing Board. Had the assessee-society not stepped-in and made the payment to State Housing Board, AGVS was likely to default on its payments as per stipulated time frame and in all likelihood, the allotment of the plot of land would have got terminated. Therefore, till the time the approval of State Housing Board is not received for transfer in favour of the assessee-society, the plot of land stand in name of the AGVS and conveyance deed has not been executed in favour of the assessee-society. At the same time, such right over the land is not an absolute right as the same is subject to the terms of 'agreement to sell' entered into with the assessee-society and at least to the extent of payment made by the assessee-society to the tune of Rs 6.73 crores, the latter can enforce its right over such land in priority to any third party. [Para 52]
- Having said that, the question that arises for consideration is whether by entering into the subject transaction, the assessee-society has violated the provisions of section 13(1)(c), read with section 13(3) as invoked by the Pr.Commissioner. [Para 53]
- As per Pr. Commissioner, AGVS and the assessee-society have three common members/trustees and therefore, AGVS is a related entity within the meaning of section 13(3) and society funds have been used for the benefit of AGVS in violation of the provisions of section 13(1)(c). The argument of the assessee-society is that noevidence has been placed on record by the revenue with regard to any direct or indirect benefit flowing to the trustees/members of the society which might bring it within the ambit of section 13(1), read with section 13(3) and further, the matter does not fall within any of the clauses or sub-clauses of section 13(3). [Para 54]
- In order to appreciate the rival contentions, provisions of section 13(3) are to be referred. The clauses from (a) to (cc) of section 13(3) are not applicable in the instant case as there is nothing on record that suggest that the common members have been benefitted in their individual and in their own right by such transaction. The clause (d) talks about any relative of any such author, founder, person, member, trustee or manager of the assessee-society which is also not a case before us. The clause (e) talks about any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest. If the said clause (e) is to be read in the context of present facts, it means AGVS, being a concern in which members/trustees of the

assessee-society have a substantial interest. The term 'substantial interest in a concern' has been defined in *Explanation 3*. [Para 55]

- That is, members and trustees of the assessee-society either individually or collectively are entitled at any time during the previous year, to not less than twenty per cent of the profits of such concern *i.e.*, AGVS. In the present case, the case of the revenue is that there are three common members/trustees in both the societies and therefore, these are related entities and are covered by provisions of section 13(3). On perusal of records, it is found that there are fifteen members in the executive committee of institute run by the assessee trust namely, SWES and equally number of members in the executive committee of AGVS. The president of the assessee-society is holding the post of Secretary in AGVS. Further, two members who are educationist and doctor by profession are common in both the societies. However, merely having common members in both the societies are not sufficient to hold the societies as related entities within the meaning of section 13(3). What has to be proved is that these common members hold substantial interest in the related entity in their own right either individually or collectively and that too, by entitlement to not less than 20 per cent of profits in such related entity. However, there is nothing on record either in the impugned order of the Pr.Commissioner or brought to notice during the course of hearing by the Commissioner (DR) that these common members are entitlement to any profits and that too, exceeding the prescribed threshold in AGVS. *Per contra*, the assessee submitted that AGVS is an old society registered under the Rajasthan Societies Registration Act in year 1961-62 and by virtue of being a registered society, it cannot transfer any surplus to its members and such surplus, if any has to be deployed in the society and even in the event of winding up, the assets and funds of the society have to be transferred to any other registered society with similar objects. In light of the same, there is no legal basis to hold that AGVS is a related entity within the meaning of section 13(3). In absence thereof, even where it is held that some benefit has flown to AGVS, the provisions of section 13(1)(c) are not attracted in the instant case. [Para 56]
- Further, the Pr.Commissioner has raised an apprehension at the time of issuance of show-cause that the payment to State Housing Board on behalf of AGVS is neither a loan nor a donation but appears to be an investment not allowable under section 11(5) and thereafter, towards the end of his order while giving his concluding findings has held that the payment made is in contravention of section 11(5) read with section 13(1)(c). However, how the payment is in contravention of section 11(5) has not been spelt out in his order. If the provisions of section 11(5), in clause (x), it provides for investment in immovable property as one of the permissible mode of investment of amount of income which is accumulated or set apart for being not included in the total income of the person in receipt of income. In the instant case, the assessee-society having entered into an agreement to sell with AGVS and having paid a substantial amount in consideration for purchase of land and in possession of the said land has clearly made an investment in an immovable property though the same is subject to approval of State Housing Board and signing of the final conveyance deed. Accordingly, in light of above discussions and in the entirety of facts and circumstances of the case, the payment to State Housing Board is not in contravention of section 11(5) read with section 13(1)(c). Therefore, the findings of the Pr. Commissioner cannot be sustained and cannot be made a basis to hold that the assessee-society is not carrying out its activities as per its objects and the exemption

granted under section 12AA should be withdrawn. [Para 57]

CASES REFERRED TO

Indian Medical Trust v. Pr. CIT (Central) [\[2018\] 99 taxmann.com 273/173 ITD 508 \(Jaipur - Trib.\)](#) (para 43).

Dilip Shivpuri, Adv. and **Rohit Badaya**, CA *for the Appellant.* **Varinder Mehta**, (IT-DR) *for the Respondent.*

ORDER

Vikram Singh Yadav, Accountant Member. - These are two appeals filed by the assessee society against two separate orders of the Id. Pr.CIT (Central), Rajasthan, Jaipur dated 14/12/2018. The Id. Pr.CIT has passed an order U/s 12AA(3) and 12AA(4) of the Income Tax Act, 1961 cancelling the registration granted to the assessee society U/s 12AA of the Act, which was originally granted on 02/01/2004. Further the Id. Pr. CIT has passed another order U/s 10(23C)(vi) of the Act withdrawing the exemption granted to the assessee society vide notification No. 10/2007-08 dated 28/12/2007 and subsequent corrigendum dated 24/01/2008.

ITA No. 9/JP/2019

2. Firstly, we take up the appeal of the assessee society challenging the withdrawal of exemption granted u/s 12AA of the Act.

3. Briefly stated, the facts of the case are that the assessee society is engaged in providing educational services through 19 educational institutes at Jaipur, Ajmer and Mumbai under the umbrella of St. Wilfred group of colleges. The Id. Pr. CIT referring to the objects of the assessee society and in view of various evidences in possession of the Department stated that the assessee is not working as per the objects for which registration was initially granted and the case of the assessee falls U/s 12AA(3) and 12AA(4) of the Act. These issues relate to diversion of fund of the assessee society for personal purposes, non-genuine scholarship expenses and addition to fixed assets in view of the payments made to Rajasthan Housing Board in contravention of Section 11(5) read with Section 13(1)(c) of the Act. In light of the discussion made in his order, the Id. Pr. CIT has held that the activities of the assessee society are not genuine and are not being carried out in accordance with the objectives of the assessee society and the registration of the assessee society U/s 12AA(1)(b)(i) was cancelled by invoking the provisions of Section 12AA(3) w.e.f. 01/04/2013 i.e. the financial year from which irregularities in the functioning of the assessee have come to notice and by invoking 12AA(4) of the Act w.e.f. 01/10/2014 i.e. the date from which this sub-section has come into force.

4. We now refer to the relevant findings of the Id. Pr. CIT on each of the issues so raised in his order and the submissions made by both the parties before us.

Diversion of the funds of the assessee society for personal purposes

5. Briefly facts of the case are that a search action was conducted at the office premises of "Integral Bank" Group of Jaipur on 11.12.2016. During the course of search proceedings, cash amounting to Rs 1,56,59,500/- was found in an almirah in the "Clearing House" room of the Integral Bank. As per Id Pr.CIT, this entire cash was not found recorded in the books of accounts of the Bank and out of this cash of Rs. 1,56,59,500, majority of amount i.e. Rs.1,38,08,000 (6904 notes) comprises of 2000 rupees notes and out of which 2289 notes totaling to Rs 45,78,000 were in new series and which was taken out of the banking system in an illegal manner since such huge withdrawals were not yet permitted by the RBI from any account. It has further been stated by the Id Pr.CIT that this cash of Rs. 1,56,59,500/- was

claimed to be belonging to St. Wilfred group of colleges.

6. Simultaneously, a survey u/s 133A of the Act was conducted at educational institutions run by the assessee society. During the course of survey, the Id Pr.CIT stated that it was observed on the basis of evidences collected and statements recorded that the assessee was collecting fees in old denomination of Rs. 500, even after notification of demonetization by the Government of India. Cash of Rs. 2,21,000 was found in old denominations during the course of survey proceedings while reported cash-in-hand as on date was Rs.6,94,774/-. It was also claimed by the assessee society that approximately Rs.2,00,00,000 was collected as fee from 01.12.2016 till 09.12.2016 while only cash amounting to Rs.54,186/- was deposited in the bank account of the assessee and that no cash deposit was made thereafter in the bank account of the assessee. It was also gathered that the fee collected in cash from the students of the assessee was regularly being transferred to the premises of the Integral Bank without making any corresponding entry either in the books of the assessee society or in the books of the bank. As per Id Pr CIT, this clearly implies that the assessee indeed collected fees in old denomination notes illegally with an intention to get it exchanged by routing it through the Integral Urban Cooperative Bank, another concern where the management of St. Wilfred Education Society had effective control. Not recording of the cash receipt in its books of accounts clearly shows that the funds were being diverted for personal purposes and therefore the activities of the assessee are not genuine.

7. The Id. Pr. CIT further stated that serious discrepancies were also detected in the daily record of denomination of Rs.500 /Rs.1000 notes maintained by the Integral Bank. One loose paper found and seized from the chamber of Shri Harish Gupta, GM of the Bank containing the actual record of cash position of the bank on 30.11.2016, which did not match with the actual breakup kept on record by the Bank in an electronic /soft form. It was evident from the hand written loose paper that the total cash balance shown in the hand written paper tallies with the total cash balance, shown in the daily cash sheet prepared by the Bank. It was observed by the Id. Pr.CIT that the Bank has reduced the actual number of Rs.2000 notes from 1605 to 1223. On the other hand, the number of Rs.500 notes have increased from 2,60,298 to 2,79,082. This fact proves that the number of Rs.500 notes (old) were increased by the Bank staff which is also to be seen in light of the fact that the fee from various students was being collected in Rs.500 notes (old) even after demonetization. This clearly implies that the old Rs.500 notes, collected as fees from various students were put in the cash of the bank and in lieu thereof, Rs.2000 notes were taken out. This modus-operandi, as is evident from the perusal of the hand-written sheet and the Official Daily Sheet, is that the key persons of the bank were regularly exchanging old currency with new currency in an unauthorized and illegal manner. Further the statement of Shri Harish Gupta was also recorded wherein he admitted that the difference in denominations on these two sheets is on account of exchange of currency on the instructions of Shri Keshav Badaya, CEO of Integral Bank. This shows that the management of St. Wilfred's Educational Society which was also controlling the operations of Integral Bank abused the official position and exercised undue influence over officials of the Bank. It was seen that the Rs. 500 notes collected as fee in the St. Wilfred group of Colleges were being put in the cash of the Integral bank and corresponding number of Rs.2000 notes were being taken out for personal consumption of the members of the St. Wilfred's Education Society. Accordingly, the Id. Pr.CIT has stated that the old currency notes received from the students as fee was never applied for the purposes of the society and was diverted for personal benefits of the trustees i.e. Badaya family which was not in consonance with the objectives of the assessee society. Instead of applying the receipts for charitable educational purposes, the funds were taken out for personal purposes and therefore, the activities of the assessee were not genuine.

8. Based on these findings, the Id Pr. CIT issued a show cause notice dated 27/11/2018 to the assessee as to why the registration granted to the assessee society u/s 12AA of the Act should not be cancelled in view of the aforesaid reasons. In response, the assessee filed its written submission on 10.12.2018

wherein it has contended that the source of the cash found in the almirah in clearing house room of Integral Bank is undisputedly from fees collected from students of the assessee society, a fact which is supported by statements recorded from various persons during the survey / search action. Therefore, it was submitted that there is no basis with the Department for doubting the source of the cash found and they have themselves admitted that the source of the cash found was fee collected from students. Regarding the issue as to why the cash was not officially deposited by the bank, it was submitted that it is for the bank to explain the same and not the assessee. In relation to the fact that there are certain new notes which are in new series and which could not have been given by students as fees, the assessee contends that whatever money was sent by the assessee from the college i.e. Rs. 1,56,59,500/-, the same was duly accounted for in the books of the assessee society. It is for the bank to explain wherefrom the new notes came. Regarding the allegation that the diversion was done to benefit the Trustees (Badaya family), it was submitted by the assessee society that the money was duly recorded in the receipt books of the assessee as fee received from students, and how the Badaya family has been benefitted therefrom is unproved and unsubstantiated.

9. The submission so filed by the assessee society was considered, but not found unacceptable to the Id Pr.CIT. Regarding the source of funds that there are fees received from the students, the Id. Pr.CIT held that be that as it may, the very fact that these funds were not recorded in the books of account of the assessee itself casts suspicion on the assessee with regard to the intended application of such funds by the assessee. If the assessee did not intend to divert any funds, and if they actually intended to use the said funds for the purposes of the assessee society itself, the same would have been recorded in the books of accounts of the assessee. However, when the Income-tax search/survey was conducted on 10.12.2016/ 11.12.2016, the Income-tax team did not find any entry in the cash book of the assessee relating to deposit of cash in its bank account and it is only after the survey / search actions of the Income-tax Department that the assessee has attempted to explain the source of funds. During the survey proceedings nowhere it was stated that fees in form of cash was transferred to Integral bank and only after the cash was found in the secret chamber, then explanation regarding the same was tendered. The Id. Pr.CIT further held that the assessee and the Integral Bank are not two independent entities, but share common management and the GM of Integral Bank has stated on oath that difference in denominations on these two sheets is on account of exchange of currency on the instructions of Shri Keshav Badaya, CEO of Integral Bank, who is also the key person and main trustee of assessee. The Id. Pr.CIT accordingly held that the management of St. Wilfred's Educational Society which was also controlling the operations of Integral Bank abused the official position and exercised undue influence over officials of the Bank. The key individual having operating influence over the assessee society had been indulging in illegal exchange of the old currency claimed to be collected in the form of fee which was supposed to be used for the purposes of the assessee society with new currency. However, no such entries in the books of the assessee were found to be recorded. Such an act clearly shows that the books of accounts of the assessee were manipulated for the benefit of the Badaya family as fees allegedly collected from students in old denomination was nowhere recorded in books of the assessee. Hence, these fees were free to be used by the Badaya family for their personal benefit. In case, fees were recorded in the books, then it would have been ensured that these receipts would have been used solely for the purposes for which the assessee society was established and in order to enjoy the funds for their personal benefit, the Badaya family did not record the fees received in the books of accounts of the assessee. It was finally held by the Id. Pr.CIT that the money found during search/survey was not recorded in the books of the Integral Bank and neither was it deposited in the bank account of the assessee. Therefore, this money was lying unaccounted and the promoters of the assessee were free to use this money as they deemed fit. The said money was diverted from the charitable education purposes and therefore the activities of the assessee society are not genuine.

10. The Id CIT DR has heavily relied on the aforesaid findings of the Id Pr.CIT. and submitted that fees

have been collected in cash by the assessee society from its students and given that the same was not recorded in its books of account and subsequently found in possession of the bank, it is a clear case of diversion of funds of the assessee society. It was further submitted that in substance, both the assessee society and the Integral Bank are controlled by the Badaya family and thus the provisions of section 13(3) are clearly attracted and once the funds of the assessee society are found in possession of the Bank, it is a clear case of attracting the provisions of section 13(1)(c) of the Act.

11. In his submissions, the Id AR of the assessee firstly drawn our attention to the provisions of Section 12AA(3) of the Act and submitted that a perusal of the provisions of section 12AA(3) shows that to invoke the provisions of this section, the Department has to prove that activities of the society/trust are not genuine or are not being carried out in accordance with the objects of the society/trust. In so far as section 12AA(4) is concerned, it is invoked if activities of the society/trust are in violation of section 13(1) of the Act. It was submitted by the Id AR that in the impugned order of the PCIT, except for making the allegation, has not provided even one piece of evidence to prove it.

12. Referring to the facts of the case, it was submitted by the Id AR that initially a survey which was later converted into a search u/s 132 of the Act was conducted at the office of M/s Integral Urban Co-operative Bank Ltd. having its office on Ajmer Road, Jaipur on 11.12.2016 and a survey u/s 133A was conducted on the office of the Appellant St. Wilfred's Educational Society in Sector 10, Mansarovar, Jaipur on 9.12.2016. During the course of search of the Bank, cash amounting to Rs. 1,56,59,500/- was found in an almirah. It was submitted that it is very clear from the narration in Para 3 of the impugned order of Id PCIT that the cash was found in the almirah of the Clearing house of M/s Integral Urban Co-operative Bank Ltd., and the cash was not recorded in the books of the Bank.

13. It was submitted by the Id AR that Integral Urban Co-operative Bank Ltd. is a Co-operative Society running the business of banking, hence it is an entity that is legally and factually, a separate entity from the Appellant, St. Wilfred's Educational Society. Each is operating legally in different fields. Therefore, if there was any discrepancy or illegality in the cash held, or, if the cash remained unexplained, then the Bank should have been questioned thereon, and action should have been taken against the Bank, and not the Appellant Society. This was very clearly pointed out in the reply to the show-cause notice submitted to the respondent. A copy of the reply filed before the PCIT (Central), Jaipur, in response to the show-cause notice dated 22.11.2018 is enclosed and marked as Annexure A/1.

14. It was further submitted by the Id AR that surprisingly, no discrepancy has been pointed out in the assessment order of the Integral Urban Co-operative Bank Ltd. passed recently U/S 143(3) r/w 153B(1)(b) on 28.12.2018 for A.Y 2017-18, the assessment year pertaining to previous year in which search was conducted. A copy of the assessment order for the A.Y. 2017-18 is enclosed and marked as Annexure A/2. In view of this fact, there is no reason to penalise the Appellant Society by cancelling its registration.

15. It was further submitted by the Id AR that in his order, the Respondent states that the Appellant Society has trustees which are also present as directors in the Bank. But no shred of evidence has been brought on record to show that the Appellant Society and the Bank were working together to divert funds. If this logic is extended then all the separate entities of a business family would be clubbed together on the premise that some of the directors/shareholders/partners are common. If some discrepancy was found in the new and old (demonetised) bank notes found, the bank needed to be questioned by RBI, and not the Income-Tax department, and no escapement of income resulted therefrom.

16. It was further submitted by the Id AR that in the reply to the show-cause notice filed on 10.12.2018, the assessee society had made it clear that as per the scheme of the Government of India, demonetization of Rs. 1000/- and Rs. 500/- bank notes was announced on 08.11.2016. The RBI stipulated that the

demonetized bank notes could be deposited with Banks over a period of 50 days until 30.12.2016. The search on the Bank was carried out on 11.12.2016 much before the window of 50 days provided by the RBI was over. Hence, in these 50 days, both demonetised notes as well as fresh notes were being accepted by Banks. Banks were also allowed to withdraw fresh bank notes from their cash reserves. There was nothing illegal in the Bank having both demonetised notes and freshly-issued notes in the cash found. And, as stated above, if there was any discrepancy in the number of notes of demonetised currency and freshly-issued bank notes, it was for the RBI to question the Bank. How is the Appellant Society concerned with it. As far as the Appellant Society is concerned, it had pointed out in its reply dated 10.12.2018 that the cash of Rs. 1,56,59,500/- was collected as fee from students of the educational institutions run by the Society, and deposited with the Bank. The Respondent also states in its show-cause notice that the amount of cash found was collected as fee from the students of the educational institutions run by the Society. In the said reply, the following statements of employees recorded by the search team of the department was referred to:

- (i) Statement of Shri Ganesh Narain Gupta, Accountant, St. Wilfred College, dated 09.12.2016 - reply to question no. 11;
- (ii) Statement of Shri Harish Gupta, GM, Integral Urban Co-operative Bank Ltd. dated 11.12.2016 - reply to question no. 13;
- (iii) Statement of Shri Vikram Singh, Cashier, Integral Urban Co-operative Bank Ltd. dated 10.12.2016 - reply to question no. 14 & 21.

Thus, all contemporaneous statements confirmed that the cash of Rs. 1,56,59,500/- originated from the students of the Appellant Society. To support this stand, photocopies of some sample receipts, mentioning the amount of fee, name of student etc. is enclosed as Annexure A/6. It may be stated here that when the fee was collected, receipts from the receipt book of the Appellant Society were issued to the students, entries made in the individual student register and their counterfoil kept by the Society, to be recorded in the cash book. Hence, the fee was completely explained as part of the receipts of the Appellant Society.

17. It was accordingly submitted by the Id AR that there is no discrepancy as far as the Appellant Society is concerned. The cash found in the bank is explained as very much part of the receipts of the Appellant Society. There is no evidence in the order or elsewhere that the receipt were unaccounted. Secondly, there is absolutely no evidence, in either the show-cause notice or in the order dated 14.12.2018 that any benefit is accruing to the persons defined in section 13 (3) of the Act, either directly or indirectly. Where have the funds been directed, and to whom, are questions which have not been answered by the Respondent, they remain only allegations. Hence, the allegation of diversion of funds is unfounded, unsubstantiated, and, hence, needs to be rejected.

18. We have heard the rival contentions of both the parties and pursued the material available on the record. During the course of search operations conducted at the premises of Integral Urban Co-operative Bank Limited, cash amounting to Rs 1,56,59,000 has been found in possession of the Bank at its clearing house room. The statement of General Manager of the Bank, Shri Harish Gupta was recorded u/s 131 on 9.12.2016. In response to question no. 30, he has stated that the said amount of Rs 1,56,59,000 has been received during last 4-5 days till 8.12.2016. In response to question no. 34 where he was asked as to who has sent the said amount of Rs 1,56,59,000 to the Bank, he has stated that the said amount is the fees collection of Saint Wilfred College and has been sent by Shri Keshav Badaya. In response to question no. 41, he has stated that the said amount has been kept in the custody of Branch Manager, Shri Dilip Maheswari and cashier, Shri Vikram Singh Shekawat. The statement of Shri Vikram Singh Shekawat was also recorded u/s 131 on 10.12.2016 and he has also been asked specific questions regarding the source of said amount of Rs 1,56,59,000. In response to question no. 13, he has stated that the said amount has been received in 2-4 times in the first week of December 2016. In

response to question no. 14, he has stated that the said amount has been received from Saint Wilfred College, Mansarovar. Therefore, we find that there is a consistency in the statement of Bank's employees wherein they have confirmed that the source of cash of Rs 1,56,59,000 found in possession of the Bank at its premises is the amount of fees collection of Saint Wilfred College, Mansarovar. Now, coming to the statement of accountant of the assessee society, Mr. Ganesh Narayan Gupta recorded u/s 131 of the Act on 9.12.2016. In response to question no. 8, he has stated that Saint Wilfred College has only one bank account in form of current account maintained with Mansarovar Branch of Integral Urban Co-operative Bank Limited. In response to question no. 11, he has stated that approx. Rs 2 crore fees have been collected in cash during the period 1.12.2016 to 9.12.2016. Further, the tax authorities during the course of survey have gone through the receipt vouchers issued by the Saint Wilfred College to its students towards receipts of fees and other charges collected from students as is evident from question no. 13 raised by the survey team to Ganesh Narayan Gupta wherein there is reference to vouchers and receipts as per which fees and other related charges have been collected in cash amounting to Rs 2.15 Crores from the students. Further, we refer to the statement of Shri Mahavir Prasad, another accountant of the assessee society whose statement was recorded u/s 131 on 9.12.2016. In response to question no. 19, he has stated that they issue receipt to the students against deposit of their fees and subsequently in response to question no. 51, he has again confirmed that students have been given receipt against deposit of their fees and the same is recorded in the computers. Further, in response to question no. 9 wherein he was asked the status of cash in hand, he has stated that they prepare a daily collection sheet and based on the same, the daily collection is deposited in the bank. Further, he has stated that they update the books later as and when they get time. In response to question no. 10, he has further stated that books have been updated till 30.11.2016 and for the remaining days, vouchers have been prepared but they couldn't do the entry. If we correlate the said statements of accountants of the assessee society with the statements of the Bank's employees, we find that the said statements corroborates the fact that the source of cash found in the possession of the bank is the fees collected from students by Saint Wilfred College. It is also clear on close examination of these statements that the fee receipts are issued to the students at the time of receiving the fees from them, these receipts are updated in the individual student register maintained online in the computer system, daily cash collection summaries and relates vouchers are prepared. The said fee receipts and vouchers were available on record at the time of survey and has in fact been examined by the survey team and are very much part of books of accounts maintained by the assessee society in regular course of its activities. Therefore, once the source of cash has been established to be fees collected from the students, such fees have been recorded in the books of accounts and the cash has been physically found in possession of the assessee's bank, there is no basis to hold that there is any diversion of funds of the assessee society. In fact, the Id Pr CIT has also not recorded any categorical finding that funds of the assessee society have actually been diverted, rather he has only cast suspicion regarding intended application and diversion of funds by the assessee society for the personal benefit of the Badaya family. The basis of such suspicion, as we have noted from his findings is the non-recording of fee receipts in the books maintained by the assessee society as found at the time of survey on 9.12.2016 and the involvement of Shri Keshav Badaya in the functioning of the assessee society and the Bank. In ordinary course where there is movement of cash, once the cash is deposited in the bank account, necessary entries are made in the cash book. In the instant case, there seems to be certain slippages on part of the assessee society in terms of not updating its cash book when the cash was received and sent for deposit in its bank account and at the time of survey, it was not updated. At the same time, as we have noted above, the fact of the matter is that fee received from the students is recorded in the books of accounts as corroborated by fee receipts, individual student register maintained online in the computer system, daily cash collection summaries and relates vouchers. These documents are written/printed documents available on record and are very much part of books of accounts maintained in the regular course and clearly fall in the inclusive definition of books of accounts so defined u/s 2(12A) of the Act. Such fee receipts and related vouchers have been examined by the survey

team at the time of survey as evident from the question no. 13 raised to Ganesh kumar Gupta, the accountant of the assessee society where the tax official has asked a question that based on perusal of vouchers, it is apparent that after 21.11.2016, fees and other related charges have been collected in cash amounting to Rs 2.15 Crores. Therefore, we find that though the cash book has not be updated at the time of survey in terms of recording the movement of cash for deposit in its bank account, cash inward in form of fees collected from the students have been duly recorded in the books of accounts as demonstrated by fee receipts, individual student register, daily cash collection sheets and related vouchers prepared by the assessee society. We therefore find that there was suspicion in the mind of authorities that assessee's funds have been diverted as the cash book doesn't reflect any outward movement of cash. Further, even the Bank has not recorded such funds and there are allegations regarding exchange of old currency notes with new notes. To our mind, once the cash is found in possession of the bank where the assessee maintains its bank account and it is confirmed by the Bank officials that the cash so found belong to the assessee society, there is no basis to hold onto such suspicion as far as the assessee society is concerned.

19. Now, in terms of involvement of Shri Keshav Badaya and intended benefit of such funds so found in the possession of the bank for the personal benefit of the Badaya family, the Id AR drawn our reference, during the course of hearing, at the constitution of the executive committee of Saint Wilfred Education Society where we find that Shri Keshav Badaya holds the post of the Secretary and his uncle, Shri Suresh Kumar is the President of the Society. Further, our reference was drawn to the list of Board of Directors of the Integrated Urban Co-operative Bank Ltd and we find that none of these two persons or any other Badaya family member is holding the post of Directors. Further, the Id AR has stated at the Bar that neither Shri Keshav Badaya nor any other members of the Badaya family hold any stake or financial interest/shareholding in Integrated Urban Co-operative Bank Ltd. Therefore, the only common linkage between the two entities is the involvement of Shri Keshav Badaya who is holding the post of secretary in the assessee society and also holding the post of chief executive officer in the Integrated Urban Co-operative Bank Ltd. from where he is drawing his remuneration and the question is whether the provisions of section 13(3) are attracted in the instant case. In this regard, we refer to the provisions of section 13(3) which reads as under:

"(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."

20. As per clause (cc) to section 13(3), it talks about any trustee of the trust or manager (by whatever name called) of the institution. Shri Keshav Badaya is the secretary of the assessee society and involved in its administrative affairs and thus falls under clause (cc) of section 13(3) as a related person in relation to the assessee society. The clause (e) to section 13(3) talks about any concern in which any of the

persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest. If we were to read the said clause (e) in the context of present facts, it means Integral Urban Co-operative Bank, being a concern in which members/trustees of the assessee society have a substantial interest. The term "substantial interest in a concern" has been defined in *Explanation 3* to mean:

- "(i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-section (3);
- (ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-section (3) are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern."

21. That is, members and trustees of the assessee society either individually or collectively are entitled at any time during the previous year, to not less than twenty per cent of the profits of such concern i.e., Integral Urban Co-operative Bank. In the present case, the said condition is not satisfied as none of the members and trustees of the assessee society including that of Badaya family holds any financial interest in the Integral Urban Co-operative Bank. Merely on account of Shri Keshav Badaya, being the chief executive officer of the Integral Urban Co-operative Bank and also holding the post of the Secretary to the assessee society, in our view, will not make the Integral Urban Co-operative Bank and the assessee society as related entity in terms of section 13(3) of the Act.

22. Now, in order to invoke the provisions of section 13(1)(c) of the Act, the question that arise for consideration is whether Shri Keshav Badaya, being a related person in relation to the assessee society has actually benefited directly or indirectly by virtue of cash belonging to the assessee society found in the possession of the Integral Urban Co-operative Bank where he hold the position of chief executive officer. The provisions of section 13(1)(c) states that if any part of the income during the previous year used or applied directly or indirectly for the benefit of any person referred to sub-section (3) to section 13 of the Act. It thus talks about the usage or application i.e, there has to be actual utilization or application of funds for the benefit of the related person. It doesn't contemplate a situation of intended or future application of such funds for the benefit of such person. In the instant case, firstly the funds belonging to the assessee society have been physically found in the possession of the Bank at its strong room and not in possession of Shri keshav Badaya. Secondly, such funds have not been used or applied and have been physically found and thus, there is no benefit which can be said to have actually been gained by Shri Keshav Badaya either directly or indirectly in his individual capacity by having such funds in the possession of the Bank. In light of above, we are of the considered view that the provisions of section 13(1)(c) are not attracted in the instant and the contentions so advanced by the Revenue and the Id CIT DR cannot be accepted.

23. We therefore find that it was merely a suspicion gathered through the preliminary enquiry conducted during the survey and search operations. A suspicion howsoever strong cannot be a basis to deny a legible claim of the assessee unless and until it is supported by verifiable evidence on record brought out through the process of detailed investigation. In the hands of the Integrated Bank where the cash was physically found in its premises, no addition has been made on account of unaccounted cash and there is also no finding regarding illegal exchange of old currency vis-à-vis new currency as evident from the assessment order passed in case of the Integrated Bank for AY 2017-18. The same rather supports the case of the assessee society that the cash so found belongs to the assessee society and the Department has thus accepted the said fact and it has attained finality. Further, it is not the case of the Revenue that

old currency which is not a legal tender cannot be brought to tax. Therefore, unless and until there is a finding by the appropriate authority that there was any illegality in the act of the assessee in accepting the fees in old currency, the same cannot be held against the assessee society. Therefore, we find that it is a case of mere suspicion and not a conclusive finding and even the Department itself has given a clean chit to the Bank. As far as the assessee society is concerned, bank officials as well as the assessee's records conclusively prove that the funds so found are fees collected from the students duly recorded in the books of accounts and infact, such amount has been seized by the Department which further proves that there was no diversion of funds and no application for personal benefit of any person. Therefore, there is no basis to sustain the findings of the Id Pr CIT. Only in a scenario, where it is proved beyond doubt that the funds of the assessee society have actually been diverted for purposes other than the stated objects of the assessee society, it can be said that such funds have not been utilized for the purposes the exemption under the Income Tax Act has been granted to the assessee society and to the extent of such diversion, the provisions of section 11 and 12 shall not apply. Further, where the Revenue through its investigation finds that there is actual diversion of funds of the assessee society and such diversion has actually resulted in direct/indirect benefit of the related persons so defined u/s 13(3) of the Act, the activities and the conduct of the assessee society will surely come under the cloud. In the instant case, the cash has been physically found in possession of the assessee's bank and the said cash belongs to the assessee society as corroborated by the statements of the bank employees, there is thus no basis to hold that there is any diversion of funds of the assessee society for the personal benefit of Badaya family and the same cannot be a basis to withdraw the exemption so granted to the assessee society u/s 12AA of the Act.

Non-Genuine Scholarship Expenses:

24. Briefly the facts of the case are that during the course of assessment proceedings for the AY 2014-15, the assessee society was asked by the Assessing officer and it has furnished a list of 301 students to whom the assessee has claimed to have paid a total scholarship of Rs.25,83,142/-. To verify the claim of the assessee, notices were issued by the Assessing officer u/s 133(6) of the Act to 25 students to ascertain whether they have received the scholarship from the assessee society. Out of total 25 students, replies of 16 students were not received. Letters sent to two students were returned back unserved by the postal authorities and three students denied to receive any scholarship during F.Y. 2013-14 from the assessee society. Based on these findings by the Assessing officer, which were made available to the Id Pr CIT, the latter issued a show cause notice to the assessee society as part of the present proceedings and the issue of scholarship was one of the matter highlighted in the said show-cause.

25. The assessee society, in response to the show-cause, submitted that all the amount of scholarship were paid through account payee cheques issued in the name of the students, and all except one cheque have been debited in the bank account of the assessee society. The assessee society further submitted that all the students, in whose case reply was not received or who have denied having received the scholarship money, were called to the office of the Department along with their guardians and necessary verification was done. Regarding one student namely Yuvraj Singh, who denied to have received the scholarship, it was submitted that he did not put the cheque in his bank account and therefore, the entry made in the books of accounts was reversed on 31.03.2015, much before the survey/search.

26. The submissions so filed by the assessee society were considered but not found acceptable to the Id. Pr.CIT. It was held by the Id Pr.CIT that the letters sent u/s 133(6) of the Act were received back unserved even though the addresses of the students were provided by the assessee society. Further, three students were examined on oath and they have stated that they have not received any scholarship. Mere filing of confirmation letters is not sufficient to prove that scholarship was actually received by students, especially when some of them have denied receiving the same on oath. The fact that scholarship money

was transferred through banking channels is also not conclusive proof that the scholarship payments were genuine and were actually encashed by the real beneficiaries. Further the Id. Pr.CIT held that no such verification was done by the Department as so claimed and therefore, the assessee's contention that the students in respect of whom the reply was not received, they were called to the office of the department and necessary verification was done, was not found acceptable. It was held that no verification was done by the department rather the assessee merely submitted confirmation letters on behalf of the students. The Id. Pr. CIT accordingly held that in absence of physical examination, such confirmation letters cannot be treated as conclusive proof of the genuineness of scholarship payment. It was accordingly concluded that the assessee has misused funds which were claimed as expenses in the guise of scholarship payments.

27. During the course of hearing, it was submitted by the Id AR that all the scholarship money was paid by account payee cheques. Except in the case of Yuvraj Singh, all the cheques have been cleared and debited in the bank account of the Society. A copy of the bank account of the Society showing debits due to scholarship money cheques is enclosed as Annexure A/7. No evidence has been brought on record to show that the scholarship money or even part of it has been siphoned off by the Trustees and utilised for their benefit. In the case of Yuvraj Singh, the cheque was never deposited by him in his bank account, hence, the amount was credited, as a contra entry, in the bank account of the Society. Copy of the relevant extract of the Society's bank account is annexed as Annexure A/8. This extract was also supplied with the reply to the show-cause notice, filed by the Appellant Society before the Id Pr.CIT. Further, in respect of other two students, necessary details are available on record which clearly demonstrates that they have received the scholarship money and the cheque issued to them have been cleared.

28. It was further submitted by the Id AR that the survey u/s 133A of the Act was undertaken on 11.12.2016 and the year relevant to the issue of scholarship money is financial year 2013-14. Many students had left, many may not remember, at the first instance, of receipt of scholarship money 2-3 years ago. However, to have the issue verified, most of the students that had been mentioned above were traced, and then produced before the concerned ITO and Confirmatory letters were also filed. The ITO made due verification, and was convinced that the scholarship money had indeed been received by those students. Hence, it is wholly incorrect for the Id. Pr CIT to state in his order that only confirmatory letters of students were filed, the students were not physically produced, and the onus was on the Society to produce them. It may be stated categorically that the onus of producing the students is not on the Society since the school has no statutory means of forcing a student to be present before an Income-Tax Authority. Secondly, the PCIT (Central) has wrongly stated that the students were not physically produced. It is reiterated that all the concerned students were produced before the Income-Tax authorities, and verification was done. An affidavit from Shri Ganesh Narain Gupta, Accountant of the Society, who had accompanied the students to the Income-Tax Office, and was present during the verification, is annexed herewith and marked as Annexure A/9.

29. It was further submitted by the Id AR that even if it is finally held by the Tribunal that scholarship money shown as paid was not actually paid, it will only deflate/decrease the expenses, and inflate/increase the surplus of the Society. Since the income of the Society is exempt from tax, it will not make any difference as far the taxability of the amount is concerned, unless it is shown that some benefit, direct or indirect, has been given to any person mentioned in section 13(3) of the Act. It was submitted that not a shred of evidence has been brought on record by the Department that any benefit has flown to any person so referred in section 13(3) of the Act. In the light of the same, it was finally submitted that the conclusion drawn by the Id Pr.CIT is wholly erroneous, incorrect, and needs to be rejected.

30. The Id CIT DR was heard who has relied heavily on the findings of the Id Pr.CIT. We have already

taken note of the said findings and the same are not being repeated for the sake of brevity.

31. We have heard the rival contentions of both the parties and perused the material available on the record. The Id Pr CIT has raised certain apprehension about non-verifiability and genuineness of the scholarship payments made by the assessee society to its 301 students during the financial year 2013-14. The basis of such apprehension is that notices u/s 133(6) issued by the Assessing officer to sixteen students were not complied with and in two cases, notices were returned unserved, and three students have denied receiving the scholarship during the financial year 2013-14. Further, these students were not produced for verification and it was concluded that the assessee has misused funds which were claimed as expenses in the guise of scholarship payments. In response, the assessee society has submitted that all scholarship payments have been paid through account payee cheques and except in case of one student who didn't present the cheque, all the cheques have been cleared and payments are duly reflected in the assessee's bank account. Further, students were produced for verification before the ITO and an affidavit of assessee's accountant who accompanied the students for verification has been placed on record and confirmation letters from the students have also been filed.

32. Firstly, we find that the apprehension raised by the Id PR CIT is based on proceedings conducted by the Assessing officer for AY 2014-15 whereby the AO has issued the summons to the students and basis that, he has reached certain preliminary findings as the Assessing officer has finally passed the assessment order for AY 2014-15 much after the conclusion of the present proceedings before the Id Pr.CIT. We therefore find that the Id Pr.CIT has proceeded on the preliminary findings arrived at by the Assessing officer. Thereafter, even though he has issued the show-cause to the assessee during the impugned proceedings, however, his findings reflect that he was guided solely by the initial and preliminary findings so arrived by the Assessing officer and has not carried out any independent examination and verification of the transactions under consideration. There is nothing in law which prevents the Pr.CIT to rely on the findings of the Assessing officer, at the same time, he should carry out independent examination and verification and the final findings so arrived at should reflect his thought process and the reasoning. However, in the instant case, we find that Id Pr.CIT is guided by the findings of the Assessing officer and such findings which have even not attained finality as far as passing of the assessment order for AY 2014-15 is concerned which was passed subsequent to passing of the impugned order.

33. Having said that, though there have been contradictory claims regarding production of students for verification before the Assessing officer. At the same time, in our considered view, mere non-appearance of certain students for verification cannot be a sole basis to raise a question mark on the whole scheme and genuineness of scholarship payments to over 301 students on a sample survey size of around 8% and basis the same, to arrive at a finding that the assessee has misused funds which were claimed as expenses in the guise of scholarship payments. We find that the documents produced by the assessee society in support of the scholarship payments have not been considered. The scholarship payments have been paid to the regular students who are enrolled in various courses conducted by the educational institutions run by the assessee society. During the course of hearing, the Id AR stated at the Bar that the criteria for such scholarship has been well laid down in terms of economic condition of the students and their parents, past academic results, etc and there is a well laid down process for seeking application from the students and after due verification and approval from the Head of the educational institution, scholarship payments are sanctioned and subsequently disbursed to the students. It is also not the case of the Revenue that these are not regular students which were enrolled with the assessee's educational institutions and that they were not eligible to receive the scholarship as per the policy framed by the assessee's educational institutions. The confirmation letters filed by the students have been placed on record and the contents thereof have not been disputed. We also find that the payments have been made through account payee cheques to all these students and all the cheques have been

cleared (except in case of one student) and the said payments has been duly reflected in the assessee's bank account. In respect of three students who have denied receiving the scholarship, the assessee has submitted due explanation in terms of one of the student (Yuvraj Singh) having not presented the cheque no. 780228 for payment of Rs 3306 and the entry for such payments been reversed in the books of accounts on 31.3.2015, and in respect of other two students namely Anshu Agarwal and Pooja Kumar Jain, copy of their scholarship forms duly approved by the Principal, St. Wilfred's College for Girls, copy of account payee cheques issued in their favour bearing cheque no. 780912 dated 13.01.2014 for Rs 3,180 cleared on 10.02.2014 and cheque no. 780917 dated 13.01.2014 for Rs 3,180 cleared on 17.02.2014 respectively and copy of their confirmations addressed to DCIT (Exemption), Circle 1, Jaipur are available on record. Therefore, there is nothing on record to suggest that the scholarship payments are not genuine and the amount has been withdrawn by the assessee society in the guise of scholarship expenses. Further, there is nothing on record which remotely suggests that the amount so claimed by the assessee society as scholarship expenses have reached back in the hands of the assessee society and the latter has misused such funds. We therefore found the apprehension so raised by the Id Pr. CIT based on preliminary enquiries drawn by the Assessing officer are not tenable and sustainable in the light of clear evidence on record brought by the assessee society that these are genuine payments of scholarship to its students as per well laid down scholarship policy and therefore, such apprehension has no legal legs to stand and the same cannot be a basis to disallow the claim of the scholarship expenses.

34. Further, seeking confirmations from the students as to whether they have received the amount is no doubt part of an investigate exercise and the officer is duly authorized under law, however solely guided by non-receipt of confirmation and that too, from few students cannot be sole basis for denial of claim in the hands of the assessee society. Even where certain scholarship expenses remains unverified, the same at best may be a basis to disallow the said expenses limited to the extent it remain unverified, how the same can be basis to hold that the assessee society has misused the funds of the society in garb of whole of the scholarship expenses and if the said analogy is accepted, then every expense claim where the same is not proved by personal appearance of the person to whom such payment has been made would be a basis to hold that the assessee society has misused the funds of the society. To our mind, as the assessee society has documentation to support its claim, such apprehension is ill-founded and is not supported by well established legal proposition and rule of law.

35. Further, we find that the Revenue authorities have to appreciate that a student studying in a College or University cannot be equated with a regular vendor or a service provider. A student involvement is limited to the educational sphere and to a limited extent where he/she and their parents/guardians are required to pay his fees and receive scholarship wherever he/she is eligible for the same and nothing beyond that. As against that, a vendor or a service provider is in the business of supply of goods and provision of services and is running a commercial establishment where he maintains its records and reports his receipts and expenses and is subject to scrutiny of the tax authorities. Therefore, the latter is in a position and is expected to timely respond and co-operate in the proceedings before the taxing authorities and in case of non-compliance, he can be fastened with appropriate penalty actions. However, a student who is studying or has recently passed out of his/her college or University and who is issued summons under section 131, he or she is not expected to appreciate and respond in the manner as expected from any other service provider. Therefore, where there is a non-compliance on part of certain students to respond to such notices/summons in a timely manner and in some cases, where they have responded though with wrong facts, the authorities have to appreciate the same in a more realistic manner rather than in a ritualistic manner and their conclusions should not be guided solely by non-appearance of certain students before them. In other words, unless the Revenue authorities are ceased of sufficient material or information and such material/information is credible enough to prove that the assessee society is withdrawing the funds of the society in the guise of scholarship expenses systematically over a period of time and such funds are not reaching the students concerned in whose

name the scholarship payments have been shown to have been made, in such a case, the authorities have all the right and the jurisdiction to proceed against the society. However, in the instant case, there is nothing on record which has been brought on record to prove such mis-management and diversion of society funds.

36. In light of above discussions and in the entirety of facts and circumstances of the case, in our considered view, scholarship payments are genuine payments made by the assessee society and there is no basis to hold that the assessee society has misused the society funds in guise of scholarship payments. Therefore, the said findings of the Id Pr CIT cannot be sustained and cannot be made a basis to hold that the assessee society is not carrying out its activities as per its objects and the exemption granted under section 12AA should be withdrawn.

Payment made to Rajasthan Housing Board in contravention of Section 11(5) read with Section 13(1)(c)

37. Briefly stated facts of the case are that during the F.Y. 2013-14, the assessee has made a payment of Rs. 6,73,70,930/- to Rajasthan Housing Board towards allotment of land by Rajasthan Housing Board to M/s Adarsh Gyan Vidyalaya Samiti and has shown the same in its financial statements as part of land purchased during the year. For the purposes, the assessee entered into an "agreement to sell" with M/s Adarsh Gyan Vidyalaya Samiti. The conveyance cum perpetual lease deed though has been executed by Rajasthan Housing Board in favour of M/s Adarsh Gyan Vidyalaya Samiti, however, no registry or title transfer has been done in favour of the assessee society.

38. The Id PCIT, referring to the conditions of allotment as per allotment letter issued by Rajasthan Housing Board to M/s Adarsh Gyan Vidyalaya Samiti, held that a person to whom the land has been allotted cannot transfer it to any other person. It was accordingly held that the claim of the assessee society that it has purchased the land is patently false as it is illegal for M/s Adarsh Gyan Vidyalaya Samiti to sell/transfer the land to the assessee. It was further observed that M/s Adarsh Gyan Vidyalaya Samiti and the assessee society have three common members/trustees and therefore, M/s Adarsh Gyan Vidyalaya Samiti is related entity within the meaning of section 13(3) of the Act. The Id. Pr. CIT has held that it is a case of "use of society fund" for the benefit of M/s Adarsh Gyan Vidyalaya Society, a related entity, which is in violation of the provisions of section 13(3) of the Act. Further, it was held that it is against the objects of the society / trust, as it is diversion of funds. Further, booking of "Land" as asset in the books of the assessee society for which the assessee has no legal ownership shows that Balance Sheet does not reflect true & fair picture of the assets of the assessee. Further, it was held that this payment to Rajasthan Housing Board on behalf of M/s Adarsh Gyan Vidyalaya Society is neither a loan nor a donation but it appears to be an investment not allowable u/s 11(5) of the Act. Accordingly, a show cause notice was issued to the assessee society

39. In response to the show-cause, the assessee society submitted that Adarsh Gyan Vidyalaya Society owned a piece of land which it was not utilizing. Since the assessee was looking at expanding its educational activities, the assessee offered to purchase the same for which a regular 'Agreement to Sell' was entered into between the two entities. The assessee contended that as per the narration in this document dated 04.12.2013, Adarsh Gyan Vidyalaya Society had purchased the said land from Rajasthan Housing board for an initial payment of Rs. 80,46,880/-. Due to paucity of funds with Adarsh Gyan Society, the assessee agreed to purchase the said land from Adarsh Gyan Society for the amount of Rs. 7,54,17,810/- in pursuance of which the said amount was paid by the assessee and Rajasthan Housing Board was informed of the change in ownership. It was further submitted that the assessee has subsequently built a building on the said piece of land and is carrying on educational activities thereon, receipts of which were being reflected in its books of accounts.

40. The submission so filed by the assessee were considered but not found acceptable by the Id. Pr. CIT. It was held by the Id Pr CIT that the assessee society has not filed any evidence to substantiate that

Rajasthan Housing Board was duly informed of the change of ownership. Also, as per the terms and conditions of allotment by Rajasthan Housing Board, Adarsh Gyan Society cannot legally transfer or sell the land to the assessee and therefore, it is illegal for Adarsh Gyan Society to transfer or sell the land in question to assessee. It was accordingly held that the "agreement to sale" is nothing but an illegal piece of document which has been fabricated by the assessee in an attempt to submit as false evidence before Income-tax authorities. It was accordingly held that by making payment on behalf of Adarsh Gyan Society, the assessee has used part of its income for the direct benefit of its sister concern, Adarsh Gyan Society and has therefore violated provisions of Section 13(1)(c) of the Act and consequently, Sections 11 and 12 will not be applicable in the case of the assessee.

41. The Id CIT DR has strongly relied on the aforesaid findings of Id PCIT. In his submissions, the Id AR on behalf of the assessee submitted that Adarsh Gyan Vihar Vidhalaya Society, in which some of the trustees are common as that of the assessee society, had purchased land from Rajasthan Housing Board to build a school thereon. The Society paid the initial amount of Rs. 80,46,880/- but was unable to pay the rest of the amount of Rs. 6,73,70,930/- due to paucity of funds. Hence, the Appellant Society made an offer to Gyan Vihar Vidhalaya Society to purchase the said land since it wanted to expand its educational activities. It paid the said amount to Gyan Vihar Society, and entered into a registered "agreement to sell" in this regard with it. Thereafter, it wrote to RHB informing them of the said purchase and requesting them for approval for change of ownership in their records. Since, the approval had not been received, a formal "sale deed" had not been executed. Meanwhile, as stated in its reply dated 10.12.2018 before the PCIT, the Appellant Society had built a school building thereon, and was carrying on educational activities therein. Fee received from students studying in this building were being duly reflected in the audited accounts of the Appellant Society.

42. Regarding the findings of the Id PCIT (Central) in his order that the agreement to sell was illegal and a fabrication; that no evidence to show that RHB had been informed has been submitted; that the Society had used its income for the direct benefit of its "sister concern", hence hit by the provisions of section 13(1)(c) of the Act, the payment could at best be called an investment, but made in contravention of section 11(5) of the Act, it was submitted by the Id AR that it is not known how can a registered agreement to sell can be called a fabrication by the PCIT. The PCIT has no evidence to back his allegation, which is totally unfounded, baseless, and malicious. The "agreement to sell" is a genuine document, and not a fabricated one. A copy of the "agreement to sell" is enclosed and marked as Annexure A/10. Secondly, the PCIT (Central) deliberately has ignored/not mentioned the fact that the department had verified this purchase from RHB which had acknowledged that they had received such a letter from the Appellant Society. PCIT (Central) was aware of this evidence. A copy of the said evidence is annexed herewith and marked as Annexure A/11. Also, a copy of the letter written by the Appellant Society to the Rajasthan Housing Board is enclosed and marked as Annexure A/12. Hence, the allegation of the Respondent is factually incorrect and a clear cut attempt to suppress material information. It was further submitted that the cost of land is included in the balance-sheet of the Appellant Society, and the receipts from students are included in its receipts. A copy of the audited a/cs of the Appellant Society for the year A.Y. 2017-18 are enclosed as proof and marked as Annexure A-13. The allegation that the purchase is not a purchase, but an investment is also incorrect, in the light of the fact that payment has been made towards purchase of the land. Hence, it does not fall within the ambit of Section 11(5) of the Act.

43. It was further submitted that even for the sake of argument, if it is taken that there is a deficiency in the papers of purchase of land in the absence of a sale deed, that does not affect the fact of purchase of land as held by the ITAT, Jaipur Bench, in the case of *Indian Medical Trust v. Pr. CIT (Central)* [2018] 99 taxmann.com 273/173 ITD 508 in following words:

"Where assessee trust engaged in running various educational institutions was denied registration

under section 12AA merely on ground that some part of land on which assessee had set up an University was not in the ownership of said University as per certain government notification, same was unjustified."

44. It was further submitted by the Id AR that very allegation of the Respondent that the purchase price is actually an investment not sanctioned by section 11(5) of the Act is legally incorrect. The attention of the Bench is drawn towards section 11(5) (x) of the Act which states as under:

"(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely:—

(x) investment in immovable property."

Hence, even by the argument advanced by the respondent, that the money paid is an investment, the investment in immovable property is a form of investment approved by the Act.

45. It was further submitted by the Id AR that no evidence has been placed on record by the respondent with regard to any direct or indirect benefit flowing to the trustees/members of the Society which might bring it within the ambit of section 13(1) r.w.s.13(3) of the Act. It was pointed out in the reply submitted to the show-cause notice that the case of the Appellant Society does not fall within any of the clauses or sub-clauses of section 13(3), hence the allegation is not maintainable in any case.

46. We have heard the rival contentions of both the parties and pursued the material available on the record. Adarsh Gyan Vidhalaya Samiti has been allotted an institutional plot measuring 4151.34 sq. meters opposite Sector 3, Shipra Path, Mansarovar, Jaipur by Rajasthan Housing Board vide allotment letter dated 17.12.2013 on leasehold basis for a period of 99 years subject to payment of Rs 7.54 Crores and Rs 34.45 lacs as annual lease payment. The said allotment letter talks about payment of lease money within stipulated time frame in absence of which the allotment will be cancelled besides stating other terms and conditions of allotment including the fact that the land so allotted shall not be transferred. In terms of "agreement to sell" entered into between Adarsh Gyan Vidhalaya Samiti and the assessee society, it has been stated therein that the former has expressed its inability to arrange the funds and make payment to Rajasthan Housing Board to the extent of Rs 6.73 Crores after making the initial payment of Rs 80.46 lacs and therefore has approached the assessee society to make payment to Rajasthan Housing Board and in consideration, has agreed to sell the aforesaid property to the assessee society for a total consideration of Rs 7.54 Crores as stated initially in the allotment letter. The assessee society in pursuance of the said agreement to sell has thereafter made a payment of Rs 6.73 Crores directly to Rajasthan Housing Board. Subsequently, Adarsh Gyan Vidhalaya Samiti, having complied with the terms and conditions of allotment letter including the requisite terms of payments, has entered into a conveyance cum perpetual lease deed with Rajasthan Housing Board which has been registered with the office of Sub-Registrar VIII Jaipur on 7.02.2014 and the relevant terms and conditions of such conveyance cum perpetual lease deed reads as under:

"4. The lessee may transfer, assign otherwise part possession of the whole or any part of the said land with the previous consent of lessor. Which it shall be entitled to refuse in its absolute discretion.

5. Whenever the title of lessee in the said land is transferred in any manner what so ever the transferee shall be bound by all covenants and conditions contained herein be answerable in all respect thereof. In case the property is mortgaged to any financial institution, bank, Rajasthan State Industrial Development & Investment Corporation Ltd. (RIICO) for a loan against it, the Rajasthan Housing Board accepts the right of the financial Institution, bank, Rajasthan State Industrial Development & Investment Corporation Ltd. (RIICO) etc. to sell the said property to any person in

exercise of the right reserved by the financial Institution, bank, Rajasthan State Industrial Development & Investment Corporation Ltd. (RIICO) under the terms of the mortgage deed entered into by the financial Institution, bank, Rajasthan State Industrial Development & Investment Corporation Ltd. (RIICO) and the lessee.

6. Where ever the title of lessee in the said land in transferor in any manner what so over the transferor and transferee shall, within three months of the transfer give a notice of such transfer in writing to the lessor. In the event of the winding up or liquidation of allottee/ lessee's Society / trust the Person on whom the title of the Society devolve/ succeed as the case may be, shall apply to the lessor with certified copies of the documents (as evidencing the transfer or devolution/succession). If the transferor and the transferee neglect to give the notice of such transfer in writing to the lessor the lessor may impose for each such case of the neglect, liquidated/ damages, amounting to RS.100/- for the first year and thereafter Rs. 100/- for each successive year or part thereof such neglect. The lessee shall from time to time and at all times pay and discharge all rates taxes charges and assessment of every description which are now or at any time hereafter during the continuance of this Deed be assessed, charged or imposed upon the said land hereby The lessee shall also pay any increase in the premium of the land under his plot if in future the cost (Premium) of the Lind goes up as result of certain judgment of a court or due to any other unforeseen reason beyond the control of the lessor."

47. On perusal of above terms and conditions of the conveyance cum perpetual lease deed, we find that it contains enabling provisions for transfer of leasehold land by the lessee i.e, Adarsh Gyan Vidhalaya Samiti with the previous consent of the lessor i.e, Rajasthan Housing Board and the latter shall be entitled to refuse such transfer at its discretion. It is a settled legal proposition that the latter agreement supercedes any earlier agreement/understanding between the two parties. When the said terms and conditions of the conveyance cum perpetual lease deed containing the enabling provisions for transfer are read in comparison to the terms of the earlier allotment letter dated 17.12.2013 wherein the transfer was not permitted, the terms of conveyance cum perpetual lease deed shall supersede the terms of initial allotment. Further, where both the parties have contractually agreed to the terms of conveyance cum perpetual lease deed, in the context of present proceedings, we cannot be guided by the initial allotment letter which stands subsumed and merged/modified by conveyance cum perpetual lease deed. Therefore, we are unable to agree with the findings of the Id Pr.CIT that Adarsh Gyan Vidhalaya Samiti cannot legally transfer or sell the land to the assessee society as there are enabling provisions, as we have noted above, in the conveyance deed which allows such transfer subject to approval and sanction of Rajasthan Housing Board.

48. Now, in terms of seeking approval and permission of Rajasthan Housing Board to transfer the land in favour of the assessee society, we find that a letter dated 14.03.2014 has been written by Adarsh Gyan Vidhalaya Samiti to Deputy Housing Commissioner, Circle-2, Rajasthan Housing Board, Jaipur available on record at Annexure A/12 and the contents thereof reads as under:

Dt. 14/03/2014

Dy. Housing Commissioner,

Circle-2,

Rajasthan Housing Board,

Jaipur.

Dear Sir,

Sub: Request for allowing permission to transfer Institution Plot at Mansarovar, Jaipur to Another Educational Institution.

With Reference to above, we are to submit as under:

1. That Adarsh Gyan Vidhyalaya Samiti was allotted an institutional plot opposite sector 03, Shipra Path Mansarovar, Jaipur admeasuring 4151.34 Sq. YD vide letter No. 2442 Dt. 23/09/2013 which was subsequently modified vide letter no. 3070 Dt- 17/12/2013 on leasehold basis for a period of 99 Years.
2. The applicant society was in the process of setting up of School on the aforesaid plot of Land, however due to certain technical & financial problem, Society" is not in position to commence the school on the aforesaid institutional Plot. The associate society ie St. Wilfred Education Society who is running the educational institution desire to commence the another educational institution on the said Institutional Plot.
3. Since The Object of both the society are similar and the said Institutional Plot of Land was allotted for Running educational institution, it is thus requested to grant the permission to transfer the said institutional plot to St. Wilfred Education Society, Jaipur for running/the educational institution. The applicant is ready to deposit if any fees is chargeable for following permission to transfer the said Institutional Plot.

Thanking you,

Yours faithfully,

For Adarsh Gyan Vidhalya Samiti.

(Secretary)

49. Further, we find that DCIT(BP) Jaipur vide his letter dated 13.10.2017 has sought certain information regarding the impugned plot of land from Rajasthan Housing Board and the latter vide letter of Deputy Housing Commissioner, Circle-2, Rajasthan Housing Board , Jaipur dated 15.11.2017 available on record as Annexure A/11 has replied and contents thereof reads as under:

image

50. On perusal of above communications and the contents thereof, we find that the permission of Rajasthan Housing Board has been sought for the intended transfer of the impugned land in favour of the assessee society and the Revenue authorities are equally ceased of the matter. Given that the approval of Rajasthan Housing Board has not been received, the conveyance deed has not been executed in favour of the assessee society.

51. We therefore find that the assessee society has entered into an agreement to sell with Adarsh Gyan Vidhalaya Samiti wherein the former has agreed to purchase an institutional plot of land which has been allotted to the latter vide conveyance cum perpetual lease deed for 99 years by the Rajasthan Housing Board. There are enabling provisions in the conveyance cum perpetual lease deed which allows such transfer subject to approval and sanction of Rajasthan Housing Board. Necessary permission has been sought from the Rajasthan Housing Board for such transfer in favour of the assessee society and the same is currently awaited and on receipt thereof, formal sale deed shall be executed in favour of the assessee society. The assessee society has already paid substantial amount of Rs 6.73 Crores, out of total purchase consideration of Rs 7.54 Crores in terms of agreement to sell, directly to Rajasthan Housing

Board. Further, the assessee society is in effective possession of the said plot of land as it has since built a school building thereon and carrying on its educational activities and the fees so received have been reflected in its books of accounts.

52. In light of above factual matrix, as far as proximate and immediate benefit of such payment of Rs 6.73 Crores is concerned, it is the assessee society which is benefitted whereby it has built a school building wherein it is carrying on its educational activities. At the same time, it cannot be ruled out that Adarsh Gyan Vidhalaya Samiti is not benefitted by such payment by the assessee society on its behalf to Rajasthan Housing Board. Had the assessee society not stepped-in and made the payment to Rajasthan Housing Board, Adarsh Gyan Vidhalaya Samiti was likely to default on its payments as per stipulated time frame and in all likelihood, the allotment of the plot of land would have got terminated. Therefore, till the time the approval of Rajasthan Housing Board is not received for transfer in favour of the assessee society, the plot of land stand in name of the Adarsh Gyan Vidhalaya Samiti and conveyance deed has not been executed in favour of the assessee society. At the same time, such right over the land is not an absolute right as the same is subject to the terms of "agreement to sell" entered into with the assessee society and at least to the extent of payment made by the assessee society to the tune of Rs 6.73 Crores, the latter can enforce its right over such land in priority to any third party.

53. Having said that, the question that arises for consideration is whether by entering into the subject transaction, the assessee society has violated the provisions of section 13(1)(c) read with section 13(3) of the Act as invoked by the Id Pr.CIT.

54. As per Id Pr. CIT, Adarsh Gyan Vidyalya society and the assessee society have three common members/trustees and therefore, M/s Adarsh Gyan Vidyalya Society is a related entity within the meaning of section 13(3) of the Act and society funds have been used for the benefit of Adarsh Gyan Vidhalaya Society in violation of the provisions of section 13(1)(c) of the Act. The argument of the assessee society is that no evidence has been placed on record by the Revenue with regard to any direct or indirect benefit flowing to the trustees/members of the Society which might bring it within the ambit of section 13(1) r.w.s.13(3) of the Act and further, the matter does not fall within any of the clauses or sub-clauses of section 13(3) of the Act.

55. In order to appreciate the rival contentions, we again refer to the provisions of section 13(3) of the Act. The clauses from (a) to (cc) of section 13(3) are not applicable in the instant case as there is nothing on record that suggest that the common members have been benefitted in their individual and in their own right by such transaction. The clause (d) talks about any relative of any such author, founder, person, member, trustee or manager of the assessee society which is also not a case before us. The clause (e) talks about any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest. If we were to read the said clause (e) in the context of present facts, it means Adarsh Gyan Vidyalya society, being a concern in which members/trustees of the assessee society have a substantial interest. The term "substantial interest in a concern" has been defined in Explanation 3 to mean:

- "(i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-section (3);
- (ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-section (3) are entitled in the aggregate, at any time during the previous year, to not less

than twenty per cent of the profits of such concern."

56. That is, members and trustees of the assessee society either individually or collectively are entitled at any time during the previous year, to not less than twenty per cent of the profits of such concern i.e., Adarsh Gyan Vidyalya Society. In the present case, the case of the Revenue is that there are three common members/trustees in both the societies and therefore, these are related entities and are covered by provisions of section 13(3) of the Act. On perusal of records, we find that there are fifteen members in the executive committee of Saint Wilfred Education Society and equally number of members in the executive committee of Adarsh Gyan Vidyalya Society. The President of the assessee society is holding the post of Secretary in Adarsh Gyan Vidyalya Society. Further, two members who are educationist and doctor by profession are common in both the societies. However, merely having common members in both the societies are not sufficient to hold the societies as related entities within the meaning of section 13(3) of the Act. What has to be proved is that these common members hold substantial interest in the related entity in their own right either individually or collectively and that too, by entitlement to not less than 20% of profits in such related entity. However, there is nothing on record either in the impugned order of the Id Pr.CIT or brought to our notice during the course of hearing by the Id CIT DR that these common members are entitlement to any profits and that too, exceeding the prescribed threshold in Adarsh Gyan Vidyalya Society. Per contra, the Id AR submitted that Adarsh Gyan Vidyalya Society is an old society registered under the Rajasthan Societies Registration Act in year 1961-62 vide registration no. 03/1961-62 and by virtue of being a registered society, it cannot transfer any surplus to its members and such surplus, if any has to be deployed in the society and even in the event of winding up, the assets and funds of the society have to be transferred to any other registered society with similar objects. In light of the same, we don't find any legal basis to hold that Adarsh Gyan Vidyalya Society is a related entity within the meaning of section 13(3) of the Act. In absence thereof, even where it is held that some benefit has flown to Adarsh Gyan Vidyalya Society, the provisions of section 13(1)(c) are not attracted in the instant case.

57. Further, we note that the Id Pr.CIT has raised an apprehension at the time of issuance of show-cause that the payment to Rajasthan Housing Board on behalf of Adarsh Gyan Vidyalya Society is neither a loan nor a donation but appears to be an investment not allowable u/s 11(5) of the Act and thereafter, towards the end of his order while giving his concluding findings has held that the payment made is in contravention of section 11(5) r/w section 13(1)(c) of the Act. However, how the payment is in contravention of section 11(5) has not been spelt out in his order. If we look at the provisions of section 11(5), in clause (x), it provides for investment in immovable property as one of the permissible mode of investment of amount of income which is accumulated or set-apart for being not included in the total income of the person in receipt of income. In the instant case, the assessee society having entered into an agreement to sell with Adarsh Gyan Vidyalya Society and having paid a substantial amount in consideration for purchase of land and in possession of the said land has clearly made an investment in an immovable property though the same is subject to approval of Rajasthan Housing Board and signing of the final conveyance deed. Accordingly, in light of above discussions and in the entirety of facts and circumstances of the case, the payment to Rajasthan Housing Board is not in contravention of section 11(5) r/w section 13(1)(c) of the Act. Therefore, the findings of the Id Pr CIT cannot be sustained and cannot be made a basis to hold that the assessee society is not carrying out its activities as per its objects and the exemption granted under section 12AA should be withdrawn.

58. In light of above discussions and in the entirety of facts and circumstances of the case, the findings of the Id Pr.CIT relating to diversion of fund of the assessee society for personal purposes, non- genuine scholarship expenses and payments made to Rajasthan Housing Board in contravention of Section 11(5) read with Section 13(1)(c) of the Act cannot be sustained. These are merely apprehension which have been raised by the Id. Pr. CIT and there is no credible evidence on record which can conclusively demonstrate that the assessee is not working as per the objects for which registration was initially

granted, that the activities of the assessee's society are not genuine or any personal benefit has been derived by any person so defined u/s 13(3) of the Act. The case of the assessee therefore doesn't falls U/s 12AA(3) and 12AA(4) of the Act. In light of our details discussion and findings, the registration of the assessee society u/s 12AA is hereby directed to be restored from the date the same was withdrawn and cancelled by the Id. Pr. CIT in terms of the impugned order.

59. In the result, the appeal of the assessee society is allowed.

ITA No. 10/JP/2019

60. In ITA No. 10/JP/2019, the assessee has challenged the withdrawal of the exemption granted U/s 10(23C)(vi) of the Act. Both the parties have fairly submitted that under identical facts and circumstances of the case as in ITA no. 9/JP/2019 and following the same reasoning, the Id. Pr. CIT has withdrawn the exemption by invoking 15th Proviso to Section 10(23C) of the Act and similar contentions have been raised by both the parties. Therefore, our findings and directions as contained in ITA No. 09/JP/2019 shall apply *mutatis mutandis* to this matter as well. The exemption granted to the assessee society U/s 10(23C)(vi) of the Act is hereby directed to be restored from the date the same was withdrawn and cancelled by the Id. Pr. CIT in terms of the impugned order.

61. In the result, the appeal of the assessee society is allowed.

Tanvi

*In favour of assessee.