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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1361 & 1362/JP/2018
Assessment Years: 2011-12 & 2012-13

Deputy Commissioner of Income Tax (Exemptions) Circle, Jaipur.	बनाम Vs.	M/s Modern School Society, Sector-A, Talwandi, Kota (Rajasthan)
PAN No.: AAATM 7045 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 357/JP/2019
Assessment Year: 2013-14

Deputy Commissioner of Income Tax (Exemptions) Circle, Jaipur.	बनाम Vs.	M/s Modern School Society, Sector-A, Talwandi, Kota (Rajasthan)
PAN No.: AAATM 7045 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Smt. Rooni Paul (Addl.CIT-DR)
निर्धारिती की ओर से / Assessee by: Shri Rajiv Sogani (CA)

सुनवाई की तारीख / Date of Hearing : 21/12/2020
उदघोषणा की तारीख / Date of Pronouncement : 18/01/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

These are the appeals filed by the Revenue against the separate orders of the ld. CIT(A)-3, Jaipur dated 04/09/2018 and 12/12/2018 for the A.Y. 2011-12 to 2013-14 respectively.

2. All these three appeals of the Revenue have common issues; therefore, all were heard together and for the sake of convenience, a common order is being passed.

3. The hearing of the appeals was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

4. Since, common issues have been involved in all these appeals of the revenue, therefore, for deciding the appeal, we take ITA No. 1362/JP/2018 for the A.Y. 2012-13 as a lead case. In this appeal, the Revenue has taken following grounds of appeal:

> *"1. On the facts and the circumstances of the case and in law the Ld. CIT (Appeals) has erred in allowing exemption u/ s 11 of the I.T. Act, 1961 to the assessee without appreciating the fact that the assessee trust has provided undue benefit to the Persons Specified u/s 13(3) of the I.T. Act, 1961 in lieu of the salary and thus provisions of Section13(1)(c)(ii)r.w.s13(2)(c) of the Income Tax Act, 1961 were clearly attracted in this case.*
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> *2. On the facts and the circumstances of the case and in law the Ld. CIT (Appeals) has erred in allowing exemption u/s 11 as well as 10(23C)(vi) of the I.T. Act, 1961 without appreciating the fact that the assessee trust has made advances amounting to Rs. 8,85,77,000/- to the Persons Specified u/s 13(3) of the I.T. Act,1961, which remained invested with them throughout the year without any justification and thus provisions of Section13(2)(h) as well as section 13(1)(d) r.w.s 11(5) of the Income Tax Act, 1961 were clearly attracted in this case*
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> *3. On the facts and the circumstances of the case and in law the Ld. CIT (Appeals) has erred in deleting the addition of surplus amounting to Rs. 4,06,93,810/ - made on account of rejection of*

exemption u/s 11 and 10(23C) of the Act by invoking provisions of section 13(1)(c)(ii) r.w.s.13(2)(c) as well as Section 13(2)(h) as well as section 13(1)(d) r.w.s 11(5) of the I.T. Act,1961.

4. *On the facts and the circumstances of the case and in law the Ld. CIT (Appeals) has erred in allowing exemption 10(23C)(vi) of the I.T. Act, 1961 ignoring the fact that the order for withdrawal of the approval granted u/s 10(23C)(vi) was passed by the CIT(E), Jaipur on 17.11.2016 w.e.f. A.Y. 2012-13 in view of the discrepancies found in the books of accounts of the assessee society.*

5. *Any other question of law as deemed fit in the facts and circumstances of the case may also be framed before the Hon'ble Tribunal in the interest of justice."*

5. All these grounds of the Revenue are interrelated and the revenue is aggrieved by the order of the ld. CIT(A) in deleting all the additions made by the A.O.

6. The ld DR has relied on the order of the A.O. and submitted that the ld. CIT(A) has erred in allowing exemption u/ s 11 of the Act to the assessee without appreciating the fact that the assessee trust has provided undue benefit to the persons specified u/s 13(3) of the Act in lieu of the salary and therefore, provisions of Section 13(1)(c)(ii)r.w.s 13(2)(c) of the Act were clearly attracted in this case. It was further submitted that the Ld. CIT (A) has erred in allowing exemption u/s 11 as well as 10(23C)(vi) of the Act without appreciating the fact that the assessee trust has made advances to the persons specified u/s 13(3) of

the Act, which remained invested with them throughout the year without any justification and thus provisions of Section13(2)(h) as well as section 13(1)(d) r.w.s 11(5) of the Act were clearly attracted in this case. The ld DR has also submitted that the ld. CIT(A) has wrongly deleted the addition of surplus made on account of rejection of exemption u/s 11 and 10(23C) of the Act by invoking provisions of section 13(1)(c)(ii) r.w.s.13(2)(c) as well as Section 13(2)(h) as well as section 13(1)(d) r.w.s 11(5) of the Act. It was further submitted that the Ld. CIT (A) has erred in allowing exemption 10(23C)(vi) of the Act ignoring the fact that the order for withdrawal of the approval granted u/s 10(23C)(vi) was passed by the CIT(E), Jaipur on 17.11.2016 w.e.f. A.Y. 2012-13 in view of the discrepancies found in the books of accounts of the assessee society. However, the ld DR has agreed to the fact that the ITAT vide its order dated 20/12/2017 had restored the approval granted U/s 10(23C)(vi) of the Act.

7. On the contrary, the ld AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the ld. CIT(A) and submitted that the ld. CIT(A) has decided the issue after following the order of the ITAT, Jaipur Benches, Jaipur passed in assessee's own case vide order dated 20/12/2017 in ITA No. 1118/JP/2016 wherein the ITAT has restored approval granted U/s 10(23C(vi) of the Act to the assessee

and the said order was also upheld by the Hon'ble Rajasthan High Court while dismissing the departmental appeal and even the Hon'ble Supreme Court had also dismissed the SLP filed by the Revenue.

8. We have considered the rival submissions as well as relevant material on record. From perusal of the record, we found that initially the ld. CIT(E) had withdrawn the approval granted U/s 10(23C)(vi) of the Act to the assessee. However, the Coordinate Bench of this ITAT in ITA No. 1118/JP/2016 for the A.Y. 2011-12 after considering the facts of the case, restored the approval U/s 10(23C)(vi) of the Act. The said order was challenged by the Revenue before Hon'ble Rajasthan High Court. However, the Hon'ble High Court dismissed the departmental appeal vide order dated 31/07/2018 and similarly the Hon'ble Supreme Court also dismissed the SLP of the department. Hence, in this way, the said order restoring the approval U/s 10(23C)(vi) of the Act attained finality. Now the ld. CIT(A) has allowed the appeal of the assessee by following the order of the Coordinate Bench of the ITAT Jaipur Benches in assessee's own case for the A.Y. 2011-12. The Coordinate Bench vide its order dated 20/12/2017 passed in ITA No. 1118/JP/2016 had restored the approval granted to the assessee U/s 10(23C)(vi) of the Act by observing as under:

"6. We have considered the rival submissions as well as relevant material on record. There is no dispute that the additional

ground raised by the assessee is purely legal in nature and goes to the root of the matter. It is also not disputed that no new facts are required to be examined nor any further enquiry was needed for adjudication of the issue raised in the additional ground. Further, this is first appeal against the impugned order and not a case of raising afresh plea for the first time before the Tribunal without raising the same before the first appellate authority. The assessee could have raised this ground in the original grounds of appeal without seeking any leave of the Tribunal. The additional ground was required to be filed because of the reason that the assessee could not raise the same in the form 36 along with the memo of appeals. Therefore, it is only matter of revising the grounds as this issue was raised in the additional ground which was missed in the original grounds. Accordingly, in the facts and circumstances of the case when the additional ground raised by the assessee is purely legal in nature and does not require any new facts to be examined or further enquiry to be conducted for adjudication of this issue, then in view of the decision of Hon'ble supreme Court in case of National Thermal Power Co. Ltd. vs. CIT(supra) we admit the additional ground raised by the assessee for adjudication.

7. *On the validity of show cause notice issued u/s 10(23C)(vi)of the Act, the ld. AR of the assessee has submitted that the show cause notice dated 08.07.2016 has been issued and signed by DCIT(Hqr.) and not by ld. CIT(E). Therefore, show cause notice was not issued by the competent authority and the proceedings best on the illegal show cause notice and consequential order*

passed by the ld. CIT(E) are not valid and hence liable to be quashed. As per the provisions of Section 10(23C)(vi) of the Act the prescribed authority can examine and consider the non fulfillment of the conditions under the said provisions by the institutions, trust etc. and therefore, before initiating the proceeding u/s 10(23C)(vi) r.w.s. 13th proviso to the said section only competent authority can issue a show cause notice giving an opportunity to the assessee to reply and explain its case. Since show cause notice is not issued by the competent authority, therefore the same is not valid and in the absence of a valid note the provision assumed by the ld. CIT(E) is bad and void and lad and hence, the order passed u/s 10(23C)(vi) of the Act is not sustainable. In support of his contention, he has relied upon the following decisions:-

- *Kolkata ITAT decision dated 20.03.2015 in case of Arun Kanti, order (ITA No. 1516/Kol/2014)*
- *Kolkata ITAT Bench decision dated 15.01.2016 in case of M/s Assam Bangal Carriers, order (ITA No. 706/Kol/2016)*
- *Hon'ble Allahabad High Court decision dated 02.07.2012 in case of Rajesh Kumar Pandey, order (ITA No. 47/2011)*

The ld. AR has also relied upon the various other decisions in support of his contention and submitted that the order passed in pursuant to invalid show cause notice is not sustainable.

8. *Next contention of the ld. AR is that the assessments for prior years i.e. assessment years 2011-12, 2012-13 were completed u/s 143(3) and the Assessing Officer had not found any violation of the provisions of section 11(5) or 13(3) or any other*

provisions of the Act while completing the scrutiny assessment. However, due to impugned order the Assessing Officer has reopened the completed assessment of the earlier assessment years. Therefore, the withdrawal of approval with retrospective effect is not valid as the impugned order has been passed on the basis of the report of the AO for the assessment year 2013-14. In support of his contention he has relied upon the decision of Hon'ble Supreme Court in case of State of Rajasthan and others vs. Basant Agrotech India Ltd. and others 388 ITR 81 and submitted that only a legislation can make a law retrospective and prospectively subject justifiability and acceptability within the constitutional para- meters. The subordinate legislation can be given with retrospective effect if a power in this behalf is contained in the principle Act. In the absence of such conferment of power the Government the delegated authority has no power to issue a notification with retrospective effect. Therefore, in the absence of any provision contained in legislative Act the delegatee cannot make a delegated legislation with retrospective effect. The ld. AR has thus contended that when no power has been conferred by the Act on the competent authority to withdraw the approval retrospectively, then the withdraw of the approval u/s 10(23C)(vi) of the Act can only be prospective.

9. *On other hand, the ld. DR has submitted that the show cause notice is issued by the CIT(E) and the DCIT(Hqr.) has signed the same for and on behalf of the CIT(E). Hence, no fault can be found in the show cause notice issued u/s 10(23C)(vi) r.w.s.*

13 proviso. The decision relied upon by the ld. AR are not applicable in this case because in those cases it was show cause notice issued u/s 263 for revision of the order of the Assessing Officer whereas in the case of the assessee it was for withdrawal of the approval granted u/s 10(23C)(vi) by the same authority. Thus, the ld. DR has contended that mere signing of the show cause notice by DCIT(Hqr.) would not render it invalid when it is issued by ld. CIT(E). The ld. DR has pointed out that the language and contents of the notice are required to be considered not mere signature. Further, it is withdrawal of approval and therefore, the same would be from the date of grant of approval i.e. with retrospective effect.

10. *We have considered the rival submissions as well relevant material on record. The first objection of the assessee is regarding the validity of show cause notice that it was not signed by the competent authority and therefore, it is invalid. The power and jurisdiction to withdraw the approval granted u/s 10(23C)(vi) of the Act is provided under 13th proviso to the said section which reads as under:-*

*"**Provided also** that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) is notified by the Central Government [7][or is approved by the prescribed authority, as the case may be,] or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that—*

(i) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not—

(A) applied its income in accordance with the provisions contained in clause (a) of the third proviso; or

(B) invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution—

(A) are not genuine; or

(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer"

The 13th proviso to section 10(23C)(vi) confers the power/ jurisdiction to withdraw the approval to the Government or the prescribed authority. It further postulates that the prescribed authority, if satisfied that such fund or institution has not complied with the conditions as provided thereunder, can withdraw the approval. For Initiation of proceedings to withdraw the approval the mandatory pre-condition is the satisfaction of the prescribed authority. Undisputedly the prescribed authority is the ld. CIT(E) and the satisfaction of the prescribed authority is a must before issuing the show cause notice for withdrawal of the approval granted u/s 10(23C)(vi) of the Act. Therefore, what is material and mandatory condition is the satisfaction of the prescribed authority and non else. In case in hand the impugned show cause notice

dated 08.07.2016 was signed by the DCIT (Hqr.) and issued as per directions of the ld. CIT(E). In paras 2 and 6 Of the show cause notice in our opinion are relevant to the issue and the same are reproduced as under:-

"2. In this regard, I am directed to state that your institution/society has violated the provisions of Section 10(23C)(vi) of the Act in respect of following issues:-

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6. Your case is fixed for hearing before the Commissioner of Income Tax (Exemptions), Jaipur on 25.07.2016 at 12.30 P.M. in the Income Tax office (Exemptions) room No. 303, 3rd floor, Kailash Heights, Lal Kothi, Tonk Road, Jaipur. You may attend either personally or through an authorized representative in this behalf (holding valid Power of Attorney). Any failure to comply may lead to the conclusion that the assessee has nothing further to say from his side in this regard, and the case may therefore, be accordingly decided."

The language and tenor of the show cause notice do not exhibit any thought process of ld. CIT(E) but it reveals it was issued and signed by DCIT(Hqr.) as per instructions and directions of ld. CIT(E). The matter would have been different if the show cause notice brings out the thought process and application of mind by the ld. CIT(E) but was only signed by the DCIT (Hqr.). In case in hand it is apparent that the ld. CIT(E) delegated its powers to DCIT (Hqr.) to issue show cause notice and therefore, it is based on the satisfaction of the DCIT (Hqr.) and not of ld. CIT(E). para 2 and 6 of the impugned show cause notice clearly manifest that it was issued by the DCIT (Hqr.) and not by the CIT(E). The language of the show cause notice does not give any impression or inference that it is an expression of the satisfaction of ld. CIT(E). The Kolkata Bench of this Tribunal in

case of Arun Kanti vs. CIT (supra) while considering the issue of validity of show cause notice issued u/s 263 of the Act not signed by the ld. CIT has observed in para 5 and 5.1 as under:-

5. Investment/deposits of funds not in the prescribed modes:-
The sub clause (b) of 3rd proviso of section 10(23C) requires the society to invest/deposit the funds in the modes specified under section 11(5) of the Act. However, it is noticed that the society has made advances which is neither as per the objects nor in the modes prescribed u/s 11(5) of the Act.
In the Balance Sheet as on 31.03.2013, it is noticed that the society has shown loans and advances in the following names:-

S.No.	Name	Amount
1.	Trumurti Colonisers & Builders Pvt. Ltd.	1,38,00,000/-
2.	A.K. Education Welfare Society	1,00,00,000/-
3.	Ambience Land Developer	60,07,953/-
4.	Surendra Kumar Meena	3,00,00,000/-

5.1 M/s Trimurti Colonizers & Builders Pvt. Ltd.:
On perusal of ledger accounts of M/s Trimurti Colonizers & Builders Pvt. Ltd produced during the course of assessment proceedings, it has been revealed that the balance as on 31.03.2013 was of Rs. 1,38,00,000-. The balance advances as on 31.03.2014 in the name of aforesaid company is also shown as Rs. 1,38,00,000/-. The society has submitted that it has given advances to aforesaid company for purchasing of land and society has not charged any interest on such advances. Perusal of 'Application Form' submitted by the assessee in respect of allotment of plot, it has been revealed that date, amount and place etc. are not mentioned on the said form. As per submission of the society, even till today any land/immovable property was not purchased out of these advances.
On giving show cause in this regard vide its reply dated 25.07.2016, the A/R of the assessee submitted as under:

i) Advance given to Trimurti Colonizers & Builders Pvt. Ltd- The society has given advances to Trimurti Colonizers & Builders Pvt. Ltd. for purchasing of land at The Future city at phagi Jaipur. The advance was given for setting up an educational institution at Jaipur. M/s Trimurti Colonizers & Builders could not give us converted land because they could not get land converted.
Your good self has mentioned that this advance given cannot be said for charitable activities and there is violation of section 11(5) of the IT Act, 1961. Sir, this advance is given for acquisition of land for opening of school and in accordance with the sole object of the society. Further clause (x) of the section 11(5) permits "investment in immovable property" as one of the modes of investment of funds, so there is no violation of section 11(5) of the Act.

Further vide reply dated 10.08.2015 submitted as under:
"The above party has informed us the final hearing of Gutab Kothari V/s State has completed and they are waiting for decision, however we have informed them that either they should give us land by end of this month or return our money. Please note that they are no way connected to us or neither we have any business relation with them except for this particular deal."

Further vide reply dated 02.09.2016 submitted as under:-
Regarding outstanding amount as informed in our letter dated 10.08.2016 that we had given time to party either to give land or refund the money before the end of August, 2016, now they have requested that the present time is very bad for construction industries and they wanted time till end of this year. They assured us that they will certainly fulfill their commitment. In fact we also do not have any other option to wait till year end, or to file a case against them."

A similar view was taken by the Kolkata Bench of this Tribunal in case of M/s Assam Bangal Carriers vs. CIT (supra) in paras 7 and 8 as under:-

"7. We have considered the rival submissions. A perusal of the records shows that the show cause notice u/s 263 of the Act dated 26.02.2013 was signed by A.C.I.T.(HQ)-XXI, Kolkata and not by C.I.T. The question regarding validity of the order passed u/s 263 of the Act when the show cause notice u/s 263 of the Act is not signed and issued by C.I.T. and had come for consideration before this Tribunal in the case of Bardhman Co-op Milk Producers' Union Ltd. Vs CIT, Burdwan (supra). This Tribunal on identical facts as in the present case has held as follows :- "4. We have carefully considered the submissions and perused the record and we find that delay of 290 days in filing in these cases has been attributed to mistake on the part of assessee's counsel. The counsel has clearly admitted the mistake on his part. When the delay in filing of these appeals is attributed to the mistake of the consultant, in our considered opinion, assessee should not be penalized on this count. The case law referred by the Ld. counsel for the assessee also supports this proposition. Accordingly, we condone the delay. 5. As regards the matter in appeal, we note that the same is against order passed by the Ld. CIT u/s. 263 of the Act. At the outset, in this case, Ld. counsel for the assessee pointed out that the notice to the assessee u/s. 263 of the Act in these case, was issued by letter dated 06-03-2007. The said notice was signed by ACIT, Hqrs., Burdwan for Commissioner. Referring to this aspect, the Ld. counsel for the assessee pleaded that Section 263 of the Act provides for notice and adjudication by the Ld. CIT. Ld. counsel for the assessee claimed that since notice u/s. 263 of the Act has not been signed by the Ld. Commissioner. The jurisdiction assumed is defective and the order u/s 263 of the Act, is liable to be quashed on this ground itself. In this regard, Ld. counsel for the assessee referred to the decision of Hon'ble Allahabad High Court in the course of cit v. Rajesh Kumar Pandey (2012) 25 taxmann.com 242 (All.). The Ld. counsel for the assessee further referred to the decision of the Tribunal in the case of Satish Kumar Kashri v. ITO 104 ITD 382 (Pat). ITA No.706/Kol/2013 M/s. Assam Bengal Carriers. A.Yr.2008-09 4 6. Ld. DR on the other hand submitted that above is not the material defect and he submitted that there is

no reason to set aside the order u/s. 263 of the Act, on this account. 7. We have carefully considered the submissions and perused the record. We find that Section 263(1) of the Act provides as under:- "The CIT may call for and examine the record of any proceeding under this Act, and if he considers that any order passed by the AO is erroneous insofar as it is prejudicial to the interest of Revenue he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing fresh assessment." Now we can also refer to the notice u/s. 263 of the Act issued to the assessee. This notice was signed as under:- " Yours faithfully Sd/- Vikramaditya (Vikramaditdya) ACIT, Hqrs., Burdwan, For Commissioner." From the above, it is clear that the said notice u/s. 263 of the Act ha s not been signed by the "Commissioner of Income Tax" rather it has been signed by ACIT, Hqrs., Burdwan. The Hon'ble Allahabad High Court in the case of Rajesh Kumar Pandey (supra) has expounded that when the Ld. CIT has not recorded his satisfaction, but it was the satisfaction of the Income Tax Officer (Technical) who is not competent to revise his order u/s. 263 of the Act, the order passed was liable to be set aside. The relevant portion of the order of Hon'ble Allahabad High Court reads as under:- "6. On perusal of the aforesaid provisions, it will be abundantly clear that the provisions of Section 299-BB deals with the procedure for service of notice and in case, there is a defective service of notice, it provides that if the assessee has cooperated, it will not be open for him to raise the plea, whereas in the instant case, it is not the case of the service of notice, but the initial issuance of notice, which has not been signed by the competent authority as a finding has been recorded by the Tribunal that the notice has been issued under the signature of Income-tax (technical), whereas in view of the provisions of powers under Section 263(1), it is only the Commissioner of Income-tax to issue notice. It is also relevant to add that pleas can be raised only out of the judgment passed by

the Tribunal or other authorities, but the plea, which was not raised at any stage, cannot be raised for the first time before this Court. No other arguments have been advanced in respect of other questions framed in the memo of appeal." 8. Similarly, we note that in the case of Satish Kr. Keshari (supra), the Tribunal had held that when the notice u/s. 263 of the Act was not under the seal and signature of Ld. CIT and suffered for want of details on the basis of which Ld. CIT came into conclusion that the order of Assessing Officer is erroneous and prejudicial to the interest of Revenue, assumption of jurisdiction u/s. 263 of the Act by the Ld. CIT was invalid. ITA No.706/Kol/2013 M/s. Assam Bengal Carriers. A.Yr.2008-09 5 9. From the above discussion regarding the provision of law and the case law in this regard, it is clear that for a valid assumption of the jurisdiction u/s. 263 of the Act, the notice issued u/s. 263 of the Act should be issued by the Ld. CIT. In this case, it is undisputed that notice was issued by ACIT, Hqrs, Burdwan who is not competent to assume jurisdiction u/s. 263 of the Act. Hence, the notice was not under the seal and signature of Ld. CIT. Hence, as per the precedents referred to above, the assumption of jurisdiction u/s. 263 of the Act in this case is not valid. Accordingly, the order u/s. 263 of the Act passed in these cases are quashed." 8. Facts of the present case being identical to the case referred to above, respectfully following the aforesaid decision we hold that the assumption of jurisdiction u/s 263 of the Act in the present case is not valid. Order u/s 263 of the Act is accordingly quashed and the appeal of the assessee is allowed. In view of the above conclusion, the other grounds of appeal are not taken into consideration."

The Hon'ble Allahabad High Court in case of CIT vs. Rajesh Kumar Pandey (supra) while dealing with the validity of notice and applicable of the provisions of section 299BB has observed as under:-

"299BB Notice deemed to be valid in certain circumstances—

Where as assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under the Act that the notice was--
(a) not served upon him; or
(b) not served upon time in time; or
(c) served upon him in an improper manner;
Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."

Thus, it is settled proposition of law that the notice issued by the authority other than the prescribed authority is not valid and consequential order passed by the ld. CIT(E) is without jurisdiction. The show cause notice confers the jurisdiction to proceed and to pass the order. In case the notice itself is not valid then the jurisdiction assumed by the prescribed authority based on the invalid notice become invalid and consequential order passed by the authority is invalid and void abinitio for want of jurisdiction. Further, invalid show cause notice vitiates the proceeding and consequential order. Hence, we are of the considered opinion that the impugned order passed by the ld. CIT(E) is invalid and liable to quash on this ground.

11. *On merits of withdrawal of approval granted u/s 10(23C)(vi) of the Act the ld. AR of the assessee has submitted that the assessee after successful running the school at Kota decided to establish a new school in Jaipur. The assessee applied for*

allotment of land by the Rajasthan Housing Board and was allotted vide allotment letter dated 23.07.2007. The plot of land measuring 9050 sq. ft. in school Sector7, Shipra Path, Mansarovar was allotted to the assessee. The assessee deposited a sum of Rs. 3,48,91,144/- and took the possession of the said land from the Rajasthan Housing Board. However, at the time of handing over the possession, Rajasthan Housing Board (hereinafter referred to as the 'RHB') imposed the condition restricting the construction of building subject to the final decision of the Government regarding the 'nallah'. Thus until and unless the government finalized the decision regarding the 'nallah' the assessee could not construct the school building on the said plot of land. The assessee accordingly approached the Hon'ble Rajasthan High Court by way of a writ petition against the said restriction imposed by the Rajasthan Housing Board. The Hon'ble High Court vide order dated 12.01.2010 in writ petition No. CW570 of 2010-R 698/2010 modified the restriction and allowed the society to carry on the construction. Thereafter the assessee constructed the school and started the same in the academic year 2017-18. The ld. AR of the assessee has explained that due to the said restriction imposed by the Rajasthan Housing Board assessee was not sure when it would be able to construct the school on the said plot of land and therefore, the assessee to safeguard the interest. The assessee had entered into an agreement to purchase a land from M/s Trimurty Colonirsers & Builders Pvt. Ltd. for construction of school and accordingly made payment to the tune of Rs. 1,38,00,000/-. The ld. CIT(E) has objected the said payment

and held that this is an investment or diversion of fund not as per the mode prescribed under the Act. The ld. AR of the assessee has submitted that this is not an investment nor diversion of fund but the assessee society made banafide efforts for acquiring another piece of land which is wrongly being termed by the ld. CIT(E) as investment in violation of section 11(5) of the Act. After the commencement of construction on the plot of land allotted by the Rajasthan Housing Board pursuant to the order of Hon'ble High Court the assessee received back the said amount of Rs. 1,38,00,000/- from the builder on 10.10.2016. The ld. AR has further pointed that since the builder could not get the land use changed to institutional purpose, therefore, even otherwise the said land could not have purchased by the assessee and accordingly the assessee received back the advance amount of Rs. 1,38,00,000/-.

12. *As regards the advance of Rs.60,07,953/- given to Ambience Land Developer for purchase of two flats the ld. AR of the assessee has submitted that after the allotment of the land by the Rajasthan Housing Board the assessee acquire the flat for the office staff to stay their during the construction and further the flat was purchased for the purpose of ensuring the school come into existence. It was also proposed to be used for residence of the Principal of the School. Therefore, it was not an investment or diversion of fund but the flat was purchase to facilitate the accommodation for the office bearers visiting to Jaipur to supervise and overseeing the construction work. The*

ld. AR has further submitted that though the initially the assessee proposed to purchase two flats however, finally one flat was purchased for a sum of Rs. 92,05,000/- on 29.03.2013. The advance of Rs. 1,50,00,000/- was given to the developer for purchase of two flats and when the transaction was finally concluded the assessee purchase only one flat and the balance amount was received back. Hence, he has contended that it is not in violation of the provisions of Section 11(5) of the Act but the flat was purchased only for the purpose of running the school and residential purpose of school principal.

13. ***Advance to A.K. Education Welfare Soceity of Rs. 1,00,00,000/- :-*** *The ld. AR of the assessee has submitted that A.K. Education Welfare Society is dully registered Society under the provisions of Rajasthan Societies Registration Act, 1958. The said society was having objects of imparting education and is granted registration u/s 12AA of the Income Tax Act, 1961 on 16.12.2016. The assessee gave advance to A.K. Education Welfare Society to establish a school at Bharatpur in collaboration and in the name of Modern School. He has pointed out that presently A.K. Education Welfare Society runs "Modern School" at Bharatpur under franchisee from the assessee society. Therefore, this amount was given to another education society for establishing a school at Bharatpur which is very much in accordance with the object of the assessee society and cannot be said in violation of the provisions of section 11(5) of the Act or any other provisions.*

14. ***Advance to Surendra Kumar Meena:-*** *The ld. AR of the assessee has submitted that the assessee society also purposed to open another school in Jaipur at a different location of the city. In pursuit of that, to acquire property in North Jaipur the assessee entered into an agreement with Surendra Kumar Meena for purchase of land for the purpose of construction of school however, the said transaction could not materialized and the entire money given as advance of Rs. 3 Crores was received back in the financial year 2014-15. The ld. AR of the assessee has referred to the agreement for purchase of the land from Surendra Kumar Meena under which the said advance was paid. Thus, he has contended that this payment was made for purchase of land for constructions and running the school and cannot be termed as investment or diversion of fund.*

15. ***Undue benefit given to the specified persons:-***

Salary paid to specified persons:- *The ld. AR of the assessee has submitted that the salary was paid to the persons who are duly qualified and have requisite experience in the field of education and therefore, the salary was paid for the services rendered by these persons. He has further contended that due to the efforts of these persons the assessee society could grow and establish schools at different cities. The salary paid was commensurate to the qualification and experience and was as per the need of the assessee society. Once services rendered by these persons are not denied then the payment of salary cannot be termed as undue benefit. He*

has further contended in the earlier assessment year a similar remuneration paid to these persons was found to be reasonable by the AO while completing the assessment u/s 143(3). Therefore, the department is expected to adopt consistency in its approach and cannot take a opposite view that the salary paid to these persons is undue benefit. In support of his contention he has relied upon the following decision:-

- *Radhasoami Satsang v. CIT 193 ITR 321 (SC)*
- *ACIT(E) v. Mahima Shiksha Samiti [2017] 79 taxmann.com 38 (Jaipur Trib.)*

Thus, the ld. AR of the assessee has submitted that this Tribunal in case of Mahima Shiksha Samiti has analyzed the issue of payment of salaries and held that the qualification and experience of persons and their services to manage the affairs of the society since inception as well as managing day to day affairs, the salary and allowances paid to them is reasonable vis-a-vis legitimate needs of the assessee society. Thus, the ld. AR of the assessee has submitted that the salary paid these persons who were rendering the services and managing affairs of the assessee society cannot be held to be undue benefit.

16. ***Expenses incurred on the tours of specified persons:*** *The ld. AR of the assessee has submitted that the assessee society sent a group of staff for study tour to Dubai. This Group of staff consists of 23 persons out of which 21 are teachers of the assessee society only and two are Director and Vice Principal. The said visit was to enhance the teaching skill and*

administrative capacity of the staff also to update them about the latest development in the field of education. Thus, the ld. AR of the assessee has submitted that it is not the case of travelling of specified persons alone but it is a group of 23 persons mostly teachers except one sent for study tour and therefore, the same cannot be held as undue benefit. He has relied upon the decision of the Coordinate Benches in case of ACIT(E) v Mahima Shiksha Samiti (supra).

17. *Thus, the ld. AR has submitted that when the assessee has not violated any provisions or conduction prescribed u/s 11 & 13 of the IT Act or the conditions of granting approval u/s 10(23C)(vi) of the Act then, withdrawal of the approval is patently illegal. He has relied upon the decision of Hon'ble Delhi High Court in case of DCIT vs. Alarippu 244 ITR 358 as well as Baidya Nath Plastic Industries (P.) Ltd. vs. K.L. Anand, Income Tax Officer 230 ITR 522 and submitted that the Hon'ble Delhi High Court has defined expression investment, deposit and loan and held that these words have different meanings. The advance given resulting no income or return cannot be termed as investment or loan it cannot be said to be deposited as it is not made for safe keeping or earning any interest income. Thus, the ld. AR has submitted that the impugned order is not sustainable and the same may be set aside.*

18. *On the other hand, ld. DR has submitted that the assessee has given a sum of Rs. 1,38,00,000/- to Trimurty Colonizers & Builders Pvt. Ltd. without charging any interest. The ld. CIT(E) has examined the record and found that this amount was*

shown in the balance sheet as on 31.03.2013 and it remained outstanding even on 31.03.2014 thus, the assessee has diverted its fund for giving this amount to Trimurty Colonizers & Builders Pvt. Ltd. without charging interest. Though the assessee has claimed that this amount was given as an advance payment for purchase of additional plot however, since May, 2011 neither any plot was purchased by the assessee society nor any interest has been received on such advances. Therefore, even if it is not an investment by the assessee the same is in-contravention of the provisions of Section 11(5) as well as the conditions of granting approval u/s 10(23C)(vi). When the assessee has not received any reciprocal benefit over the period on this advance then it is a clear case of diversion of fund. He has relied upon the impugned order of the ld. CIT(E).

19. *As regards the payment to A.K. Education Welfare Society the said payment was given in the financial year 2010-11 and the assessee has shown the balance advances even as on 31.03.2014. Thus, the assessee has given interest free funds to the said society out of the capital of the trust which cannot be accepted as a charitable activity. The assessee explained that this amount was given to the A.K. Education Welfare Society for starting and running a school in Bharatpur however, no such education activities were started by the said society till the end of 2016. Therefore, this is also a diversion of fund of the assessee in contravention of the provisions of Section 11(5) as well as other conditions of granting approval u/s 10(23C(vi) of the Income Tax Act.*

20. The ld. DR has then submitted that the assessee has again given an advance of Rs. 1.5 Crores to Ambience Land Developer India Pvt. Ltd. for purchase of two flats however, the assessee has purchased only one flat for Rs. 92,05,000/- on 29.03.2013, therefore, the balance amount of Rs. 60,07,953/- is nothing but diversion of fund without charging any interest. He has relied upon the finding of the ld. CIT(E) and submitted that the flat was purchased for the personal purpose of office bearer of the assessee society and not for the society purpose.

20. The ld. DR has submitted that the assessee has also given an amount of Rs. 3,00,00,000/- to Shri Surendra Kumar Meena during the financial year 2007-08 in the garb of purchase of some land however, no land was purchased by the assessee till date and therefore, this amount was given free of interest in violation of provisions of Section 11(5) till it was received back by the assessee in the Financial Year 2014-15. It is a clear case of diversion of fund for non charitable or education purpose. These advances are clearly in violation of section 11(5) of the Income Tax Act as well as in violation of the conditions subject to which the approval u/s 10(23C)(vi) was granted. Thus, these violations itself are sufficient for invoking the provisions of 13th proviso to section 10(23C)(vi) for withdrawal of the approval.

21. As regards undue benefit given to the specified persons, the ld. DR has contended that the assessee society has paid salary to the persons which are covered u/s 13(3) of the I.T. Act. Therefore, this payment on account of salary is unreasonable benefit given to the specified persons. The ld. CIT(E) has given

finding that the Director/Chairman and other trustee performed only supervising and managerial role to the public service and therefore, this high payment given as salary is nothing but giving undue benefit to the specified persons in violations of the provisions of Section 13(3) r.w. the provisions of Section 10(23C)(vi) 3rd proviso and 13th proviso. He has relied upon the finding of the ld. CIT(E) and submitted that the payment given to these persons is not justified when the assessee society is doing a charitable activity. Apart from the salary the assessee has also incurred expenditure on the foreign tour of specified persons. The expenditure incurred on the tour cannot be treated as expenditure incurred for educational purpose and therefore, it is in violation of the provisions of Section 13(3) as well as 3rd proviso to Section 10(23C)(vi) of the Income Tax Act. Thus, the ld. DR has submitted that there are multiple violations of provisions of Sections 11(5), 13(3) as well as section 10(23C)(vi) r.w. proviso 3rd and 13th and therefore, the ld. CIT(E) is justified in withdrawing approval granted U/s 10(23C)(vi) of the Income Tax Act.

22. *We have considered the rival submissions as well as relevant material on record. The ld. CIT(E) withdrew the approval primarily on two grounds viz (i) investments/deposits of fund not in prescribed mode and (ii) undue benefit given to the specified persons as per Section 13(3) of the I.T. Act. First we will deal with the issue of investments/ deposits in violation of the provisions of section 11(5) of the Income Tax Act. The*

details of such deposits are given by the ld. CIT(E) in para 5 of the impugned order as under:-

S.No.	*Name*	*Amount*
1.	*Trumurti Colonisers & Builders Pvt. Ltd.*	*1,38,00,000/-*
2.	*A.K. Education Welfare Society*	*1,00,00,000/-*
3.	*Ambience Land Developer*	*60,07,953/-*
4.	*Surendra Kumar Meena*	*3,00,00,000/-*

Thus, there are four transactions of alleged investments/deposits. Before we proceed to examine each of these transactions the relevant provisions of the I.T. Act are required to be analyzed. For exercising the power under 13th proviso to Section 10(23C)(vi) the prescribed authority has to satisfy itself about the existence of the default/ violation committed by the assessee as contemplated under clause (i) B of the said proviso. The said requirement is mandatory for invoking the jurisdiction and powers provided under 13th proviso to Section 10(23C)(vi) of the I.T. Act. The violation and defaults as alleged by the ld. CIT(E) in the impugned order fall under clause (i) sub clause A and B of the said proviso to Section 10(23C)(vi) of the I.T. Act. There is no allegation of the activity of the assessee society are not charitable or not genuine or not carried out in accordance with all or any of the conditions subject to which it was granted approval. The Two grounds on which the ld. CIT(E) withdrew the approval are falling under clause (i) of the 13th proviso. To bring the case of investments/ deposits of fund in the purview of clause (i) B of 13th proviso to Section 10(23C)(vi) of the I.T. Act It is primary condition there must be an investment or

deposit of funds of the institution. Therefore in order to ascertain whether such investment/ deposit is in violation of the mode prescribed u/s 11(5) of the I.T. Act there must be investment or deposit of funds. For ready reference we quote the provisions of section 11(5) 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 :—

(i) investment in savings certificates as defined in clause (c) of section 2[50] of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;

(ii) deposit in any account with the Post Office Savings Bank;

(iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).

Explanation.—In this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

(iv) investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);

(v) investment in any security for money created and issued by the

Central Government or a State Government;

(vi) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;

(vii) investment or deposit[51] in any [52][public sector company]:

*[53][**Provided** that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector company,—*

(A) such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of three years from the date on which such public sector company ceases to be a public sector company;

(B) such other investment or deposit shall be deemed to be an investment or deposit made under this clause for the period up to the date on which such investment or deposit becomes repayable by such company;]

(viii) deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and [54][which is eligible for deduction under clause (viii) of sub-section (1) of section 36];

(ix) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and [54][which is eligible for deduction under clause (viii) of sub-section (1) of section 36];

[55][(ixa) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for

urban infrastructure in India.

Explanation.—For the purposes of this clause,—

(a) "long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;

(b) "public company" shall have the meaning assigned to it in section 3[56] of the Companies Act, 1956 (1 of 1956);

(c) "urban infrastructure" means a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, roads, bridges and flyovers or urban transport;]

(x) investment in immovable property.

Explanation.—"Immovable property" does not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to, or permanently fastened to, anything attached to the earth;]

[57][(xi) deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964);]

[58][(xii) any other form or mode of investment or deposit as may be prescribed.[59]]"

In light of the requirement of the provisions of law we will examine each of this transactions one by one ***Advance given to Trimurty Colonizers & Builders Pvt. Ltd.*** *the assessee explained the purpose and intent for giving the said amount of Rs. 1,38,00,000/- to purchase education plot for construction of*

school. It is not in dispute that the said payment was made under an agreement to purchase which was executed on 27.05.2011 for purchase of educational plot of measuring 9680 yards. This amount was paid as booking advances to the builder. The assesse has explained that since Rajasthan Housing Board restrain the assessee from constructing the school building and put a condition that the assessee society can carry out the construction subject to the decision to be taken by the Government, in respect of Nallah. Therefore, due to the uncertainty of construction of the school building on the plot allotted by the Rajasthan Housing Board the assessee took the decision in the best interest of the institution and for achieving the objects of the society. The facts explained by the assessee are not in dispute that after the allotment of the land for new school the assessee challenged the conditions imposed by the Rajasthan Housing Board before the Hon'ble High Court and only after the order of the Hon'ble High Court modifying the said conditions, the assessee was allowed to start the construction work on the allotted site. Therefore, the allotment of site itself was under dispute and to safeguard the interest of the assessee institution in the eventuality of any adverse outcome of the litigation and dispute regarding the plot allotted by the Rajasthan Housing Board the assessee made these arrangements of acquiring a substitute plot of land vide agreement dated 27.05.2011. Thus, this payment for purchase of educational plot for construction of the school as per agreement cannot be regarded as an investments or deposits but the same was payment for purchase of land in accordance with the objects and

purpose of the assessee society. The payment under the agreement is not in dispute but the long duration for which this amount remained with other party was the reason for considering the same as investments/ deposits in violation of provisions of section 11(5) of the Act while passing the impugned order by the ld. CIT(E). It is also not in dispute that the said agreement was consequently cancelled and this amount was received back by the assessee on cancellation of the agreement, therefore, until and unless the agreement dated 27.05.2011 is held as bogus or non-est the payment under the said agreement cannot be considered as an investments or deposits. The Hon'ble Delhi High Court in case of DCIT vs. Alarippu (supra) has observed that the investment means to lay down money in business with a view to obtain an income or profit or the said amount should be capable of result of income, return or profit to the investor. In every case of investment the intention and positive act on part of the investor to earn such income, return, profit. The word deposit does not cover transaction of loan being the advance given for purchase of asset. Further, in the absence of the intention to earn the income out of such transaction the same cannot be termed as investments/ deposits. Therefore, when the advance was paid for purchase of education plot for construction and running of school which is in accordance with the objects and purpose of the assessee society then, the same cannot be treated as investments or deposits and therefore, there is no violation of provisions of section 11(5) of the Income Tax Act.

23. Similarly the payment of Rs. 1 Crore A.K. Education Welfare Society it is not disputed by the department that the said society is duly registered under the provisions of Rajasthan Society Act and also granted registration u/s 12AA of the Income Tax Act. The assessee filed a copy of order of granting registration U/s 12AA dated 16.12.2016. The objection of the ld. CIT(E) regarding this payment is that despite the laps of consideration time no school was started at Bharatpur as claimed by the assessee however, the assessee has produced the browser as well as admission application form and submitted that a Modern School has been dully started in Bharatpur in the collaboration and under the franchise of the assessee. The assessee has given this amount to start a school in Bharatpur and A.K. Education Welfare Society has now started the school which is fully functional and imparting education. Thus, this payment made only for achieving the objects imparting education. We find That the school at Bharatpur is also in the name of "Modern School" as the other schools of the assessee society. Therefore, when the payment was given to the education society which was granted registration u/s 12AA and "Modern School" has been started in Bharatpur under the franchise of the assessee and in the collaboration with A.K. Education Welfare Society then the said payment cannot be held as an investment or expenditure other than the expenditure laid down for achieving the objects of the assessee. Hence, there is no violation of section 11(5) as regards this payment of Rs. 1 crore was made to the A.K. Education Welfare Society.

24. ***The payment to Ambience Land Developers India Pvt. Ltd.:-*** *The ld. CIT(E) noted that the assessee initially paid an advance of Rs. 1.5 Crores to the developer for purchase two flats however, finally the assessee purchase only one flat of Rs. 92,05,000/-, therefore the balance Rs. 60,07,953/- was treated as diversion of fund in violation of Section 11(5) of the Income Tax Act. It is not in dispute that the said payment of Rs. 1.5 Crores was paid under the agreement to purchase two flats. The assessee has explained that the assessee acquired the flat at Jaipur so that the office bearers visiting to Jaipur for supervising and overseeing can stay there, the flat was finally to be used for residence of the principal of the school. Therefore, even if the assess as originally proposed to purchase two flats and subsequently acquired only one flat the excess amount paid at the time of initial agreement cannot be treated as investment or deposit in violation of the provisions of section 11(5) of the IT Act. Though the ld. CIT(E) doubted the use of the flat, however when the flat was finally used for the residence of principal of the school then it cannot be treated as diversion of fund but the fund was applied only for the purpose of education which is the primary object of the assessee society. Hence, this transaction cannot be termed either investments or deposits and therefore, there is no violation of provisions of section 11(5) of the I.T. Act.*

25. ***The payment to Shri Surendra Kumar Meena:*** *The assessee has made an advance of Rs. 3,00,00,000/- to one Shri Surendra Kumar Meena for purchase of land in Jaipur vide agreement dated 04.04.2007. It is clear that the said land was to*

be purchased for the purpose of construction and running of a new school. Subsequently when the land was not converted to non agricultural use for the purpose of education as there was a public interest litigation filed against the said land then, the assessee decided to cancel the said agreement and received back the amount. The agreement dated 04.04.2007 is not in dispute. It is also a matter of fact and record that a public interest litigation was filed in the Hon'ble High Court challenging the use of land other than the agricultural purpose and thus until and unless the land was finally converted for non agricultural use the assessee could not acquire the same. After waiting for a reasonable period, the assessee finally received back the amount and cancelled the agreement. The intent and purpose for the payment was acquisition of the land for opening a new school cannot be doubted as the assesses entered into agreement dated 04.04.2007 and thereafter subsequent agreement on 18.03.2008. These payments were made on two occasions at the time of these two agreements and therefore, the said payment for acquiring the land will not fall in the category of investment or loan or deposit. Hence, the said payment is not hit by the provisions of Section 11(5) of the Income Tax Act.

26. ***Undue Benefit given to the specified persons:*** *The ld. CIT(E) noted that the assessee made payment on account of salary to the persons allegedly covered u/s 13(3) of the Act. The details of the payments are given in para 6.1 of the impugned order as under:-*

Sl. No.	*Name of person*	*Salary Amount*	*Qualification*	*Duties Assigned*
1.	*Dr. Deepak Singh*	*48,78,418/-*	*B.SC., M.A. Phd., B.Ed.*	*Director/Treasurer*
2.	*Seema 'D' Singh (wife of Deepak Singh*	*10,84,775/-*	*B.A., B.Ed.*	*Teacher*
3.	*Vaibhav Singh*	*9,52,831/-*	*M.A.*	*Secretary/Principal*

There is no dispute that these payments are not made first time during the year under consideration but are regular payments of salary to these persons from the financial years 2008-09 to 2012-13. The Assessing Officer while completing the assessment u/s 143(3) never doubted or question these payments as excessive or unreasonable as it is clear from the facts that these payments are remuneration paid to these persons for rendering services and not merely payments for being the specified persons. Once the qualification of these persons and rendering of service by them is not in dispute then the quantum as per provisions of Section 13(2) can be examined to ascertain that there are not excessive payment to these persons. For ready reference we quote section 13(2) as under:-

"(2) Without prejudice to the generality of the provisions of clause (c) [17][and clause (d)] of sub-section (1), the income or the property[18] of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—

(a) if any part of the income or property[19] of the trust or institution is, or continues to be, lent[19] to any person referred to in sub-section (3) for any period during the previous year without either adequate security[19] or adequate interest or both;

(b) if any land, building or other property[19] of the trust or institution is, or continues to be, made available for the use of any person

referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;

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

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

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

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

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

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

(h) if any funds[21] of the trust or institution are, or continue to remain, invested[21] for any period during the previous year (not being a period before the 1st day of January, 1971), in any concern[21] in which any person referred to in sub-section (3) has a substantial

interest."

As per Section 12(2) (c) of the IT Act only when an amount is paid by way of salary, allowance or otherwise to any person specified in sub-section (3) the amount so paid in excess of what may be reasonably paid for such services would be deemed to have been used or applied for the benefit of such specified persons. The ld. CIT(E) has not given a finding that the payment of salary to these persons is more than the fair market price of the services rendered by them, though the justification of payment is questioned by the ld. CIT(E). Further, the salary in question were being paid since long time and reasonableness was not question by the AO while completing the scrutiny assessment for the earlier years as well as subsequent year i.e. 2013-14. The Coordinate Bench of this Tribunal in case of ACIT(E) v. Mahima Shiksha Samiti (Supra) has held in para 73 as under:-

*"**73.** In our view, given the qualification and the experience of these persons and the fact that these persons have managed the affairs of the society since its inception and they are closely and actively involve in management and day to affairs of the assessee society, the salary and allowances paid to them is reasonable vis-a-vis legitimate needs of the assessee society and benefit derived or accruing to the assessee society. We do not see any justifiable reason to disturb the decision which has been taken by the management of the assessee society in terms of determining the appropriate remuneration payable to these persons. The only scenario where one can think of disturbing the said decision taken by the management of the assessee society is where people holding similar position and having similar experience and qualification have been drawing lesser remuneration compared to what has been paid to these persons by the assessee society. In other words, the test of reasonableness can be invoked where*

there is contemporary data in terms of identifiable third-party transactions in similar area of operation of education. In the instant case, the revenue has not brought on record any such contemporary data in terms of other educational institutions of same scale-and size and having similar strength of student and infrastructure wherein keep managerial person having been paid lesser salary. Further the Courts have held from time to time that the reasonableness of the expenditure is to be adjudged from the point of view of an business man and not of the Revenue. In other words, the reasonableness has to be seen vis-a-vis legitimate needs of the assessee society and benefit derived or accruing to the assessee society and as determined by the assessee society. It is also noted that in the past consistently over the years, the matter relating to reasonableness of the salary paid to the members of the Bakshi family have been raised by the Revenue and the Coordinate Benches have consistently held in favour of the assessee society and have not seen any justifiable basis for such action on the part of the revenue. For one of the years i.e. A.Y. 2009-10, the Revenue has accepted the order of the Ld. CIT(A) upholding the salary paid to these persons. In the entirety of the facts and circumstances of the case, we are of the view that the salary paid to the members of Bakshi family are commensurate with qualifications and experience as well as area of their responsibility in terms of management and day to day affairs of the assessee society and commensurate vis-a-vis legitimate needs of the assessee society and benefit derived or accruing to the assessee society. In the result, we do not see any violation in terms of section 13 and the disallowance made by the A.O. which has been deleted by the ld. CIT(A) is upheld.In the result, ground No.3 of the Revenue is dismissed."

Thus, when the qualification and experience of the persons who were managing the affairs of the society and also involved in the day to day affairs and teaching work is not denied then salaries and allowances or remuneration paid to these persons cannot be held as unreasonable or excessive. Following the decision of the

Coordinate Benches of this Tribunal (Supra) we hold that the payment is made on account of salary against the services rendered by these persons and not merely on account of their status then the same cannot be said to be a undue benefit to attract the provisions of Section 13(3) of the Income Tax Act.

27. *Next undue benefit was considered on account of the expenditure incurred on foreign tour of specified persons. The assessee furnished the details of 23 persons who have gone on education tour. The list of these persons is as under: -*

S.No.	Name of Staff	Post
1	Vaibhav Singh	Director
2	Sunita Bali	Vice Principal
3	SN Vaishav	Post Graduate Teacher
4	RK Jain	Post Graduate Teacher
5	Satish Gosain	Trained Graduate Teacher
6	Arun Sahoo	Trained Graduate Teacher
7	Ravina Anand	Trained Graduate Teacher
8	Mona Jain	Trained Graduate Teacher
9	Reva Jain	Primary Teacher
10	Usha Gosain	Primary Teacher
11	Pratima Dhar	Trained Graduate Teacher
12	Alka Sharma	Trained Graduate Teacher
13	Neelam Madan	Trained Graduate Teacher
14	Asha Singh	Trained Graduate Teacher
15	Deep Mala	Trained Graduate Teacher
16	Lla Singh	Trained Graduate Teacher
17	Kalpna Ojha	Trained Graduate Teacher
18	H Rautela	Primary Teacher
19	R Kukreti	Primary Teacher
20	ZU Khan	Post Graduate Teacher
21	Madi Modi	Primary Teacher
22	Rekha Vajpai	Trained Graduate Teacher
23	Anil	Trained Graduate Teacher

It is apparent from the list that except one person,all others are the teachers of the assessee society and not falling in the category of specified persons as per section 13(3). When the

expenditure was incurred for the tour of the entire group then it cannot be considered as undue benefit only one i.e. Director. It is not a case of the Department that all 23 persons are falling in the category of the specified persons. We find that only the Director namely Shri Vaibhav Singh was considered by the ld. CIT(E) as specified persons while raising the objection of payment of salary. Therefore, out of the group of 23 persons, the Director cannot be picked out to invoke the provisions of section 13(3) of the Income Tax Act. Further it is not the finding of the ld. CIT(E) that the tour was undertaken for their personal trip then the education tour by the teaching staff along with the Director has to be considered as one event and expenditure. Hence, we are of the view that the expenditure incurred on this tour of group of teacher along with Director cannot be held as undue benefit to one person. In view of the above facts and circumstances of the case as discussed above the impugned order passed by the ld. CIT(E) is set aside and consequently the approval u/s 10(23C)(vi) granted to the assessee is restored."

9. The ld. CIT(A) had deleted the additions so made while relying upon the order of the Coordinate Bench dated 20/12/2017 by holding as under:

"4.3 I have considered the facts of the case, gone through the assessment order and the submission of the A/R. The Assessing officer taxed the surplus as AOP as approval u/s 10(23C)(vi) has been withdrawn. It is seen that after assessment the issue of approval u/s 10(23C)(vi) has been decided by the Hon'ble ITAT vide

order dated 20.12.2017 in ITA No.1118/JP/2016 wherein after detailed discussion at para 22 page 32 to 49 it is held that order passed by the Ld. CIT(Exemption) is set aside and the approval granted u/s 10(23C)(vi) to the assessee is restored. The Hon'ble ITAT has dealt all the issue while deciding the case. Therefore respectfully following the decision of ITAT Jaipur Bench in assesssee's own case, the Assessing officer is directed to compute the income of the assessee by considering the exemption u/s 10(23C)(vi).

5.3 I have considered the facts of the case, gone through the assessment order and the submission of the appellant. The Assessing officer treated the salary paid to three persons to the extent of Rs.38,00,000/- as unreasonable and made disallowance of the same. On the other hand the A/R filed the justification of the salary paid to these persons.

It is seen that the appellant society was paying salary to these persons since last many years and allowed while completing the assessment u/s 143(3). Further this issue was also raised by CIT (Exemption) while withdrawing approval u/s 10(23C)(vi). Therefore, the Hon'ble ITAT while restoring approval examined this issue and held as under:

> *Thus when the qualification and experience of the persons who were managing the affairs of the society and also involved in the day to day affairs and teaching work is not denied then salaries and allowances or remuneration paid to these persons cannot be held as unreasonable or excessive. Following the decision of the Coordinate Benches of this Tribunal (Supra) we hold that the payment is made on account of salary against the services rendered by these persons and not merely on account of their*

status then the same cannot be said to be a undue benefit to attract the provisions of section 13(3) of the Income Tax Act."

Thus where the Hon'ble ITAT has treated the salary paid to these persons as reasonable, the disallowance made by the Assessing officer of Rs.38,00,000/-is deleted. This ground is allowed.

6.3 I have considered the facts of the case, gone through the assessment order and the submission of the appellant. The Assessing officer made addition of Rs.1,06,29,240/- by computing notional interest on the various advances given. On the other hand the A/R field justification of the advance given for the purpose of object of the society. It is further seen that the Hon'ble ITAT Jaipur Bench in assessee's own case for A.Y. 2011-12 while restoring the approval u/s 10(23C(vi) has examined all these advances at page 36 to 42 held that there is no violations of the provisions of section 11(5) in giving such advance. Respectfully following the decision of the Hon'ble ITAT, I find that there is no violation of the provisions of section 11(5) of the I.T. Act and therefore the addition of Rs.1,06,29,240/- made by the Assessing officer computing notional interest on the advance given is deleted. This ground is allowed.

7.3 I have considered the facts of the case, gone through the assessment order and the submission of the appellant. The Assessing officer disallowed the claim of application of income is respect of capital expenditure of Rs.30780861/- as approval u/s 10(23C)(vi) has been withdrawn.

It is seen that now the approval u/s 10(23C)(vi) has been restored and in ground No. 1 supra I also allowed the same the Assessing officer is directed to allow the claim of capital expenditure of Rs.30780861/- as per law. This ground is allowed."

10. In view of the above facts and circumstances, we observe that once the Coordinate Bench of this Tribunal have restored the approval granted U/s 10(23C)(vi) of the Act to the assessee and the Hon'ble High court as well as Hon'ble Supreme Court had upheld the order of the Tribunal, therefore, by following the order of the Coordinate Bench of this Tribunal, the ld. CIT(A) has deleted all the additions so made and allowed the appeal. The ld. CIT(A) had deleted the additions so made by following the order of the Coordinate Bench of the Tribunal passed in assessee's own for the A.Y. 2011-12, which had attained finality wherein it was held that the salary paid to the persons by the assessee was reasonable as the qualification and experience of the persons who were managing the affairs of the society and also involved in the day to day affairs and teaching work is not denied then salaries and allowances or remuneration paid to these persons cannot be held as unreasonable or excessive and with regard to advances given by the society, there was no violation as assessee had proved the justification of advances which were for the purpose of the object of the society. Thus, there was no violation of Section 11(5) of the Act. The Coordinate Bench of this ITAT in ITA No. 1118/JP/2016 order dated 20/12/2017 had thoroughly examined all these facts in detail, therefore, the ld. CIT(A) in the present case was justified in relying upon the said order of the ITAT while giving relief to the

assessee. Therefore, we do not find any reason to interfere in the order of the ld. CIT(A) qua the issues raised in this appeal. Hence, we uphold the same.

11. In the result, this appeal of the revenue stands dismissed.

12. Now we take Revenue's appeals No. 1361/JP/2018 and 357/JP/2019 for the A.Y. 2011-12 and 2013-14 respectively.

In both these appeals, since the facts and submissions are identical to the facts and submissions of ITA No. 1362/JP/2018 for the A.Y. 2012-13. Both these appeals are also covered by the decision of the Coordinate Bench passed in assessee's own case for the A.Y. 2011-12 in ITA No. 1118/JP/2017 restoring exemption U/s 10(23C)(vi) of the Act, therefore, our findings given in ITA No. 1362/JP/2018 for the A.Y. 2012-13 shall apply mutatis mutandis in these appeals also.

13. In the result, all these three appeals of the revenue are dismissed.

Order pronounced in the open court on 18th January, 2021.

Sd/-	Sd/-
(विक्रम सिंह यादव)	(संदीप गोसाईं)
(VIKRAM SINGH YADAV)	(SANDEEP GOSAIN)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 18/01/2021
*Ranjan

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

1. अपीलार्थी/The Appellant- The DCIT(E), Circle, Jaipur.
2. प्रत्यर्थी/ The Respondent- M/s Modern School Society, Kota.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 1361 & 1362/JP/2018 & 357/JP/2019)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar