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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 08 July 2024
Judgment pronounced on: 26 July, 2024

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ITA 141/2021

**COMMISSIONER OF INCOME TAX
(EXEMPTIONS) DELHI**

.....Appellant

Through: Mr. Abhishek Maratha, Sr. SC
alongwith Mr. Parth Semiwal,
Mr. Apoorv Agarwal, Jr. SCs.
with Ms. Nupur Sharma, Mr.
Manav Goyal, Mr. Gaurav
Singh, Ms. Divya Verma and
Mr. Bhanukaran Singh Jodha,
Adv.

versus

NIIT FOUNDATION

.....Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with
Mr. Rohit Jain, Mr. Aniket D.
Agrawal and Mr. Samarth
Chaudhari, Adv.

CORAM:**HON'BLE MR. JUSTICE YASHWANT VARMA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****J U D G M E N T****YASHWANT VARMA, J.**

1. This appeal by the **Commissioner of Income Tax (Exemptions)**¹ assails the order of the **Income Tax Appellate Tribunal**² dated 27 May 2020. By our order of 09 May 2024, we had

¹ CIT(E)

² Tribunal



formally admitted the appeal on the following two questions of law:

“A. Whether the Income Tax Appellate Tribunal [“**ITAT**”] is correct in the eyes of law in setting aside the order under Section 263 of the Income Tax Act, 1961 [“**Act**”] even though the order of Assessing Officer [“**AO**”] was erroneous and prejudicial to the interest of the Revenue and framed without making proper enquiries/ verification and application of mind?

B. Whether the ITAT was correct in coming to the conclusion that the assessee was undertaking educational activities in terms of Section 2(15) of the Act?”

2. For the purposes of evaluating the rival submissions which were addressed, we deem it appropriate to notice the following essential facts. The respondent/assessee is a society registered under the Societies Registration Act, 1860 and also holds a registration under Section 12A of the **Income Tax Act, 1961**³. It was also accorded recognition under Section 80G(5) of the Act in terms of an order dated 07 March 2008.

3. In **Assessment Year**⁴ 2014-15, the assessee filed its Return of Income declaring its taxable income to be ‘Nil’. The aforesaid Return is stated to have been selected for scrutiny assessment, as a consequence of which a notice came to be issued on 31 August 2015 under Section 143(2). During the assessment proceedings, the assessee appears to have been called upon to furnish explanations with respect to the broad nature of activities undertaken by it as well as particulars pertaining to the fee structure, service tax payments, details of contributors and other functions concerning its avowed charitable activity of imparting education.

4. Responding to the aforesaid, the assessee made various

³ Act

⁴ AY



submissions including those dated 06 June 2016 (a brief note indicating the history of the assessee), 03 September 2016 (an explanation of the reconciliation of revenue as per the service tax returns and TDS 26AS forms filed by the assessee and the revenue disclosed in the income tax returns), 07 November 2016 (a note on the particulars of the tuition fees charged, the demography of the students and the details of sponsorship received by the assessee) and 24 November 2016 (a write-up on the charitable activities conducted by the assessee in the relevant previous year). The **Assessing Officer**⁵ accepted the Return under Section 143(3), in terms of an order dated 30 November 2016 and which acknowledged and accepted the charitable nature of the educational activities undertaken by the assessee.

5. The CIT(E), however, doubting the correctness of the view taken by the AO, issued a **Show Cause Notice**⁶ dated 15/16 November 2018 in purported exercise of powers conferred by Section 263 and embodying its intent to revise and set aside the assessment on the ground that the same was not only erroneous but also prejudicial to the interest of the Revenue. As would be apparent from a reading of the said SCN, the CIT(E) appears to have doubted that the respondent was engaged in the activity of imparting education as explained by the Supreme Court in its judgment in **Lok Shikshana Trust vs. CIT**⁷ and consequently that its activities were liable to be placed in the residual category of **General Public Utility**⁸ as contemplated under Section 2(15). The CIT(E) appears to have been swayed by the assessee not

⁵ AO

⁶ SCN

⁷ (1976) 1 SCC 254

⁸ GPU



being affiliated with any regulatory body and thus not being engaged in the activity of imparting formal education.

6. By an order dated 19/26 March 2018, the CIT(E) set aside the assessment as erroneous and held that the respondent was rendering services for profit and was not engaged in any educational or charitable activity as contemplated under Section 2(15). It further held that the assessee appeared to be acting primarily as a contractor/service provider with the elements of formal schooling being absent, and its activities, even if construed to be of a GPU, being liable to be viewed as contravening the Proviso to Section 2(15). It additionally held that the various activities undertaken by the assessee were also concerned with the enhancement of brand value and thus were violative of Section 13(1)(c) of the Act.

7. Pursuant to the aforesaid, a fresh assessment order came to be framed on 19 December 2019. In terms of this order the AO came to the following principal conclusions:

“11. In view of the discussion made above, the following findings are arrived at:-

- a. The A.O during the assessment proceedings is duty bound to look into the manner of actual conduct of activities towards objects of the trust, as to whether these are actually done as charitable activity or as commercial activity.
- b. The assessee is actually undertaking commercial contracts of providing consultancy on the projects of its clients.
- c. The client of the assessee debits amount paid to the assessee as business expenses and claims 100% deduction. In case of donation/grant 100% deductions not allowed.
- d. The assessee itself books the income as receipt from educational services.
- e. The contracts with clients invariably come with advertisement/logo obligation on the part of the assessee, which also shows the commercial angle of the arrangement.



- f. The amounts received by the assessee are not in the nature of specified grant/legal obligation. Rather it is based on commercial arrangements. The payments are received on the basis of invoices raised on deliverables. The donor does not promise to pay the deficit or the assessee has any obligation to pay back the unutilized amounts.
- g. The deduction of tax at source on every payments made to the assessee and issue of invoice including service tax show the actual intent of commercial transaction on the side of both the parties.
- h. The assessee is also acting as a turn-key contractor for supply, installation, operation and maintenance of "Hole in Wall" computer system, a proprietary product of its related party/specified persons M/s Mind Champion learning System Ltd. On the said project it is also earning profits.
- i. The assessee has not been able to show that the prices charged towards various programmes to the trainee, are less than the market price of the same courses, in the same area for the same duration, of the same quality and under the same circumstances.
- j. There is no element of charity from the side of the assessee, as it is earning surplus from providing training, by not only charging the training but also getting its cost and profit recouped, who make payments either out of business considerations or out of CSR obligations. The assessee is acting only under a commercial contract as a consultant/contractor.
- k. The assessee has tried to mislead by stating that NIIT Ltd. Is not a specified person, whereas it has itself shown NIIT Ltd as specified persons in the audit report in form 10 B and also in submission filed. Further the assessee has not been able to deny, rather admitted that intangible and tangible benefits were derived by NIIT Ltd, from the income of the property of the trust.
- l. The activity of the assessee cannot be categorised as an activity within the meaning of 'education' as defined in section 2(15) of the income tax Act.
- m. The advertisement of one of the courses shows that it cannot be categorized as education in any manner.
- n. Even if the activity of the assessee is considered as charitable under the limb of General Public Utility, it is hit by proviso to section 2(15) of the Act.

Hence it is concluded that:-

- a. The activities of the assessee do not fall under any limb of charitable purposes as defined under section 2(15) of the Income Tax Act, 1961.
- b. The activities of the assessee are commercial services purely in the nature of trade and commerce.



c. The case of the assessee is also hit by proviso to section 2(15), even in case, the activities were taken to be in the nature general public utility.

d. The assessee is providing benefit to specified persons, u/s 13(3) of the Act hence it is not eligible for exemption u/s 11 and 12 of the Act.

Since the assessee is not held eligible for exemption u/s 11 & 12 of the Act, in view of the discussion made above the Income of the assessee is held taxable, treating it as an AOP and also at Maximum Marginal Rate because of infringement of section 13(1) of the income tax Act.

Total income as per computation of Income	Rs. 4,53,41, 153/-
Less: Application of Income	Rs. 4, 14,01,899/-
Total Taxable Income	Rs. 39,39,254/-

Assessed u/s 143(3)/263 of the Act at an income of Rs. 39,39,254/-.
Penalty proceedings u/s 271 (1)(c) of the Act, on account of concealment of income and furnishing inaccurate particulars of such income, have been separately initiated. Interest charged as per law. Issue necessary forms.”

8. Aggrieved by the aforesaid order, the assessee approached the Tribunal. In terms of the order dated 27 May 2020, the Tribunal allowed the appeal of the assessee holding that not only was Section 263 unjustifiably invoked, but the findings rendered in the context of Section 2(15) were also unsustainable. It ultimately came to the conclusion that the assessee was engaged in the charitable activity of imparting education.

9. Before us, Mr. Maratha, learned counsel for the appellant, argued that in terms of the principles laid down by the Supreme Court in *Lok Shikshana Trust*, for the purposes of qualifying Section 2(15), the assessee was liable to establish that it was engaged in conducting systematic and formal instruction, schooling or training. It was his submission that the assessee was merely administering courses without



any fixed curriculum, criteria or discipline and thus lacking the ingredients of formal education as explained by the Supreme Court. Learned counsel also referred to the order of the CIT(E) which had doubted the activities of the assessee as being concerned with imparting education and had held that the same could at best be classified as GPU.

10. The CIT(E), it becomes pertinent to note, had also drawn an adverse inference from the fact that the assessee received fees from students, and which it held akin to undertaking an activity in the nature of trade, commerce or business. It had also taken note of various receipts of the assessee from different corporate houses and on which TDS had been deducted under Section 194J. This, according to the CIT(E), was clear evidence of the respondent being engaged in commercial activities. Mr. Maratha drew our attention to the following conclusions as appearing in the order of the CIT(E):

“4.1 The details of payments received from various corporate as per TDS statement during the year are under:

S. No.	Name	Receipts	TDS deduction u/s 194/J
1	HINDUSTAN COCA COLA BEVERAGES PVT. LTD.	8223755	164474
2	M.P. BUILDING & OTHER CONSTRUCTION WORKER WELFARE BOARD	348170	38686
3	TATA CONSULTANCY SERVICES LIMITED	195003	19500
4	WORLD VISION INDIA	815130	16302
5	ATC TOWER COMPANY OF INDIA PVT. LTD.	1039075	20782
6	APNE AAP WOMEN WORLD WIDE (TRUST)	46765	4677
7	EFICOR	14000	1400



8	HOPE FOUNDATION	96098	1922
9	NIIT INITIATIVE FOR LEARNING	10697	1071
10	NIIT YUVA JYOTI LIMITED	5947278	190360
11	NIIT LIMITED	444876	44487
12	SAHYOG FOUNDATION	25667	2567
13	VIDYA INTEGRATED DEVELOPMENT FOR YOUTH AND ADULTS	60000	1200
14	ZILA PANCHAYAT	64000	1280
15	JBLIANT BHARTIA FOUNDATION	10000	1000
16	GRAM NIYOJAN KENDRA	73034	1460
17	AIRPORTS AUTHORITY OF INDIA	1058596	21772
18	AEGIS LIMITED	61500	6150
19	CIPLA FOUNDATIONS	991160	99440
20	TATA HOUSING DEVELOPMENT COMPANY LIMITED	263260	5266
21	THE TATA POWER COMPANY LIMITED	4248962.26	388941
22	TATA CONSULTANCY SERVICES LIMITED	719202	31000

XXXX**XXXX****XXXX**

5. A perusal of the records of the case it is seen that the exact nature of these payments vis-a-vis services rendered by the assessee has not been examined in the assessment proceedings for A.Y.2014-15. Why commercial establishments are making such payments and deducting TDS on such payment, impliedly claiming the expenditure in computation of their taxable income have not been examined in the course of the proceedings. It cannot be disputed that the AO in the course of the assessment proceedings is supposed to examine the nature and genuineness of activities undertaken by the assessee so as to ascertain whether such activities fall within the scope of charitable activities or whether they are hit by proviso to section 2(15) of the Act. From the records, it is clear that no such exercise has been undertaken by the assessing officer and the submissions of the assessee has been accepted without making necessary enquiries and investigations. The following points have not been specifically examined by the A.O. in the assessment proceedings.

XXXX**XXXX****XXXX**



b. Terms of the contracts with various clients and documents show that that the payment to the assessee are booked in their respective accounts as 'recruitment or training expenses' (with TCS), for installation and supply of computer equipment (with Chemical Terminal Trombay Limited), for managing, operating and upgrading recruitment centres (with JSL Limited), to act as a technical consultant for course run by Aga Khan Foundation, etc. The fact that essentially comes out from the said agreement is that the assessee is providing supplies and services to its clients who are actually undertaking some activities in the field of training etc. All the Clients of the assessee have invariably deducted TDS and termed the services received from the assessee as either professional or contractual receipts. The assessee has also raised invoices terming the same as consultancy or professional services and also service tax was raised in the invoices The A.O. has failed to appreciate the actual nature of activities undertaken by it.”

11. Insofar as the subject of education and the ambit of Section 2(15) is concerned, Mr. Maratha relied upon the following principles which were enunciated in *Lok Shikshana Trust*:

“5. The sense in which the word “education” has been used in Section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word “education” has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word “education” is used in clause (15) of Section 2. What education connotes in that clause is the process of training



and developing the knowledge, skill, mind and character of students by formal schooling.”

12. Learned counsel also invited our attention to a more recent decision of the Supreme Court in **New Noble Educational Society vs. CIT**⁹, and where while reiterating the legal position which was enunciated in *Lok Shikshana Trust*, the Supreme Court had held as follows:

“34. The subject of education is vast, even sublime. Yet, it is not the broad meaning of the expression which is involved in this case. As was held in *T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1]*, education in the narrower meaning of the term as scholastic *structured* learning is what is meant in Article 21-A, Articles 29-30 and Articles 45-46 of the Constitution. As to what is “education” in the context of the IT Act, was explained in *Lok Shikshana Trust v. CIT [Lok Shikshana Trust v. CIT, (1976) 1 SCC 254 : 1976 SCC (Tax) 14]* in the following terms : (*Lok Shikshana Trust case [Lok Shikshana Trust v. CIT, (1976) 1 SCC 254 : 1976 SCC (Tax) 14]*, SCC p. 262, para 5)

“5. The sense in which the word “education” has been used in Section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word “education” has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get

⁹ (2023) 6 SCC 649



acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word “education” is used in clause (15) of Section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling.”

Thus, education i.e. imparting formal scholastic learning, is what the IT Act provides for under the head of “charitable” purposes, under Section 2(15).”

13. Refuting the aforementioned contentions, Mr. Vohra, learned senior counsel appearing for the respondent/assessee, submitted that the AO upon due examination of the activities undertaken by the assessee, had come to the definitive conclusion that the same fell within the scope of Section 2(15). It was submitted that during **Financial Year**¹⁰ 2013-14, the assessee had conducted various training programs for underprivileged youth spread across various streams such as **Information Technology**¹¹, English, Soft skills, BPO, Retail, Banking and Service sectors. It was submitted that the training imparted to the enrollees was conducted at NIIT-run centers and NGO-partner centers. It was pointed out that apart from the above, the assessee had undertaken various digital literacy initiatives such as the establishment of Hole-in-the-Wall Learning Stations across the country and which enabled children to improve their understanding of Science, IT, English, General Knowledge and Mathematics.

14. Mr. Vohra pointed out that the details in respect of these activities were duly placed before the AO in terms of a letter dated 24 November 2016. Mr. Vohra further drew our attention to the

¹⁰ FY

¹¹ IT



assessment order for AY 2007-08 and which appears at Volume II, page no. 246 of our record and where also the factum of the assessee being engaged in the promotion and imparting of technical education was duly accepted.

15. Learned senior counsel then took us through the details of the various activities undertaken by the respondent in FYs 2011-12, 2012-13 and 2013-14 and which extended to the establishment of career development and skill development centers. The details of those activities which appear at Volume II, page no. 232 of our record also encapsulate particulars pertaining to the skill development training programs as well as the mobile learning project which was curated for employability training.

16. Mr. Vohra also highlighted that the Memorandum of Association for the respondent/assessee identifies its primary aims and objectives as under: -

“3. Aims and objectives

The aims and objects for which this society is established are as follows:

1. To promote, support and strengthen education, research and training of Information Technology and its application in all fields of activities and to collaborate, cooperate and enter into partnerships with Universities, Colleges and Schools for expanding IT education and training and to play an active role in the human development initiatives of the country by supporting and sponsoring, wherever feasible, the establishment of new Universities, Colleges and Schools for organizing innovative IT education and training programmes;

2. To support, sponsor and collaborate with teachers and researchers in Universities and research institutions to develop IT enabled teaching and learning paradigms and new education technologies and to sponsor and support conferences, seminars and workshops of academics and professionals engaged in IT and



related fields to share experiences and to strengthen institution-industry linkages;

3. To cooperate with, and seek cooperation from Universities, Research Institutions and industry in Delhi for strengthening and modernizing the curricula, teaching methods and student assessment procedures in IT education and training. To play a catalytic role in promoting, popularizing and expanding IT education and training at all levels of education in the country and to commission studies and research on the status of IT education and training in the country from time to time and to identify new initiatives required to be taken;”

17. Of equal significance are the particulars which have been set out and appear at Volume II, page no. 323 of our record and which carry details of the application of income that accrued to the assessee, and which was used solely for the purposes of imparting education. Mr. Vohra also underlined the fact that various courses which were conducted by the assessee were duly certified by the **National Skill Development Council**¹², among other globally recognized institutions.

18. Our attention was specifically drawn to the reply dated 13 December 2019, making disclosures in response to the notice under Section 142. Similar disclosures were furnished in terms of a letter dated 19 December 2019 submitted in the course of assessment. Since the disclosures made in these two communications would be of some relevance, they are extracted hereinbelow: -

“December 13, 2019

To,
Income tax Officer,
Ward Exemption 2(4),
24th Floor, Room No. 2409
E-2 Block, Civic Centre,
New Delhi-110002

¹² NSDC



Dear Sir,

**Re.: M/s. NIIT Foundation ("We or Assessee or NF")
(formerly known as NIIT Education Society)
Assessment Year: 2014-15
Reply to notice u/s. 142(1) of the Income Tax Act,
1961 ("the Act") issued pursuant to order passed
u/s. 263 of the Act.**

We are in receipt of notices issued under section 142(1) of the Income Tax Act, 1961 ("the Act") dated October 14, 2019 and November 21, 2019 for assessment year 2014-15 in respect of the proceedings pursuant to the order dated 26.03.2019 passed by the Commissioner of Income Tax (Exemptions) ("the CIT(E)") u/s. 263 of the Act.

In this regard, the details asked for by you are being submitted as under:

**1 Details of training provided, their duration, timings, etc.
[Reply to Query no. 4 (a) and 4(b)]**

1.1 The details of the courses offered by the Assessee along with their duration, type of certificate granted and attendance requirement, passing percentage, etc. is attached as 'Annexure A'. As would be observed, the Assessee was offering around 33 courses during the captioned year. Further, during said year, the Assessee had around 24 centres located across India. Presently, it has almost 188 centres across India. The list of centres that were there in the relevant previous year is attached as '**Annexure B**'. The said courses were provided by the Assessee through all these centres.

2 Attendance criteria of the courses, its assurance and disciplinary actions taken in case inadequate attendance [Reply to Query No. 4 (c)]:

2.1 As would be observed from 'Annexure A' attached above, each course has a minimum attendance requirement ranging from 50% to 70% of the total attendance. The students have to compulsory attend classes and achieve at least the minimum attendance. The attendance of the students is taken on a regular basis and a proper track record of the same is maintained by NF. In case, the students do not have the required attendance, they are not provided completion certificates for the course and in order to avail



certificate of completion of training, students have to attend the course afresh.

3 Examination in respect of the courses provided [Reply to Query No. 4(d)]:

3.1 After the completion of a specified course, a proper assessment of the students is taken. Examination is conducted and the performance of each student is evaluated. The successful students are issued certificates mentioning the grade scored by the students in the examination which is calculated on the basis of marks scored by the said students in the examination conducted by the assessee. The said certificates also contains the logo of the organization from where the course is approved. The Sample certificates are attached at 'Annexure C'.

4 Recognitions provided to the courses provided by the Assessee [Reply to Query No. 4(e)]:

4.1 The students who enroll with the centres operated by NF are given education as per educational courses duly developed and/or approved by various government authorities and/or globally recognized institutions. The educational courses offered by NF are mainly National Skill Development Corporation ("NSDC") approved courses. NSDC is an Indian not-for-profit company set up to address the need for providing skilled manpower across various industry sectors. It was founded in 2009 by the Ministry of Finance, and is currently under the Ministry of Skill Development and Entrepreneurship, Government of India. NIIT Yuva Jyoti Limited (NYJ) is an approved training partner of NSDC (Please see the certificate issued by NSDC in this regard as 'Annexure D') which provides the said NSDC approved courses to be used for providing education to the students of the assessee.

4.2 Apart from educational courses approved by NSDC, NF is also providing educational courses developed by globally recognized institutions (CompTIA, CISCO, Tally, NIIT etc.) that are recognized across IT industry and other industry. For instance, CompTIA is a world-renowned non-profit trade association, issuing professional certifications for the information Technology (IT) industry. It is considered one of the IT industry's top trade associations and its courses are recognized across the IT industry. Intel is a well renowned corporate body in the field of IT. Since these courses are recognized across the industry, the students who undergo these certificate educational courses get easily recruited by various companies.



4.3 NF uses the curriculum recognized by these government authorities and globally recognized institutions to educate/train its student at its centres. The list of approved courses offered by NF is given at 'Annexure E'. The classes conducted by NF are based on the courseware supplied by these government authorities and globally recognized institutions.

4.4 Further, the centres through which we provide trainings and courses are duly approved by NSDC to conduct various approved educational courses approved by NSDC. The fact that the said centres were approved from NSDC is evident from the screen shots of the NSDC website which are attached at 'Annexure F'. Further, as could be observed therefrom, the details of the said centres like address of centres, the date of approval of said centres is duly mentioned therein.

4.5 Further, NF also operates aforesaid approved Educational / vocational Courses in Government Schools, Community Schools and Schools/Centres operated by various other NGOs. Please see the sample approval letters received from various government schools in this regard at 'Annexure G'.

All the activities stated above which are carried by NF in its own center is also being carried at these Government schools, Community Schools and Schools/Centres operated by various other NGOs. NF even trains the teachers and faculties of such schools to enable these institutions to conduct these educational courses on their own.

4.6 Other ways of NF to provide the students education is through various digital literacy initiatives like Hole-in-the-wall education project. The said project is to educate children of age group 6 to 12 years belonging to slum and backward areas of the country, who do not have access to the computers and its applications. In this project, Computer learning stations are installed at various locations like schools, slum, etc. where children can use these computer learning stations and improve their understating of subjects like Science, IT, English, GK and Mathematics.

4.7 Further, the work done by NF in the education field has also been recognised through various awards and recognitions. The list of some of the Awards received by NF recognizing its contribution in the field of education and charitable activities done by it over the years is as under:

XXXX

XXXX

XXXX



The detailed list of the awards is at 'Annexure H'

4.8 The list of some of the articles published in Newspaper and electronic media recognizing NF's contribution in the field of education and charitable activities done by it over the years are as follows:

XXXX

XXXX

XXXX

The aforesaid articles/news are attached at 'Annexure I'.

5 Details of trainees along with the courses opted by them in the NF during financial year 2013-14 [Reply to Query No. 4(f to j)]

5.1 Details of the number of students registered in the NF alongwith the courses opted by them during the relevant previous year is attached as 'Annexure J'.

5.2 As stated earlier, the Assessee, in its development centres, is conducting various educational courses in the field of IT and other communication and vocational courses such as IT, English, Soft skills, BPO, Banking Sector, Accounting Skills, Personality development etc. duly developed and/or approved by government authorities and/or globally recognized institutions like NSDC, CompTia, Intel, CISCO etc. for the poor and physically and mentally challenged students at either free of cost or at heavily subsidized rate. The same is evident from comparison of fees charged from the students by NF and market rate of said courses attached at 'Annexure K'. NF also assists its student in getting job placement after completing certified educational courses (i.e. Career oriented program) offered by NF. These courses are certification courses and not degree oriented courses, and hence the information of the courses run by the NF is not required to be submitted before AICTE and no such authorisation of the said courses is also required from the AICTE.

We are in the process of compiling the balance details sought by Your Goodself in the captioned notice, and accordingly, we humbly request Your Goodself to kindly allow us time to finalize the details.

In case if Your Goodself decides otherwise, kindly grant us an opportunity of personal hearing to take a well-considered decision.

Thanking You

Yours faithfully,



For NIIT Foundation (formerly known as NIIT Education Society)

XXXX

XXXX

XXXX

December 19th, 2019

To,
Income Tax Officer,
Ward Exemptions 2(4),
24th Floor, Room No. 2409,
E-2 Block, Civic Centre,
New Delhi- 110002.

Dear Sir,

**Re.: M/s. NIIT Foundation (“We or Assessee or NF”)
(formerly known as NIIT Education Society)
Assessment Year: 2014-15
Reply to notice u/s. 142(1) of the Income Tax Act,
1961 ("the Act") issued pursuant to order passed
u/s. 263 of the Act.**

We are in receipt of notices issued under section 142(1) of the Income Tax Act, 1961 ("the Act") dated October 14, 2019 and November 21, 2019 for assessment year 2014-15 in respect of the proceedings pursuant to the order dated 26.03.2019 passed by the Commissioner of Income Tax (Exemptions) ("the CIT(E)") u/s. 263 of the Act. In response to the said notice, we have filed the part replies vide letters dated 23th November 2019 and 13th December 2019.

In continuation to the earlier replies filed by us, we humbly submit as under:

1. As regards point 3 of the notices asking to show cause as to why the receipts of the Assessee should not be treated as business receipts and why the Assessee should not be treated as carrying out activities relating to general purpose utility as against 'education'.

1.1 In this regard, the Assessee humbly submits as under:

1.2 **NF's Objects:**

1.3 We are society registered on December 1, 2004 under the Societies Registration Act, 1860 with the main object to promote, support and strengthen education, research and training of the Information Technology and its application in all fields of activity



and to collaborate, cooperate and enter into partnerships with universities, colleges and schools for expanding IT education and training and to play an active role in the human development initiatives of the country by supporting and sponsoring, wherever feasible, the establishment of new universities, colleges and schools for organizing innovative IT education and training programmes. Please see the copy of our Memorandum of Association at Page 1 to 10 of Paper Book (PB).

1.4 Rule 5 of the Rules and Regulations contained in the charter of the society provides that the income and property derived by the society shall be applied solely to the promotion of the objects of the society and no portion thereof shall be paid or transferred directly or indirectly to any member of the society. Relevant portion of the aforesaid rule reads as under:

"Income and Property of the Society

The Income and properties of the Society derived shall be applied solely towards the promotion of the objects of the Society as set forth in "Memorandum of Association" of the Society and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or other manners or by way of profit to any of the member of the society provided that nothing herein contained shall prevent the payment in good faith of the remuneration to any employee of the Society for work done or service rendered for payment of interest that may be due on moneys borrowed by the Society."

Please see the copy of the Rules and Regulations at Page 11 to 25 of PB.

1.5 Further, we were accorded approval under section 12A of the Act by DIT (Exemption) vide order dated 30th March 2006, w.e.f December 1, 2004. Please see the copy of said registration at Page 26 of PB.

1.6 **NF's Activities:**

1.7 **Conducting various approved Educational / vocational Courses in NF's education / development centers:**

1.8 **In pursuance of the aforesaid objects, we have been primarily operating various education/development centers in rural areas and slum / economically backward pockets of semi urban and urban areas across India, so as to impart education**



to the students belonging to the under privileged / economically backward strata of the society with an objective to develop their skill so that their employability can increase.

In the said education / development centers, we conduct various educational courses in the field of IT and other communication and vocational courses such as IT, English, Soft skills, BPO, Banking Sector, Accounting Skills, Personality development etc. duly developed and/or approved by government authorities and/or globally recognized institutions for the poor and physically and mentally challenged students at either free of cost or at heavily subsidized rate. NF also assists its student in getting job placement after completing certified educational courses (i.e. Career oriented program) offered by NF.

Please see the profile of NF explaining the activities carried on by it in detail at pages 27 to 38 of the PB and brief note on past and current activities of NF at pages 39 of PB.

1.9 We first identify under privileged / economically backward areas and communities to whom we can provide benefit with our activities and set up centers in those areas. A center generally comprises of classrooms, computer labs and other infrastructure required to conduct educational classes along with trained faculties to educate/train the students. Once the center is set up, we spread awareness about the various educational programs being carried out at our centers in those communities and try to persuade the students to come and visit our centers. At the center, we do a proper counseling for the student and based on his/her strength and weakness suggest the student, which would be the best educational course that would suit him. The students who desire to enroll for the educational courses are asked to fill requisite forms and a proper record of the students enrolled in a particular course is collected like the name of the student, his parent's name, address of his residence, his age, economic condition of his family, etc. The enrolled students are given education at these centers based on the courses duly developed and/or approved by various government authorities and/or globally recognized institution.

Please see photographs of some of our centers at Page 40 to 59 of PB. As could be observed from the said photographs in the centers, there are proper classroom, computer labs and other infrastructure required to conduct educational classes using which the faculty is imparting education/career skills to students.



1.10 Centers operated by NF are duly approved by National Skill Development Corporations ['NSDC'] to conduct various educational courses approved by NSDC:

During the relevant previous year, we had around 24 centers located across India and presently, we have almost 188 centers across India. The list of centers that were there in the relevant previous year is already submitted vide submissions dated 13th December 2019 at Annexure B. We from th2 said centers have educated/trained almost 4.25 lakhs students till date and after completing certified educational courses from NF these students have been able to get better employment opportunity.

It is submitted that these centers were duly approved by National Skill Development Corporation ("NSDC") to conduct various approved educational courses approved by NSDC. NSDC is an Indian not-for-profit company set up to address the need for providing skilled manpower across various industry sectors. It was founded in 2009 by the Ministry of Finance, and is currently under the Ministry of Skill Development and Entrepreneurship, Government of India. The fact that the said centers were approved from NSDC is evident from the screen shots of the NSDC website. The same has already been submitted vide submissions dated 13th December 2019 at Annexure F. Further, as could be observed therefrom, the details of the said centers like address of centers, the date of approval of said centers is duly mentioned therein.

1.11 Educational Courses offered at the aforesaid Centres are developed and/or by the government authorities (NSDC) and/or other institution:

1.12 The students who enroll with the centers operated by NF are given education as per educational courses duly developed and/or approved by various government authorities and/or globally recognized institutions. The educational courses offered by NF are mainly NSDC approved courses. As stated above, NSDC is an Indian not-for-profit company set up to address the need for providing skilled manpower across various industry sectors. It was founded in 2009 by the Ministry of Finance, and is currently under the Ministry of Skill Development and Entrepreneurship, Government of India. NIIT Yuva Jyoti Limited (NYJ) is an approved training partner of NSDC which provides the said NSDC approved courses to be used for providing education to the students of the assessee. The certificate issued by NSDC in this regard was already submitted vide submissions dated 13th December 2019 at Annexure D. Apart from educational courses approved by NSDC, NF is also providing educational courses developed by globally



recognized institutions (CompTIA, CISCO, Tally, NIIT etc.) that are recognized across IT industry and other industry. For instance, CompTIA is a world-renowned non-profit trade association, issuing professional certifications for the information technology (IT) industry. It is considered one of the IT industry's top trade associations and its courses are recognized across the IT industry. Intel is a well renowned corporate body in the field of IT. The detailed profile of each of the said organizations is attached at page nos. 60 to 76 of PB. Since, these courses are recognized across the industry, the students who undergo these certificate educational courses get easily recruited by various companies.

1.13 NF uses the curriculum recognized by these government authorities and globally recognized institutions to educate/train its student at its centers. The list of approved courses offered by NF is already submitted vide submission dated 13th December 2019 at Annexure E. The classes conducted by NF are based on the courseware supplied by these government authorities and globally recognized institutions. After the conclusion of a particular course, examination is conducted and the performance of each student is evaluated. The successful students are issued certificates containing the logo of the organization from where the course is approved. The Sample certificates are already submitted vide submissions dated 13th December 2019 at Annexure C.

1.14 Educational Courses conducted by NF in same manner as that of any course/class conducted by any other Educational institute:

1.15 NF conducts educational courses in the same manner as any course/class conducted by any other Educational institute.

1.16 Classes are conducted as per fixed curriculum: - As stated above, classes conducted by NF are based on the fixed curriculum duly recognized by these government authorities and/or globally recognized institutions. NF have a complete session plan for every defined course in which it has been defined what all needs to be covered in each session;

1.17 Courses are conducted and completed within a fixed duration: NF conducts and completes these courses in its centers within a fixed duration which is decided on the basis of content of each educational courses and on recommendations of institutions that has developed these courses;

1.18 Students have to compulsory attend classes and the students who do not have proper attendance are not allowed to take



examination: The students have to compulsory attend classes. The attendance of the students is taken on a regular basis and a proper track record of the same is maintained by NF. The students who do not have proper attendance are not allowed to take examination.

1.19 Conducts examination and issues Certificates: After the completion of the specified course, a proper assessment of the students is taken and certificate of the same is provided to the students.

1.20 Educational Courses are offered either free of cost or at heavily subsidized rate at the aforesaid Centers:

1.21 NF are providing aforesaid educational courses at either free of cost or at heavily subsidized rate at its Centers. The reason behind charging a token amount fees from the students is that this helps building a commitment from students side towards the educational course and they don't dropout the enrolled course. Anything that comes for free is not valued and so a token amount of fees is charged from them. NF is providing the educational courses at heavily subsidized rate at its Centers as compared to the market rates as already submitted vide submissions dated 13th December 2019 as Annexure K.

1.22 Conducting various Approved Educational / vocational Courses in Government Schools, Community Schools and Schools/Centers operated by various other NGOs:

1.23 NF also operates aforesaid approved Educational / vocational Courses in Government Schools, Community Schools and Schools/Centers operated by various other NGOs. The sample approval letters received from various government schools are already submitted vide submission dated 13th December 2019 at Annexure G. All the activities stated above which are carried by NF in its own center is also being carried at these Government schools, Community Schools and Schools/Centers operated by various other NGOs. NF even trains the teachers and faculties of such schools to enable these institutions to conduct these educational courses on their own.

1.24 Our other ways to provide the students education is through various digital literacy initiatives like Hole-in-the-wall education project. The said project is to educate children of age group 6 to 12 years belonging to slum and backward areas of the country, who do not have access to the computers and its applications. In this project, Computer learning stations are installed at various locations like schools, slum, etc. where children can use these



computer learning stations and improve their understating of subjects like Science, IT, English, GK and Mathematics.

1.25 Awards and Recognitions received by NF for its contribution in the field of education and charitable activities done by it:

1.26 The list of some of the Awards received by NF recognizing its contribution in the field of education and charitable activities done by it over the years is already submitted by the assessee vide submission dated 13th December 2019. Further, the copies of said awards were provided at Annexure H of the said letter. Also, the list of some of the articles published in Newspaper and electronic media recognizing NF's contribution in the field of education and charitable activities done by it over the years are already submitted before Your Goodself vide submissions dated 13th December 2019 at Annexure I.

1.27 Donations and amount received from various Sponsors:

1.28 As stated above, NF is providing aforesaid educational courses at either free of cost or at heavily subsidized rate at its Centers. Therefore, the amount of tuition fees received is not adequate to fund the aforesaid charitable activity of NF. The aforesaid charitable activities are funded by donations received from various persons.

1.29 Further, NF has various corporate sponsors who have sponsored various centers operated by NF. These corporate sponsors reimburse the cost incurred by NF for operating these centers on actual basis of the centers sponsored by them. NF has charged service tax on this amount from the sponsors and the sponsors, in certain cases, have deducted TDS on the same.

REPLY TO THE QUERY THAT WHY THE TUTION FEE SHOULD NOT BE TREATED AS BUSINESS RECEIPT [QUERY NO. 3(I)]

2. OUR COURSES ARE AFFILIATED WITH COMPETENT AUTHORITIES AND ACCORDINGLY, OUR ACTIVITY WOULD CLASSIFY AS 'EDUCATION':

2.1 In this regard, it is submitted that as stated above at Paras 1.10 to 1.13, NF is mainly providing courses duly approved by NSDC (a government body) from its centers, which are also approved by



NSDC, to conduct said approved educational courses. The same is clearly visible from the certificates that are provided by us to the students at the time of successful completion of the course. These certificates contain the logo of the organization whose course has been provided to the students. Also, the students who have been trained in the courses certified by the NSDC, a record is maintained and the same is updated on the NSDC portal, so that, at any point in time, one can enter the details of the students and know the details of the student registered with NSDC. Also, apart from educational courses approved by NSDC, NF is also providing educational courses which are developed and/or approved by the government and/or renowned institutions like Intel, CompTIA and CISCO that are widely recognized by IT industry and other industry globally.

2.2 In this regard, kind attention is drawn to the decision of the **Jurisdictional Tribunal** in case of **Assistant Director of Income-tax, (OSD)(E), Trust Ward-III, Delhi v. Bird Education Society for Travel & Tourism (72 taxmann.com 47)**, wherein it is held that where the aviation courses that are approved by regulatory authorities like DGCA, IATA would qualify as education. The relevant extract of the decision is reproduced below:

"14. We further find that the objections of the AO that the courses conducted by the assessee do not have recognition (ram the Govt. and further that there is no regulatory Authority to exercise check on its fee structure is no longer a valid objection as not only considering the aforesaid decision but also considering the approvals/recognition of sector specific competent Authority like DGCA at the national level and IATA at the global level who are presumed to have given their giving approvals as per industry standard requirements by way of their Agreements/approvals etc on a year to year basis after due care and diligence, considering the adherence of standards and requirements to be met in the industry specific skill/qualification requirements."
(Emphasis Supplied)

2.3 It is submitted that as the courses have been approved by the regulatory body (NSDC) and other globally recognized institutions, the activity conducted by the Assessee ought to be regarded as being in the nature of 'education'.

3. WITHOUT PREJUDICE, THERE IS NO REQUIREMENT THAT THE COURSES CONDUCTED BY NF SHOULD BE AFFILIATED TO ANY REGULATORY BODY:



3.1 Besides, it is submitted that for the purpose of being 'education', it is not mandatory that the courses provided should be affiliated with any regulatory body.

3.2 In this regard, attention is drawn to the decision of the Hon'ble Supreme Court in the case of Sole Trustee, Lok Shikshan Trust vs. CIT (101 ITR 234). In that case, **the Hon'ble Supreme Court has given a guidance as to what can constitute 'education' and what not. In that context, the Hon'ble Supreme Court has explained that the word 'education' cannot be construed in a loose manner to mean any acquisition of knowledge.** However, any mode of systematic instruction, schooling or training given to the young in preparation for the work of life would be regarded as education. The relevant extract of the said decision is as under:

*"The word 'education' has been used in section 2(15) is the systematic instruction, schooling or training given to the young is preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word 'education' has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. **What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling.**"*

(Emphasis Supplied)

3.3 It is submitted that the said decision does not narrow down the meaning of 'education' to mean only providing affiliated courses by recognized schools/colleges, etc. The said term connotes the whole course of scholastic instruction, which a person has received. The said interpretation has been upheld by the **Jurisdictional High Court in case of Delhi Music Society (357 ITR 265)**. In the said case, the assessee was established with the aim and object of teaching music and dancing in all its forms and claimed exemption u/s. 10(23C)(vi) claiming that it is educational institution and its activity falls under the nature of education. The prescribed authority rejected the claim for exemption on ground that it did not satisfy criteria of being an 'educational institution'. As per prescribed authority the petitioner was not awarding any degree or certificate and was merely imparting coaching/training in India as per norms of foreign colleges; that it was not an institution recognized by the UGC or by any board constituted by Government for imparting formal education in the field of western music. The prescribed authority observed that the petitioner could not be distinguished from any coaching or training institute preparing the students for appearing in any examination for obtaining a formal



degree by a formally recognized institution. The prescribed authority, therefore, held that the petitioner was not entitled to be characterized as an 'educational institution' within the meaning of section 10(23C)(vi). The Hon'ble Delhi High Court after relying on the ratio laid down by the Apex Court in Sole Trustee, Lok Shikshan Trust (Supra) held that in order to qualify as 'education', it is not required that courses offered should be recognised by any university or Board. The relevant extract of the said decision is as under:

"It is true that the petitioner is not affiliated to any university in India and is not recognized by any statutory body having anything to do with education. It is also a fact that the petitioner does not have a syllabus of its own and it awards grade certificates to the students depending upon their proficiency as declared by the Trinity College, London and the Associated Board of Royal School of Music, London on the basis of the examinations conducted by them. The question before us is whether the reasons given by the prescribed authority are germane to the question as to whether the petitioner is an educational institution within the meaning of Section 10(23C)(vi).

9. The Supreme Court in the case of Sole Trustee, Loka Sikshana Trust (Supra) interpreted the word "education" in Section 2(15) of the Act and held that the word has been used to denote systematic instruction, schooling or training given to the young in preparation for the work of life and it also connotes the whole course of scholastic instruction which a person has received. It has further been observed that the word also connotes the process of training and development of knowledge, skill, mind and character of students by normal schooling.

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3.4 Kind reference is also drawn to the decision of the **Gujarat High Court in case of Gujarat State Cooperative Union v. Commissioner of Income Tax {195 ITR 279}**, wherein the Hon'ble Court has explained the meaning of 'education' after considering in detail the foregoing decision of the Supreme Court. In that case, the Tribunal had disallowed the claim of exemption of the assessee on the ground that the objects of the assessee could not be considered to be educational in view of the meaning given to the word "education" by the Supreme Court in its decision in Lok Shikshan's case (supra). The High Court after considering the foregoing decision of the Supreme Court held that:

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3.5 As would be observed, the Court has categorically held that the decision of the Supreme Court did not intend to give a narrow or pedantic sense to the word "education". The observations of the Supreme Court only indicate the proper confines of the word "education" in the context of the provisions of section 2(15) of the Act. The word "education" cannot be construed to be limited to schools, colleges and similar institutions. It would extend to any other media for such acquisition of knowledge. It accordingly held that the word education would encompass systematic dissemination of knowledge and training in specialised subjects.

3.6 As stated earlier, we are engaged in the activity of imparting training/ education to the students coming from the under privileged/economically backward strata of the society. The said training is provided in a systematic manner in proper classrooms. It is accordingly submitted that the activity conducted by us falls within the meaning of education as explained by the Hon'ble Supreme Court, as per which the main criteria is that there should be systematic schooling and training of the young blood to make them fit for the work of life.

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3.11 In view of the foregoing decision, it is humbly submitted that the activity conducted by us qualifies as 'education' and accordingly, we are eligible to claim exemption u/s. 11 of the Act.

3.12 We accordingly humbly submit that we ought to be regarded as being engaged in the activity of imparting education to poor and accordingly, we are eligible for exemption u/s. 11 of the Act and our receipts cannot be regarded as business receipt.

4. REPLY AS TO WHY THE ACTIVITIES OF NF SHOULD NOT BE TREATED AS GENERAL PURPOSE UTILITY INSTEAD OF EDUCATION AND PROVISIO TO SECTION 2(15) OF THE ACT SHOULD NOT APPLY (QUERY NO. 3(ii)]

4.1 In this regard, as submitted above, it is reiterated that the activity carried out by the Assessee is in the nature of education. Without prejudice to the same, even if the activity is not regarded as education but as advancement of general purpose utility, even in that case, since we are not engaged in any trade, business or manufacture, we are still eligible for exemption u/s. 11 of the Act.



4.2 In this regard, it is submitted that the term 'business' is defined under section 2(13) of the Act to include 'any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture'. The term 'business' connotes "some real, substantive and systematic or organized course of activity or conduct with a set purpose".

4.3 It is submitted that in our case, we are not carrying out any trade, commerce or manufacture. We are engaged in imparting training and education to the under privileged strata of the society. The primary purpose behind our activity is to develop the underprivileged youth of the country and to make them fit for the work of life. The activity carried out by us is not with an objective to earn any profit. Considering that the object of imparting the aforesaid education/training is to achieve the charitable object of uplifting the calibre/skill of the under privileged / economically backward strata of our society, a nominal fee is charged from the candidates with an intent to instill sense of responsibility amongst the candidates to undergo such training.

4.4 The fees charged by us are at a much lower rate as compared to what is charged by the other commercial institutions, as is evident from the comparative chart of the fees charged by us and that charged by other commercial organizations for similar IT courses/program, was already submitted vide submission dated 13th December 2019 at Annexure K. It is evident therefrom that the objective of education provided by us is not generating profits but the benefit of the society. It is for this reason that we had accumulated losses of almost Rs. 3.61 crores as on April 1, 2013. In the captioned year, after being engaged in said activity for so many years, we have generated a nominal surplus, which is mainly attributable to the cost efficiency due to economies of scale.

4.5 It is accordingly submitted that merely because some surplus has been made in the captioned year, it cannot be concluded that we have been engaged in any business activity.

4.6 In this regard, reliance is also placed on the decision of **the Delhi High Court in India Trade Promotion Organization vs. DIT(E) (371 ITR 333)** where, in the context of section 2(15), it is held that where the dominant objective of the assessee was charitable, then merely because a fee is charged would not make the activity as trade, commerce or business. The relevant extract of the decision is reproduced below:

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4.7 In view of the foregoing, it is humbly submitted that the activity carried out by us cannot, by any stretch of imagination, be regarded as being a business and accordingly, the proviso to section 2(15) is not applicable to us.

4.8 MERELY BECAUSE A RECEIPT IS CHARGEABLE TO SERVICE TAX OR TDS IS DEDUCTED THEREFROM DOES NOT MAKE IT A BUSINESS RECEIPT.

4.9 Further, it is submitted that when the inherent nature of the activity itself is not business, merely because service tax has been charged by the assessee or TDS has been deducted by the payer in compliance with the specific laws, the nature of the receipts would not become business receipts. It is submitted that these cannot be the factors in determining the nature of any receipt.

4.10 As regards levy of service tax, it is submitted that that the Service Tax Law is a completely different and independent law and thus, no inference can be drawn from the same with regards to the nature of receipt. Under the said law, service tax is chargeable on services rendered by the service provider to the service receiver, notwithstanding such services are provided in the course of business or not. Under Service tax Act (Finance Act, 1994), the term 'services' have been widely defined to include various activities that may or may not be in the nature of business. For eg. Service tax is leviable on sitting fees received by a Non-executive Director. Clearly, a Nonexecutive Director is not doing any business activity, still service tax is leviable on the same. Thus, it is submitted that levy of service tax cannot be a basis to decide that the activity on which service tax is charged is a business or not.

4.11 We further submit that under the Service tax Act, the term 'services' may or may not be regarded as services, as understood in common parlance. For eg. renting of immovable/movable property, royalty, etc. are regarded as 'service' under said law, which under common parlance is not regarded as service at all. Accordingly, it is submitted that levy of service tax cannot be a basis to decide that the activity on which service tax is charged is a business or not.

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4.13 As regards deduction of TDS by the payers from the receipts, it is respectfully submitted that TDS provisions are applicable to assesseees irrespective of whether the income is taxable or not in the hands of the payee. The said provisions apply irrespective of whether the payment is made to a charitable institution registered



u/s. 12A/12AA of the Act or not. It is submitted that the fact that TDS has been deducted or not and if deducted, under which section, do not have any impact whatsoever on deciding the nature of the activity or taxability of the same. Chapter XVIIIB of the Act casts obligation on the payer to deduct tax at source from certain payments specified in the said Chapter. The said obligation is *de hors* the nature of activity and receipt in the hands of the recipient. Accordingly, the fact that the payer had deducted tax at source under which provision of Chapter XVIIIB in discharge of obligation(s) casted on it, is not reflective of the nature of the activity undertaken by us or its taxability.

4.14 Accordingly, it is submitted that no adverse view can be formed on the ground that the payer has deducted tax at source under section 194J before remitting the aforesaid payments to us. The payer, in its wisdom, has deducted TDS u/s. 194J, but that does not mean that it makes the activity undertaken by us as a business activity. Besides, Section 194J covers certain payments, which may or may not be a receipt from business activity. For eg. TDS on remuneration or fees or commission paid to director of the company.

4.15 In this regard, reliance is placed on the decision of the Delhi bench of the Tribunal in the case of **Heart Care Management v. DIT (Exemption) (52 SOT 277)**, wherein it was observed as under:

"5.2. Coming to the issue about some of the donors being pharmaceutical companies and having deducted TDS. In our view while accepting donation, a donee has limitations and if the donor offers the donation in cash kind or in a manner which it thinks legal, generally the donee would not refuse the donation. This is so because TDS can be claimed by trust towards the tax paid. It has not been disputed that for these amounts only donation receipts were issued. There was no loss to trust as on application of income i.e. utilization of donation, the TDS becomes refundable to it. On/v because donors are pharmaceutical companies and they deducted TDS, will not convert a donation into a commercial receipt on the basis of presumptive inferences. As long as the assessee has credited the amount as donations and issued donation receipts, in our view, the same cannot be held to be commercial receipt."

(Emphasis supplied)



4.16 In view of the foregoing, we humbly submit that the basis on which Your Goodself has treated the receipts as business receipts is totally unfounded.

5. WITHOUT PREJUDICE TO THE ABOVE, IF IT IS HELD THAT THE ACTIVITY OF THE ASSESSEE IS BUSINESS ACTIVITY AND THEREFORE TAXABLE, THEN THE LOSSES INCURRED BY THE ASSESSEE FROM SAID ACTIVITY IN THE EARLIER YEARS OUGHT TO BE ALLOWED TO BE CARRIED FORWARD AND SET OFF AGAINST THE ACTIVITY OF THE CAPTIONED YEAR.

5.1 Without prejudice to the above, it is submitted that if we are considered to be doing business activity and not charitable activity, then said finding would apply to all the years in which said activity has been conducted by us.

5.2 Accordingly, in that case, the taxability of the income for all the years ought to be based on the same premise. As stated earlier, in the past, we have incurred losses aggregating to Rs. 3.6 crores from said activity. The details of the brought forward losses is already submitted before Your Goodself vide submission dated 28th November 2019 at Annexure C. Even the CIT(E) has in his order dated March 19/26, 2019 at para 10 held that the losses of the past year should be allowed to be set off against the assessed income of the captioned year. It is accordingly submitted that if the surplus earned this year is taxable as business income, then the losses of the past years ought to be regarded as carried forward business losses and the same ought to be allowed to be set off against said income as per the provisions of section 72 of the Act.

In view of the foregoing, the Assessee submits that the receipts of the Assessee cannot be regarded as business receipt and the same is eligible for exemption u/s. 11 of the Act.

We hope this adequately replies to your satisfaction as to why the receipts of the Assessee should not be regarded as business receipt and why exemption u/s. 11 should be allowed. If you still decide otherwise, the Assessee humbly requests to issue a show cause notice, so that the Assessee can further provide its reply thereof.

The assessee further requests Your Goodself Honour to kindly grant the assessee adequate reasonable time to provide further submissions/ clarifications along with the necessary documentary evidences in the matter, in case Your Goodself Honour decides otherwise.



Thanking You,
Yours faithfully,
For NIIT Foundation
Authorised Signatory”

19. Insofar as the funds received from corporates and private entities are concerned, it was the submission of the respondent/assessee that they were essentially donations which were utilized solely for the purposes of undertaking educational activities. The aforesaid details, which appear at Volume II, page no. 494 of our record are reproduced hereinbelow: -

Details of TDS – as per Form 26 AS	Income Amt_Rs.	TDS Amt_Rs.
Tuition Fees	412,170	39,966
Educational Services	24,396,361	1,029,000
Interest Income	10,697	1,071
Total	24,819,228	1,070,037
<u>Details of Tuition Fees (as per Form 26AS)</u>		
MP Building and Construction	348,170	38,686
Zila Panchayat	64,000	1,280
Total	412,170	39,966
<u>Educational Services</u>		
NIIT Yuva Jyoti Limited	5,947,278	190,360
Airport Authority of India	1,058,596	21,772
Tata Consultancy Services Ltd.	195,003	19,500
Tata Housing Development Co. Ltd.	263,260	5,226
NIIT Limited	444,876	44,487
Tata Consultancy Services Ltd.	719,202	31,000
Aegis Limited	61,500	6,150
Hindustan Coca-Cola Beverages Pvt. Ltd.	8,286,755	170,774
World Vision of India	815,130	16,302
ATC Tower company of India Pvt Ltd	1,039,075	20,782
ApneAap Women World Wide Trust	46,765	4,677
The Evangelical Fellowship of India Commission on Relief.	14,000	1,400
Hope Foundation	96,098	1,922
Sahyog Foundation	25,667	2,567
Vidya Integrated Development for youth and	60,000	1,200



adults		
Gram Niyojan Kendra	73,034	1,460
Cipla Foundation	991,160	99,440
The Tata power Company Limited 4	4,248,962	388,941
Jubilant Bhartia Foundation	10,000	1,000
Total	24,396,361	1,029,000
Interest Income		
NIIT Initiative for Learning	10,697	1,071
Total	10,697	1,071

20. Mr. Vohra then vehemently countered the contention of Mr. Maratha, who had urged that the amounts so received were utilized by the assessee for activities concerned with conducting sponsored courses and which were in the nature of trade, commerce or business. Learned senior counsel submitted that the aforesaid contention is wholly incorrect in as much as the donations and sponsorship which were received from private entities were utilized only for the purpose of furtherance of education as a charitable activity. It was submitted that while those donations may have been triggered by the **Corporate Social Responsibilities**¹³ obligations of those private entities, the CIT(E) clearly lost sight of the fact that its enquiry would be concerned with the ultimate utilization and use to which those donations were put.

21. While material pertaining to the certification for courses accorded by NSDC and other globally recognized institutions such as Intel, Cisco, CompTIA and Tally among others, is placed at Volume II, page no. 863 of our record, the approval from the Government of the National Capital Territory for running and implementing IT fundamental school programs in government schools appears at Volume II, page no. 898.

¹³ CSR



22. In view of the above, it was Mr. Vohra's contention that the activities undertaken by the respondent/assessee clearly fall within the broad principles which came to be propounded by the Supreme Court in *Lok Shikshana Trust*. It was the submission of learned senior counsel that the Tribunal has thus correctly come to the conclusion that the activities undertaken by the assessee would fall within the sweep of the expression 'education' as appearing in Section 2(15).

23. Having noticed the rival contentions, we deem it appropriate to notice some of the salient findings on facts which came to be rendered by the Tribunal. In paragraph 20 of the order impugned before us, the Tribunal noticed in some detail the gamut of activities which are undertaken by the respondent/assessee. The same is reproduced hereinbelow: -

“20. We have carefully considered the rival contention and perused the orders the lower authorities. In the case of the assessee, assessment under section 143 (3) of The Income Tax Act, 1961 was passed by the learned assessing officer on, 30/11/2016 where the learned assessing officer has recorded the fact that the assessee is a society which is registered under the societies registration act, under section 12 A of The Income Tax Act, 1961 and is also holding the recognition under section 80 G (5) (vi) of The Income Tax Act, the learned assessing officer has noted the objects of the society and thereafter held that income of the assessee society is a charitable in nature within the meaning of section 2 (15) of The Income Tax Act, 1961. Thereafter he computed the income of the assessee and assessed at Rupees Nil. During the course of assessment proceedings, assessee submitted a letter dated 24 November 2016 wherein the assessee explained its charitable activities conducted during the financial year. Assessee submitted that during the financial year 2013- 14, 15656 underprivileged youths were trained by in NIIT foundation across various streams such as information technology, English, soft skills, BPO, retail sector banking sector and service sectors. The training was conducted at NIIT foundation run centers and NGO partner centers. Out of the youths that were eligible for job, 2903 students were placed with an average income of ₹6800 per month. Each employed



student contributed to increase family income making the family more sustainable. It was further stated that various digital literacy initiatives were also started during the period. Assessee is holding Hole in the wall learning stations were also set up across Telangana, Sikkim, West Bengal, and Bihar to provide free access to technology to children in the age group of 6 – 12 years. The children learned to use this learning stations to improve their understanding of science, IT, English, GK and mathematics apart from this, Digital Literacy Program was also launched at several locations to provide teacher training and free basic information technology contained. Further, Delhi, Haryana, Rajasthan, Maharashtra, MP, Tamil Nadu, Telangana, Sikkim, West Bengal, and Bihar were the main geographies where the impact was created during this financial year. The assessee further submitted the details of its activity by letter dated 7 November 2016 where the assessee explained its revenue from tuition fees and educational services. The assessee submitted that in respect of fees charged, the assessee is imparting educational services to the economically weaker section of students and other physically and mentally challenged, for students wherein the educational services are rendered either free or heavily subsidized, discounted. Assessee offers highly subsidized training to underprivileged youth. A very small part of the training courses charges fees to the students. This builds commitment to the students to complete the training course and they do not dropout. Anything free is not valued so students are encouraged to pay small fees. For those students who cannot prototypes with the intent to build scalable and sustainable models. At the same time assessee is also continuing to expand the areas of impact as they collaborate with the corporate social responsibility in the corporate sector, NGOs and funding organizations. The main objects of the assessee were also explained by submitting the copy of the memorandum of Association and a subsequent amendment. Assessee also supported its activity narrated by the assessee by producing before him the various bank accounts as well as the details of donation. After examination of all these information, learned assessing officer passed an order granting assessee exemption provided under 2 (1% as educational institute u/s 11, 12 of The Income Tax Act, 1961 holding that assessee is carrying on charitable activities within the meaning of section 2 (15) of The Income Tax Act, 1961. It is also important to note that for assessment year 2008 - 09, where the assessee was last assessed, on similar lines, where the assessee was held to be carrying on the activities of charitable nature within the meaning of section 2 (15) of The Income Tax Act, 1961. Then learned assessing officer specifically mentioned that the provisions of section 13 of The Income Tax Act, 1961 are not violated at all. Thus for the earlier years also on the similar set of activities the learned assessing officer in that year has taken a view that assessee is



carrying on educational activities. Thus in past the activities of the assessee were accepted as educational.”

24. As is manifest from the recordal of facts appearing in that paragraph, the assessee in the concerned AY was found to have essentially undertaken educational activities spread across various subjects and streams, providing opportunities to underprivileged youth and others and essentially skilling them for the purpose of future employment. It is also stated to have undertaken various digital literacy initiatives spread across as many as ten States of the country. The instruction was imparted at either NIIT-run centers or NGO-partnered establishments. Its revenue stream was disclosed to flow from tuition fees and other educational services provided by it. The fee structure was asserted to be heavily subsidized and discounted. It is the aforesaid facts which appear to have weighed upon the AO to characterize the activities undertaken by the assessee as being charitable and falling within the meaning of the word ‘education’ and which falls within the six principal activities spoken of in Section 2(15).

25. Proceeding further and while noticing the conclusions which had come to be recorded by the CIT(E), the Tribunal observed as under: -

“21. Despite this examination carried out by the learned assessing officer during the course of assessment proceedings, the learned CIT exemption issued a notice for setting aside the assessment under section 263 of The Income Tax Act, 1961 on 16.11.2018. The main reason for stating so, is that the income and expenditure account of the assessee has shown that assessee has received the tuition fee income of ₹10666236 and the AO has failed to examine whether the activities carried out by the assessee in the absence of affiliation with any regulatory body and adherence to the criteria for formal education laid down by the honourable Supreme Court in case of Sole Trustee, Lok shikhsan Sansthan case does not qualify as education. It was further alleged that the assessee has received fees for training students, which is in the nature of trade, commerce or



business, and accordingly the surplus from these activities should be brought to tax. The learned CIT exemption was also guided by the fact that the receipt from different corporate houses has been subjected to tax deduction at source under section 194J and therefore the nature of these receipts are commercial in nature. Further it was also point of concern for CIT exemption that the turnover from services reported to the service tax authorities amounted to ₹ 38665028 and assessee has also paid service tax on the fees etc received from the students making it a further strong case for invoking the proviso to section 2 (15) of the act. Thereafter considering the reply filed by the assessee the learned CIT Exemption set aside the order passed by the learned assessing officer holding that assessee is only rendering services as a contractor, service provider, the content and nature of the services cannot be characterized as education in any manner whatsoever, and the nature, duration and the quality of courses run by the assessee are not comparable to the activities of the assessee in any manner. It was further held that the courses run on behalf of its clients for a duration of 20 hours to 200 hours without any fixed curriculum, criteria, discipline and other essential ingredients of formal education, but merely to teach how cooperate a Smartphone or use an email, and speak English cannot be considered as an education thus it was held that the order passed by the learned assessing officer is erroneous as he has not made any such enquiries.”

26. On an overall consideration of the material that existed on the record, the Tribunal ultimately came to the following conclusion: -

“22. The details of the activities conducted by the assessee have been explained above at various places therefore to avoid repetition, they are not reiterated. The assessee has categorically stated that it is primarily operating various education and development centers in rural areas and slum and economically backward pockets of semi urban areas across India so as to impart education to the students belonging to the under privileged economically backward strata of the society with an objective to develop their skills so that their employability can increase. Assessee has also shown that it has charged fees from the students either at subsidized rate or at free of cost. The nature of the training that has been-imparted at its various centers generally, comprises of classrooms, computer labs and other infrastructure required conducting educational classes along with trained faculties to educate and train the students. The assessee is also getting those centers approved by NATIONAL SKILL DEVELOPMENT CORPORATION to conduct various educational courses approved by them. Thus it is apparent that educational courses conducted by assessee are in the same manner as that of any



course or classes conducted by other educational Institute in a schooling format. The assessee has also developed the fixed curriculum, which is duly recognized by these government authorities or may be recognized by other globally recognized institutions. The complete session plan for every course is covered. Therefore it is in a planned manner. The attendance of the students is also compulsory to allow them to take further examination. The necessary certificates to the successful candidates are also issued. The fees charged by the assessee to the various students are compared to the market rate are very low, the deserving student are granted concession or subsidy. The assessee has also conducted various approved educational and vocational courses in government schools, community schools and centers operated by other NGOs. The digital literacy Mission trainings are also provided to the children. The work of the assessee has been accredited by various organizations by awarding recognition and awards. Assessee has also shown various newspaper reports, which clearly shows that assessee, is providing education. Merely because of in certain projects there is a deficit, which deficit is reimbursed by the several corporate entities by spending out of their corporate social responsibility funding to the assessee does not make assessee an non-educational Institute. If, for any reasons, those entities have deducted tax at source due to their own tax obligations, it does not make the income so received by the assessee as business income, Naturally, the character of outflow from the payer cannot always used in characterizing the inflow of the recipient. The obligation of the assessee of complying with the service tax law also does not make assessee an Institute, which is carrying on business. More so, the opinion of the assessing officer for this year that assessee is carrying on an educational activity is also supported by the assessment history of the assessee where in earlier year also on identical facts and circumstances, the assessee was held to be carrying on educational activities, entitled to deduction/exemption under section 11 and 12 of The Income Tax Act, 1961. Honourable Supreme Court

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27. If the activities carried out by the assessee are visualized in the context of judicial precedent as relied upon above, it is apparent that assessee is not engaged in any other activity other than education. Therefore, for this reason, we are of the view and hold so that the learned CIT – E is not correct in holding that assessee is not engaged in educational activities covered under section 2 (15) of the Act.

28. No evidences have been put forth by the revenue except merely an allegation of violation of the provisions of section 13 (1) (C) of



the act. It has not been shown that how the assessee has conferred any benefit directly or indirectly on any person. It is also not shown that who are those persons who are fulfilling the criteria of section 13 (3) of the act. Thus, the order of the learned CIT exemptions so far as this issue is involved is not supported by any evidence.

29. Further, it is apparent from the assessment order and the communication made by the assessee during the course of assessment proceedings before the assessing officer it is apparent that all and every aspect of the assessment of the income of the assessee have been examined by him. The learned assessing officer has in detailed look into the activities, object, the functions, nature of receipts, nature of expenditure, applicability of service tax, applicability of tax deduction at source credit and above all the applicability of the provisions of section 2 (15) of the act. Thereafter, the learned assessing officer has granted assessee the benefit of being an educational Institute. It is not required for the assessing officer to examine how the payer of an income has dealt with receipt of an income in the hands of the assessee. This cannot be a general law but in the specific facts of the case where the payment made by the parties are subjected to tax deduction at source under section 194J of the income tax act cannot go against the assessee. The learned CIT – exemption has not in substance held that any due enquiry which should have been made by the assessing officer has not been made by him. Perhaps at the level of enquiry and the manner of enquiry may be different because of change in perception. However, that does not make the order erroneous.”

27. It is thus apparent that the Tribunal came to the firm conclusion that the activities undertaken by the respondent/assessee were systematic and proceeded along well-defined lines based on curated courses all of which were designed to skill and educate the students who had been enrolled. On facts, the assessee was also able to establish beyond a measure of doubt that the courses run by it were informed by a fixed curriculum and attendance criteria and thus fulfilling all essential ingredients of formal education. The Tribunal also found that the corporate receipts were mainly flowing from the CSR obligations of the concerned business houses and could not possibly be viewed or characterized as aimed at profiteering. Those corporate donations were



asserted to have been utilized solely for the purposes of the educational activities which were undertaken by the assessee. It becomes pertinent to note that the veracity of the facts noticed above was not contested by the respondents before us.

28. We at this juncture deem it apposite to take note of the following observations of the Supreme Court in *New Noble Educational Society*: -

“82. The conclusions of this Court are summarised as follows:

82.1. It is held that the requirement of the charitable institution, society or trust, etc. to “solely” engage itself in education or educational activities, and not engage in any activity of profit, means that such institutions cannot have objects which are unrelated to education. In other words, all objects of the society, trust, etc. must relate to imparting education or be in relation to educational activities.

82.2. Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval under Section 10(23-C) of the IT Act. At the same time, where surplus accrues in a given year or set of years per se, it is not a bar, provided such surplus is generated in the course of providing education or educational activities.”

29. The Tribunal, in our considered opinion, correctly found in favour of the assessee when it held that affiliation with and recognition by a regulatory authority are not essential attributes of education under Section 2(15). This clearly flows from the principles enunciated by the Supreme Court in both *Lok Shikshana Trust* and *New Noble Educational Society*. This, of course, was in addition to it having been duly established that the centers of the respondent/assessee had been duly approved by the NSDC, which undoubtedly is a nodal agency concerned with vocational and technical training. We ultimately bear in mind the precept formulated by the Supreme Court in *Lok Shikshana*



Trust and where it explained Section 2 (15) as being concerned with training and developing knowledge, skill, mind and character by formal schooling. These tests, in our considered opinion, were clearly met by the assessee.

30. We also find merit in the Tribunal's conclusion that the mode and manner in which education is imparted would be a concept which would have to necessarily be evaluated bearing in mind the march of technology and the myriad modes of imparting instruction which now exist and have enabled institutions to overcome barriers of distance and time. Imparting of education through a virtual mode or by the adoption of new technologies would not detract from the said activity, otherwise fulfilling the requirements of structured education. The test, as propounded by *Lok Shikshana Trust*, essentially requires us to evaluate whether a formal and systematic process of imparting education had been adhered to. We thus approve and affirm the following observations as they appear in the order of the Tribunal: -

“30. Before parting, we would like to put on record that, at the time of dictation, whole world is experiencing ‘new normal’ in all spheres of activities. Education is no exception. Naturally, classrooms have no bricks and mortar, no benches and blackboards. ‘Blackboard Collaborate’ and digital white boards have replaced blackboards. Teachers and students do not assemble at one place but they reach each other on cloud through Meets, Teams, WebEx and Zoom! Such cloud classes have wide representation of students across the globe blurring the geographies of traditional classrooms. Students love Polls, Live Q & A sessions and prerecorded videos. Books and Notebooks have been replaced by smart phones, tabs etc. Most importantly, attendances are also virtual instead of physical. Chat boxes are medium of group discussion. Strikingly, Timings are 24*7. Still it has all the essential of a “classroom”. It definitely covers ‘process of training, developing the knowledge, skill, mind and character of students’ like normal schooling. Thus, in true sense the activities performed by the assessee are no different from ‘classrooms.’



31. In view of above facts, we hold that assessee is carrying on educational activities which are covered by the provisions of section 2 (15) of the income tax act and it is neither business nor profession of the assessee. It definitely constitute a charitable activity as it does not charge the fees at the level of market rate and even otherwise the surplus generated is also used for charitable activities of education. This is the finding of the learned assessing officer for assessment year 14 – 15 and for earlier assessment years. In view of this, the order passed by the assessing officer is not at all erroneous. Therefore, we set aside and quash the order passed by the learned CIT – exemption under section 263 of the Income Tax Act For assessment year 20 14-15 on 26th of March 2018. Thus, we allow ground number 3- 6 of the appeal of the assessee.”

31. We thus find no merit in the challenge which stands raised to the order of the Tribunal. Considering the conclusions that we have arrived at on the principal issue of Section 2(15), the question with respect to whether the CIT(E) was justified in invoking its powers conferred by Section 263 of the Act pales into insignificance and need not be answered.

32. In view of the aforesaid, we answer Question B in the affirmative and in favour of the assessee. Question A, for reasons aforesaid, need not be answered. The appeal shall consequently stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 26, 2024/kk