

IN THE INCOME TAX APPELLATE TRIBUNAL  
AGRA BENCH: AGRA  
BEFORE : SHRI LALIET KUMAR , JUDICIAL MEMBER, AND  
DR.MITHA LAL MEENA , ACCOUNTANT MEMBER

I.T.A NO. 05/Agra/2021

Shree Digamber Jain Shiksha Samiti, NarainBhawan ,Shree Mahavir Digamber Jain Inter College, Agra, 282002 PAN NO.AADAS9404Q (Appellant)	V/S	Commissioner Of Income Tax (Exemption) Lucknow  (Respondent)
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Assessee by	Shri.P.K.Sahegal, Adv
Revenue by	Shri. Sunil Bajpai, CIT. DR

Date of Hearing	28.05.2021
Date of Pronouncement	31.05.2021



**ORDER**

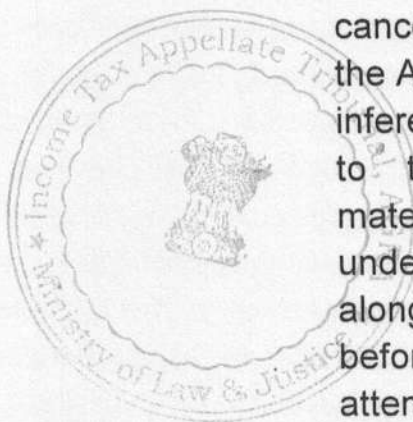
**Per LALIET KUMAR, J.M**

1. Present appeal was filed by the assessee feeling aggrieved by the order passed by the commission exemption whereby she had



cancelled the registration earlier granted to the assessee on the ground, mentioned hereinbelow:

- I. That the learned CIT Exemption, Lucknow (hereinafter referred to as 'CIT(E)') has grossly erred both in law and on facts in passing the impugned order dated 21.01.2021 U/S 12AA(3) of Income Tax Act, 1961 (hereinafter referred to as 'the Act') cancelling the registration granted to the appellant charitable society (hereinafter referred to as 'Appellant') U/S 12AA of the Act vide CIT(E) order dated 23.09.2015 bearing registration number 368/2015-16.
- II. That in any view of the facts and circumstances of the case of the appellant impugned order dated 21.01.2021 U/S 12AA(3) of the Act has been passed in exparte manner, in complete violation of principles of natural justice and disregard to the facts and even material/evidences placed on records, thus the appellant has been denied adequate opportunity to defend its case properly and judiciously.
- III. That the learned CIT(E) has erred both in law and on facts in cancelling the registration granted to the appellant U/S 12AA of the Act, solely on the basis of wrongly drawn unilateral adverse inferences and unwarranted observations, which are contrary to the facts of appellant's case and even to the material/evidences placed on records. The appellant understand that the various compliance made and submissions alongwith the material/evidences placed from time to time before the predecessor of learned CIT(E) has escaped her attention. Thus the impugned order U/S 12AA(3) of the Act,

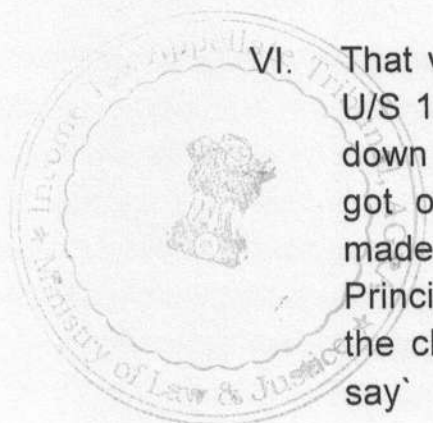


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which is solely based on suspicion, surmises and conjectures, is unsustainable in law.

- IV. That the observations made by the learned CIT(E), in her order U/S 12AA(3) of the Act dated 21.01.2021 that in the spot enquiry report the ITI has stated that no charitable activities had been carried out as claimed in the objects and that the AR appeared from time to time and furnished that the society is a charitable society formed with the object of providing education to the students of Jain Community and so and so on, are untrue and completely contrary to the facts of the appellant's case and thus impugned order U/S 12AA(3) of the Act liable to be quashed.
- V. That while arbitrarily cancelling the registration granted to the appellant U/S 12AA of the Act the learned CIT(E) has completely brushed aside and disregarded the relevant facts and even material/evidences placed on records wherefrom it was beyond doubt evident that the appellant continued to conduct the charitable activities, mainly imparting education to needy and financially weak students from all sections of society, strictly in accordance with its charitable objects and thus the impugned order dated 21.01.2021 U/S 12AA(3) of the Act on the ground that the activities of the appellant are not in accordance with its objects, is erroneous and unsustainable in law.
- VI. That while cancelling the registration granted to the appellant U/S 12AA of the Act by unlawfully invoking the provisions laid down U/S 12AA(3) of the Act, the learned CIT(E) unnecessarily got over influenced by the general nature, false complaint made by Mrs. Bhavna Jain wife of Dr. Rajiv Jain, Former Principal of Mahavir Digamber Jain Inter College, Agra (one of the charitable limb of the appellant) solely based upon 'hear say' and 'mere say', with ulterior motive and malafide

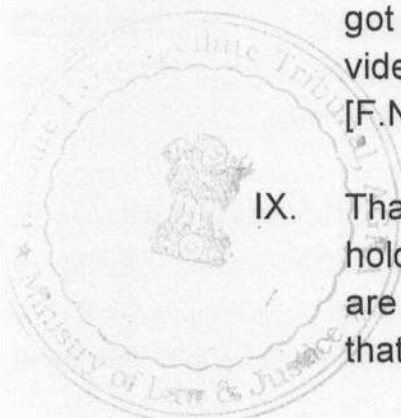


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intention, though Sub-Registrar of Firms, Societies & Chits, Agra and even Superintendent CGST, after extensive inquiry, did not draw any adverse inference or taken any cognizance of such baseless complaint. Thus the impugned order U/S 12AA(3) of the Act deserves to be quashed/annulled.

- VII. That from the facts of the appellant's case and in the light of material/evidences placed on records it is evident that since long the appellant towards the attainment of its objects of social welfare has been providing its space mainly to poor/weaker section and needy persons to perform marriages or community group marriages or other social functions, without any discrimination for any particular religion, community or caste, free of cost or at a nominal rate and the income/funds generated from providing space are wholly and exclusively utilized towards the attainment of the charitable objects of the appellant and such facts even existed at the time of grant of registration U/S 12AA of the Act to it and therefore the order U/S 12AA(3) of the Act passed by complete disregard to the past established history, facts of the case and material/evidences placed on records, is bad in law and legally unsustainable and thus deserves to be quashed.
- VIII. That the learned CIT(E) has been arbitrary and unjust in completely disregarding the 2nd proviso to section 2(15) of the Act, introduced w.e.f.01.04.2009 vide Finance Act, 2010, which got substituted by the new proviso introduced w.e.f. 01.04.2016 vide Finance Act, 2015 and Circular No.21/2016 [F.No.197/17/2016-ITA-II] dated 27.05.2016.
- IX. That the learned CIT(E) has erred both in law and on facts in holding that the provisions laid down U/S 13(1)(b) of the Act are attracted over the appellant's case, by completely ignoring that as the appellant has been created/established prior to the



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commencement of the Income Tax Act, 1961, thus these are inapplicable over its case.

- X. That the order U/S 12AA(3) of the Act dated 21.01.2021 is against the law and facts of the case of the appellant charitable society.

**Brief facts**

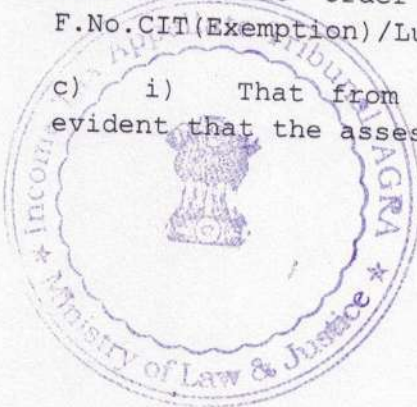
2. The assessee had filed the detailed synopsis in support of its case before us. We are reproducing hereinbelow the details submissions filed before us , which were to the following effect:

**"FACTS**

1. a) That the Assessee Public Charitable Institution (hereinafter referred to as 'Assessee Society') came into existence on 22<sup>nd</sup> August, 1959 (prior to the commencement of the Income Tax Act, 1961) vide registration no.661/1958-59 issued by Registrar of Society, Uttar Pradesh under Societies Registration Act, 1860 (XXI of 1860).

b) That the assessee society has been granted registration under clause(aa) of sub section(1) of section 12A of the Act by your Honour vide order U/S 12AA(1)(B)(i) of the Act dated 23<sup>rd</sup> September, 2015 bearing reference no.F.No.CIT(Exemption)/Lucknow/12A/2015-16/6051(URN No.368/2015) and also has been approved U/S 80(5)(vi) of the Act vide order dated 21<sup>st</sup> June, 2016 bearing reference no. F.No.CIT(Exemption)/Lucknow/ 80G/2016-17/53/1304/2537.

c) i) That from the perusal of latest bye-laws(amended), it is evident that the assessee society has following objects :-

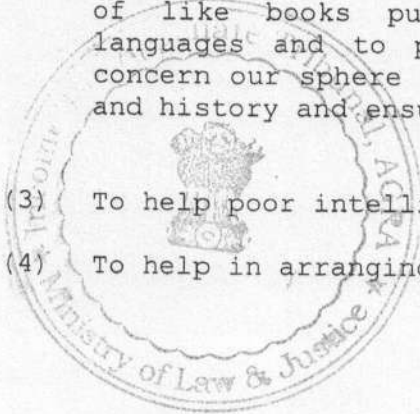




- (1) इस समिति का उद्देश्य धार्मिक, लौकिक, व्यवहारिक और औद्योगिक शिक्षा का प्रसार तथा बालक-बालिकाओं के शारीरिक, आध्यात्मिक, मानसिक धरातल को ऊंचा करना होगा। भगवान ऋषभदेव से महावीर पर्यन्त तीर्थकरों द्वारा प्रतिपादित तथा श्रीमत् कुन्दकुन्दाचार्य प्रभृति आचार्यों द्वारा व्याख्यायित सिद्धान्तों तथा सत्य, अहिंसा, अपरिग्रह, अनेकान्त का प्रचार एवं प्रसार करना, धर्मार्थ प्रभावना करना एवम् नैतिक मूल्यों की स्थापना करना।
- (2) साहित्य, पुरातत्व, दर्शन, राजनीति, इतिहास, ज्योतिष आदि विषयों पर जैन तत्व परक शोध करवाना और शोधकों को प्रोत्साहन तथा प्रश्रय प्रदान करना। जैन साहित्य का प्रकाशन करना तथा प्रचार करना तथा शोध के लिए पत्र-पत्रिकाएँ निकालना। संस्कृत, प्राकृत, अपभ्रंश, हिन्दी, तमिल, तैलगू, कन्नड, मराठी, गुजराती आदि भाषाओं के ग्रन्थों का पाठ शोधन, सम्पादन व अनुवाद आदि करना तथा विदेशी भाषाओं से अपने उद्देश्यानुकूल सामग्री लेकर प्रकाश में लाना। जैन इतिहास का संकलन करना और पुरातत्व की सामग्री का संग्रह करना और संरक्षण करना। जैन व जैनतर साहित्य का संग्रह करना और उसके संरक्षण की व्यवस्था करना।
- (3) निर्धन प्रतिभाशाली विद्यार्थियों की सहायता करना।
- (4) जरूरतमंद विद्यार्थियों के आवास की प्रबन्ध व्यवस्था करना।
- (5) नगर की कोई शिक्षा संस्था जो हमारे उद्देश्यों में आस्था रखती हो यदि वह चाहे तो शिक्षा समिति प्रबन्धकारिणी द्वारा शिक्षा समिति के हितों को ध्यान में रखते हुए उसे सम्बद्ध किया जा सकता है।
- (6) औषधालय आदि खोलना एवम् जन स्वास्थ्यवर्धक कार्य करना एवम् ऐसे कार्यों में सहयोग देना।
- (7) धार्मिक एवम् सामाजिक कार्य करना।

ii) That the english translation of latest amended objects of the assessee society is given hereunder :-

- (1) The Object of this society shall be to propogate and impart knowledge pertaining to Religion, Education, social behaviour and to upkeep & raise physical and mental health of boys and girls.
- (2) To encourage and help research work pertaining to literature, Archeology, philosophy, history, astrology, and extend all sorts of cooperation to researchers to publish jainlituarature and research work. To publish jain literature and periodicals. To arrange study of like books published in Sanskrit, Prakrat and other Indian languages and to publish or to bring in light such matters which concern our sphere of interest. To collect material on Jain Archeology and history and ensure safe upkeeping of the same.
- (3) To help poor intelligent students.
- (4) To help in arranging living place for needy students from outstation.



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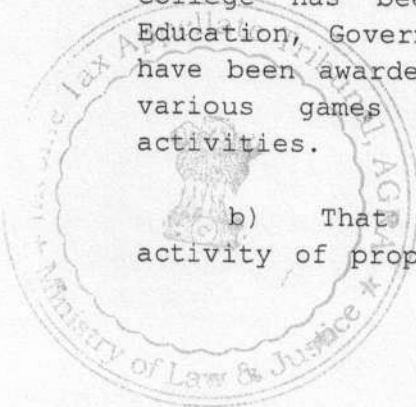
- (5) The executive committee keeping in mind the interest of Shiksha Samiti may provide affiliation to other educational institution to whom the objects of the society are acceptable.
- (6) To open hospital/dispensary and to help programs of upkeeping of good health of people in general.
- (7) To work for upliftment of spiritual and social welfare.

d) a)i) That it is most humbly submitted that towards the attainment of charitable objects for propogating and imparting education the assessee society is primarily running Inter College under the name and style of Mahavir Digamber Jain Inter College, Hariparvat, Agra wherein about 3000 students from various caste, creed, religion and community i.e. from all sections of society, are studying in Class VI to Class XII, which has separate blocks for both Hindi and English medium.

ii)a) That it is pertinent to apprise your Honour that while no fees is charged from students studying in Class VI to VIII, nominal fee of Rs.450 per annum is charged from the students studying in Class IX to XII out of which 60% is passed on to Department of Education, Government of Uttar Pradesh. Further in many cases looking to the financial status of the parents/guardian, concession in fee is allowed to the number of students and even in many cases the fees is waived. Such Inter college has well equipped science (1) Physics lab (2) Chemistry lab (3) Biology lab and Air conditioned Computer training lab having about 130 computers with qualified & experienced and knowledgable trainers. The college has very highly qualified and dedicated lecturers and teachers numbering about 60. It has outdoor games and qualified games and gymnasium teachers. The college is having examination results for both High School

and Intermediate Boards examination 100% pass, out of which about 70% of the students passing in first division. For moral upliftment of the students "NAITIK SHIKSHA" is also imparted to the students. This college has been assessed as "A" Grade by the Directorate of Education, Government of Uttar Pradesh. The students of this college have been awarded Trophy/Certificate in various fields like science, various games and debate, social-service and other important activities.

b) That apart from the aforementioned primary charitable activity of propogating and imparting education the assessee society



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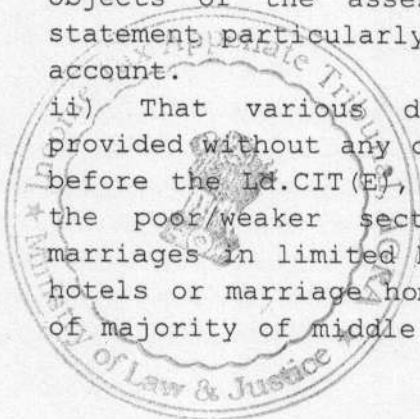
has another charitable limb styled as 'Shri ShantinathDigamber Jain Mandir', which is of religious and historical importance. In such charitable limb the assessee society is actively engaged in propogating massages, teachings, ideals and philosophy of religious and spiritual reformers to create a sense of non violence, brotherhood, humanity, communal harmony and equality among general public. Hundreds of visitors from various religious community or caste or creed participate in the discourses for the spiritual and moral upliftment.

c) That in the other charitable limb styled as 'Jain Sahitya SodhSansthan' the assessee society is maintaining a library wherein more than 3000 rare books, shastras are preserved/maintained and the public from various section/society visit such library for reading and even for research work.

d) That in the fourth charitable limb the assessee society is running charitable homeopathic dispensary under the name and style of 'Shri Mahavir Digamber Jain Homeopathic Aushadhalaya', for the benefit of public at large for providing medical relief to the poor and needy patients irrespective of caste, creed, religion or community. In such dispensary two qualified and experienced doctors and three compounders are working both in the morning and evening and around 82 to 100 patients are attended every day.

e)i) That so far so Shree Digamber Jain Shiksha Samiti is concerned towards the attainment of its objects of social welfare, it is providing space to poor/weaker section and needy persons irrespective of caste, creed, religion or community for performing marriages, group marriages and other social functions free of cost or at very nominal charges without any profit motive. Normally the space is provided for use after the educational institution and other charitable institutions are over so that charitable activities are not hampered. The funds generated from such charges recovered are utilized wholly and exclusively towards the attainment of the charitable objects of the assessee society which is evident from financial statement particularly income and expenditure and receipt and payment account.

ii) That various documents mentioning details where space was provided without any charge or against nominal charges were duly filed before the Id.CIT (E), Lucknow. On account of such charitable activity the poor/weaker section and needy persons are able to perform marriages in limited budget because these days performing marriage in hotels or marriage homes involves exorbitant expenditure beyond means of majority of middle class. Such charitable activity provided by the



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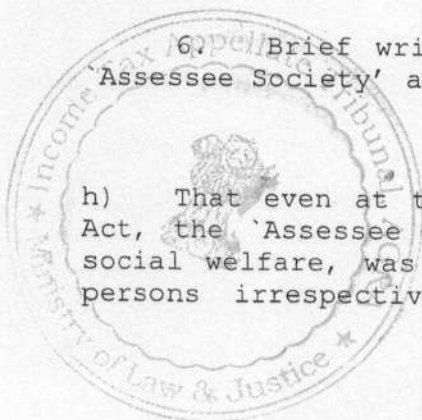
assessee society is appreciated by all. The space is provided to all without any discrimination of caste, creed, religion or community. Such facts were duly brought to the knowledge of Ld.CIT(E), Lucknow both at the time of grant of registration U/S 12AA of the Act and in the proceedings for cancellation of registration U/S 12AA(3) of the Act.

f) That the 'Assessee Society' finds it pertinent to apprise your Honours' that in the the proceedings for grant of registration under section 12AA of the Act, it had strictly in accordance with Form No.10A, Rule 17A and in compliance to the notice(s) and queries raised by the learned Commissioner of Income-tax (Exemption), Lucknow (hereinafter referred to as 'Ld. CIT(E)'), the requisite details, informations and documents/evidences, who after being satisfied about the charitable objects and genuineness of its activities granted the registration to the 'Assessee Society' under section 12AA of the Act on 23.09.2015.

g) That in support of the fact that till date neither there is no change in the charitable objects nor in the genuineness of the activities conducted by the 'Assessee Society' towards the attainment of its charitable activities which were existing at the time of grant of registration to the 'Assessee Society under section 12AA of the Act on 23.09.2015, it is filing herewith the following documents/material, which were placed before the Ld.CIT(E) at the time of grant of registration U/S 12AA of the Act :-

1. Copy of Audited Income & Expenditure accounts relevant to F.Yrs.2011-12 to 2013-14.
2. Consolidated Income & Expenditure Account.
3. Copy of acknowledgement receipts for filing ITR for A.Y. 2013-14 and 2014-15.
4. Copy of Sthanopyog account for F.Y.2011-12 to 2013-14.
5. Classwise details of number of students who have taken education in Inter College run by 'Assessee Society' under the name and style of M.D. Jain Inter College during F.Yrs.2011-12, 2012-13 and 2013-14.
6. Brief write up on Charitable activities carried on by the 'Assessee Society' and its limb.

h) That even at the time of grant of registration U/S 12AA of the Act, the 'Assessee Society' towards the attainment of its object of social welfare, was providing space to poor weaker section and needy persons irrespective of caste, creed, religion or community for



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performing marriages, group marriages and other social functions free of cost or at a very nominal charges, without any profit motive. The funds generated from such activities have always been utilized wholly and exclusively towards the attainment of charitable objects of the 'Assessee Society', which is evident from the relevant financial statement(s) particularly Income & Expenditure and receipt and payment account.

i) That the 'Assessee Society' has been regularly filing its return of income and GST, in support of such fact, copies of ITR, computation of total income and return of GST relevant to A.Yrs.2017-18, 2018-19 and 2019-20 are filed.

j) That the 'Assessee Society' finds it right place to apprise you that its case for A.Y.2017-18 was selected for complete scrutiny and after extensive investigation, the assessment was completed U/S 143(3) of the Act vide assessment order dated 31<sup>st</sup> November, 2019, wherein the declared income was accepted and it was found that the 'Assessee Society' towards the attainment of its charitable objects has been carrying genuine activities by holding at paras 3 and 4 as under :-

"3. During the year the assessee society is registered under section 12AA/80G of the Income Tax Act, 1961. The assessee is running educational institutions as well as general charitable activities. As per information available on record, the activities are being carried out as per the objects of the trust/society which are charitable in nature as defined in section 2(15) of the IT Act, 1961.

4. The assessee has furnished audited statement of financial affairs with copy of Balance sheet, computation of total income and income & expenditure account which is as under-

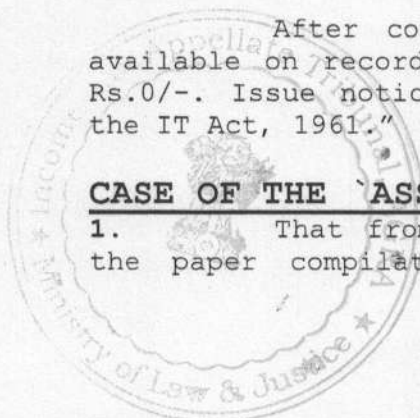
By Fee and other income	Rs.52994534
To Revenue expenses	Rs.53046319
To Capital expenses	Rs.0
By excess of income over expenditure	(-)Rs.51785

Thus the assessee has applied more than its total income on the objects during the year under consideration as required u/s 11 of the IT Act, 1961.

After consideration of online replies filed and material available on record, the assessment is completed on total income of Rs.0/-. Issue notice of demand and charge interest as provisions of the IT Act, 1961."

#### **CASE OF THE 'ASSESSEE SOCIETY'**

1. That from the sequential events filed at pages 1 to 5 of the paper compilation it is evident that the 'Assessee Society'



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received a show cause notice U/S 12AA (3) of the Act for cancellation of registration dated 31<sup>st</sup> May, 2017 from the Ld.CIT(E).

2. That Advocate Pradeep Kumar Sahgal and CA Utsav Sahgal [hereinafter referred to 'the AR' - (Authorised Representative)] of the 'Assessee Society', in compliance of the same, personally appeared before the Ld.CIT(E) and whereat he was informed that the registration cancellation proceedings were solely initiated on the basis of Tax Evasion Petition (TEP). For defending the case of 'Assessee Society' properly and judiciously AR, in the light of principles of equity and natural justice, requested the Ld.CIT(E) for providing him all adverse material in support of various allegations levelled in the show cause notice dated 31<sup>st</sup> May, 2017.

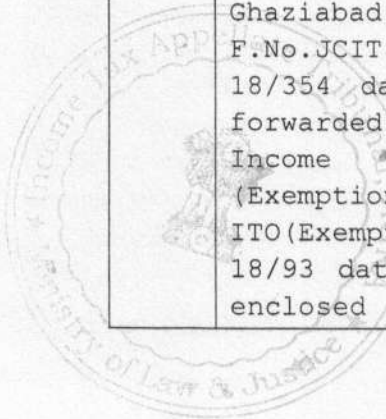
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3. a) That in between the AR of the 'Assessee Society' and CA Utsav Sahgal personally appeared before the Ld.CIT(E) and filed paper compilation comprising of 309 documents, alongwith the reply to show cause notice U/S 12AA(3) of the Act for cancellation of registration U/S 12AA of the Act dated 16<sup>th</sup> August, 2017, meeting out all the allegations leveled by Ld.CIT(E) in his show cause notice and to substantiate that the 'Assessee Society' is continuously carrying on genuine activities towards the attainment of its charitable objects. Some of the submissions made are reproduced hereunder for your Honours' ready reference :-

PB 16 -17, 18/1 to 308 - 309

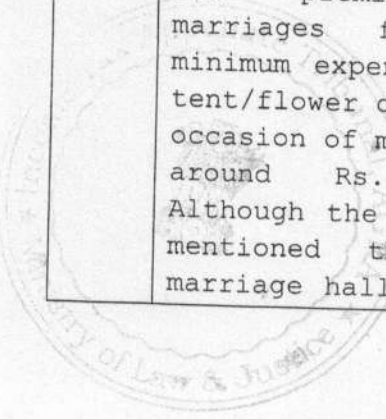
SNO.	Allegation	Explanation
1.	It has come to the notice of this office that the society is presently not involved in the performance of any charitable cause and its activities are not being carried out in accordance with the objects of the society. The Jt. Commissioner of Income Tax (Exemption), Ghaziabad, vide his letter F.No.JCIT(E)/GZB/TEP/2017-18/354 dated 25.05.2017 has forwarded the report of the Income Tax Officer (Exemption), Agra vide F.No. ITO(Exemption)/AGRA/TEP/2017-18/93 dated 17.05.2017 which enclosed the Spot Enquiry	The same is incorrect and baseless. On the contrary from the facts narrated in foregoing paras it is beyond doubt established that all the limbs of assessee society namely Shree Mahavir Digamber Jain Inter College, Shree ShantinathDigamber Jain Mandir, Shree Jain Sahitya ShodhSansthan and Shree Mahavir Digamber Jain Aushdhalay are actively carrying out charitable activities towards attainment of charitable objects laid down in Bye-laws. Towards the attainment of its object of social welfare space is provided to poor/weaker section and needy persons irrespective of caste, creed, religion or community to



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<p>report of the ITI which conveyed that presently the society i.e. M/s Shri Digamber Jain Shiksha Samiti (PAN-AADAS9404Q) (hereafter referred to as "assessee") is not involved in any charitable activity as claimed in the objects set forth in the memorandum of the society instead it is primarily engaged in running</p>	<p>all section of society for performing marriages, group marriage and other social functions free of cost or at very nominal rates, without any profit motive.</p>
<p>commercial activities by renting its grounds/ auditorium (hall)/ Narayan Bhawan/ Bal Mandir Bhawan for the purposes of marriages and other social activities/ events giving preferences and leverage to the Jain Community.</p>	
<p>2. The commercial motive of the applicant is evident from the spot enquiry report of the ITI wherein it has been mentioned that, upon discreet enquiries, it was found that venue maintained by the assessee is well known for its premium/high class marriages for which the minimum expense for booking/ tent/flower decoration etc on occasion of marriage comes to around Rs. 6-7 lakhs. Although the society has not mentioned the renting of marriage halls as one of the</p>	<p>Such allegations are completely contrary to the facts of the case of the assessee society, incorrect and even false. As stated in foregoing para 4(vii) it is evident that the assessee society towards the attainment of object of social welfare is providing space to poor/weaker section and needy person irrespective of caste, creed, religion or community to all section of society for performing marriages, group marriages and other social functions free of cost or at very nominal charges, without any profit motive. The maximum charges towards the use of space</p>



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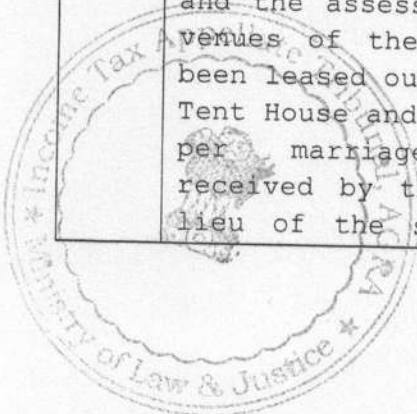
objects set forth in the memorandum of the society yet it is not only undertaking the commercial activity of renting out premises of its educational institutions but is also charging hefty fee for the same which is being credited to the account of the society and not being utilized for the benefit of its educational institutions is also not for pursuing any other act of charity. The report also does not suggest that the applicant has even cared to rent out the marriage hall for the economically weaker/backward sections of the society but is solely concentrating and

renting out premises to the economically affluent sections of the society, which clearly goes to prove that the society is existent only for commercial motives belying any act of charity or even any motive of charity.

As per the spot enquiry report, it was also found that an arrangement exists between Purshottam Tent House and the assessee whereby the venues of the assessee have been leased out to Purshottam Tent House and a fixed amount per marriage is being received by the assessee in lieu of the same. The said

during F.Y.2015-16 amounted to Rs.91,000 which is evident from statement of account and records of service tax which are produced before your Honour. Ordinary and simple low budget marriages and other functions are performed by poor/weaker section and needy person here. The premium/ high class marriages are performed in luxury and five star hotels and marriage homes. It is categorically submitted that the funds generated from such charges recovered are utilized wholly and exclusively towards the attainment of charitable objects of the assessee society, which is evident from financial statements particularly income and expenditure and receipts and payment accounts.

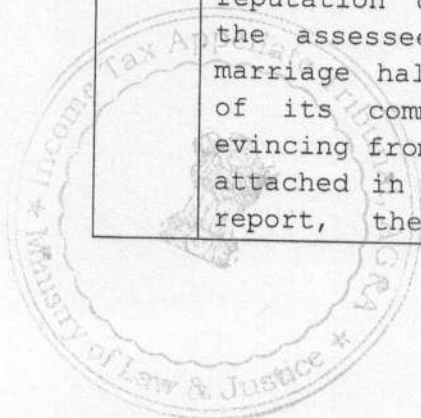
It is categorically submitted that neither any arrangement exists between Purshottam Tent House nor venue has been leased out to them and no fixed amount per marriage is being received by the assessee society in lieu of the same. In fact the assessee society towards the use of space, recovers charges from the person who books the space.



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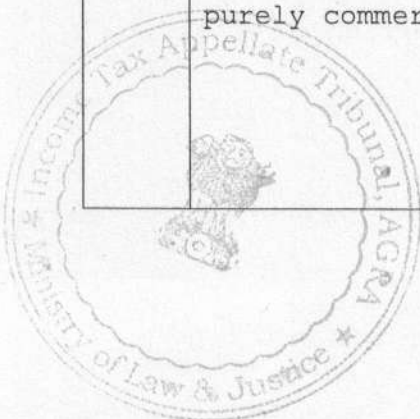
<p>arrangement goes to prove that the applicant solely exists for profit motives and is more engrossed in generating avenues of its income by expanding and diversifying its rental business by collaborating with other commercial entities and executing mutually favorable partnerships with them which is characteristic of a commercial entity existing for profit motive and not for any act of charity.</p>	
<p>3. The assessee, as per the spot enquiry report of the ITI, also failed to provide the complete details of the booking registers/booking forms so as to gauge the number of bookings in the past year but the assessee produced only a few booking forms and no compiled details could be produced. This also goes to prove that despite having ample business opportunities during the entire year, as evident from</p> <p>the well established reputation of the venue of the assessee as a premiere marriage hall and the scale of its commercial activity evincing from the photographs attached in the spot enquiry report, the applicant has</p>	<p>It is categorically submitted that such allegation is completely contrary to the facts of case of assessee society and baseless. In fact since the inception the assessee society is maintaining proper books of account and records which are audited. What ever records were required they were produced before authorities below. The receipts from providing the space are properly verifiable and explained with reference to relevant records which are produced before your Honour.</p>



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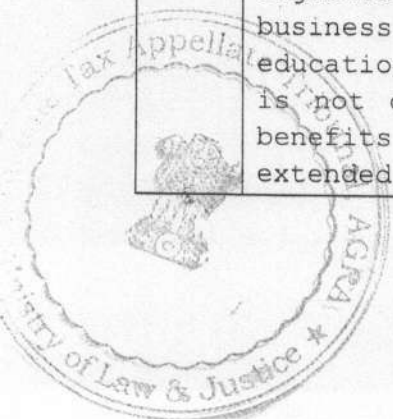
	<p>failed to showcase its financial statements and booking registers which clearly questions the intention of the assessee to overshadow the actual profits that are being made from its rental business.</p>	
4.	<p>It is also important to note that although the assessee has claimed to be working for religious and charitable initiatives as evident from the 7 objects that have been set forth in the memorandum of the society but on the contrary the assessee society has registered itself with the Service Tax Department as commercial entity of a mandap keeper involved in the renting of immovable property since 2015 and paying taxes on its claimed receipts under the respective heads which are reason enough to establish that although the applicant has deceitfully been availing the benefits of exemption u/s 11 of the Income Tax Act, 1961 by purporting itself to be an educational and charitable institution and on the other hand has registered itself as a commercial entity with the Service Tax Department and is carrying out activities of a purely commercial nature.</p>	<p>Such allegations have also no legs to stand. In fact as stated in foregoing para 4(vii) the assessee society towards the attainment of its object of social welfare provided space to poor/weaker section and needy persons to perform marriages, group marriages and other social functions free of cost or nominal rates. As the charges recovered from providing the space exceeded the threshold limit as provided under Service Tax Act thus the assessee society was under statutory obligation to get it registered under Service Tax as a society under the specified head of Mandap Keeper.</p>



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	<p>This clearly establishes the fact that the assessee is not carrying out activities as per norms mandated by law for conferring the benefits of exemption u/s 11 of the Income Tax Act, 1961.</p>	
5.	<p>On perusal of the aforementioned report of the Income Tax Officer (Exemption), Agra and the Sport enquiry report of the ITI, it was also found that the applicant has converted a lot of premises that once belonged to the educational intuitions of the assessee to be used as an accessory for augmenting the rental business of the assessee. For instance the auditorium hall currently being utilized as a marriage hall by the assessee once used to be the library of the college and the main marriage ground once used to be the playground of the college. This goes to prove that the assessee which purported itself be an educational institution has now come out of its garb of charity and has become fully engrossed in the diversification and augmentation of its rental business at the cost of its educational premises and thus is not deserving of the tax benefits that are being extended by law to</p>	<p>This allegation is also completely against the facts of the case of the assessee society and even false. In fact in last number of years there is substantial expansion in the building and infrastructure of educational institution and other limbs which is evident from financial statements and other evidence/material produced before your Honour. It is reiterated that normally the space is provided for performing marriages/group marriage and other social functions after the educational and other charitable activities are over or on holidays. The assessee society is continuously expanding its building and infrastructure to ensure successful attainment of its charitable objectives.</p>



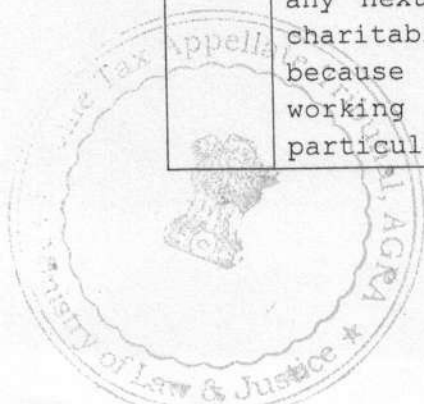
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institutions that have accomplished substantial pursuits of charity.

It is also gathered from the aforementioned reports that the applicant is extending privileges in the booking for marriages and other social events to the Jain community only and the Income and Expenditure Accounts for the F.Y. 2015-16 shows that the biggest expense amounting to the tune of Rs. 21,84,282/- are being carried out for religious purposes and since the booking pattern of the assessee clearly shows its inclination for extending the resources and benefits of the society to a specific community, the possibility that a large chunk from the aforementioned expenses are being utilized for the benefit of that particular community, cannot be ruled out. The assessee has by this very act has attracted the provision of the Section 13(1)(b) of the Income Tax Act, 1961. In the absence of any nexus with religious or charitable purpose, merely because the applicant is working majorly for a particular caste, it cannot

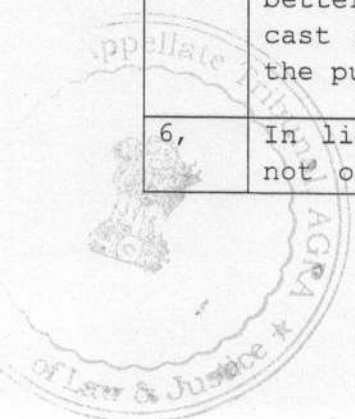
This allegation is absolutely wrong, untrue and completely against the facts of the case of assessee society. As stated in foregoing paras the assessee society towards the attainment of its object of social welfare is providing space to poor/weaker section and needy persons irrespective of caste, creed, religion or community to all section of society for performing marriages, group marriages and other social functions free of cost or at a very nominal charges without any profit motive. It is vehemently submitted that no special consideration is given to Jain community. Thus provisions laid down under section 13(1)(b) of the Act are not attracted over assessee's case.



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	<p>be said that it is for charitable purpose. On perusal of the Society's Memorandum it is found that the objective of the applicant is to work for the educational, social, economic, spiritual, physical, cultural and intellectual upliftment of the Jain Community and the same is being substantiated by the activities of the</p> <p>assessee. This attracts the provisions of the section 13 (1)(b) of the Income-tax Act, 1961 which states that nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof in the case of a trust for charitable purposes or a charitable institution if the trust or institution is created or established for the benefit of any particular religious community or caste. This is fatal to the claim of the applicant as its objects are majorly aiming for the betterment of a particular cast rather than benefitting the public at large.</p>	
6,	In light of the above facts not only is the society M/s	

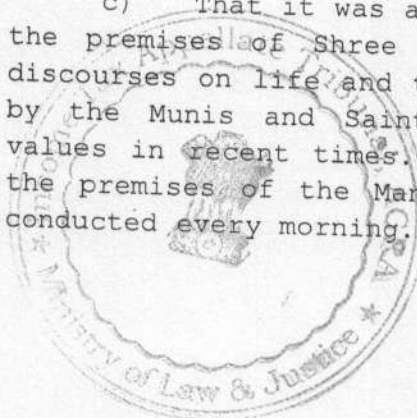




	<p>Shri Digamber Jain Shiksha Samiti, Hari Parwat, Agra, U.P. having PAN AADAS9404Q carrying out activities in variance with the norms mandated by law by generating income as a commercial entity engage in the business of renting out premises for marriage and other social activities with preference to a specific community generating profits only to augment its business and generate further income.</p>	
7.	<p>In the instant case the assessee society does not seem to be involved in a charitable activity as the aforementioned activities not only are prohibited by law but also are not characteristic of an Institution that enjoys registration u/s 12AA.</p>	

b) That the Ld.CIT(E), Lucknow was also apprised that as the assessee society had come into existence on 22<sup>nd</sup> August, 1959 i.e. prior to commencement of the Income Tax Act, 1961, thus the provisions laid down under clause (b) of sub section (1) of section 13 of I.T. Act, 1961 (hereinafter referred to as 'the Act') according to which "in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste," are inapplicable over the assessee's case.

c) That it was also apprised to the Ld.CIT(E), Lucknow that in the premises of Shree Shantinath Digamber Jain Mandir, lectures and discourses on life and teachings of Holy Books, Shastras and Granthas by the Munis and Saints aim to upliftment of deteriorating human values in recent times. Such sermons are open for all to attend. In the premises of the Mandir, free yoga classes in the open park are conducted every morning. The entry to such yoga classes is open to all



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and no fee for charging such classes. From the perusal of Income & Expenditure A/C of Shree ShantinathDigamber Jain Mandir, it is evident that towards the repairs and preservation of Mandir Rs.21,84,282 were incurred. It is settled law that the income applied towards the repairs and preservation of Mandir for all the purposes is treated as application of income towards the attainment of charitable objects.

d) That the assessee society during the course of registration cancellation proceeds duly furnished the explanation for the eight documents supplied to it, before the Ld.CIT(E), Lucknow, which are reproduced hereunder :-

1. Copy of letter dated 09.05.2017 of Joint Commissioner of Income Tax, Exemption Range, Ghaziabad bearing reference no. F.No. JCIT(E)/GZB/TEP/2017-18/264 Sub: Call for report in the case of Shri Digamber Jain Shiksha Samiti, Hariparwat, Agra (PAN-AADAS9404Q)- sending of report-Reg. addressed to The Commissioner of Income Tax, Exemption, Lucknow.

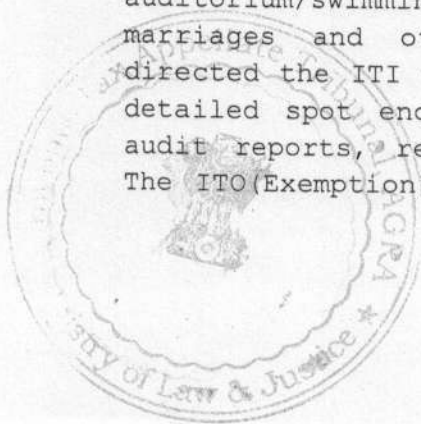
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Through such letter the learned Joint Commissioner of Income Tax, Exemption Range, Ghaziabad has forwarded to your Honour, a copy of letter bearing reference no. F.No. JCIT(E)/GZB/TEP/2017-18/264 dated 9<sup>th</sup>May, 2017 alongwith its enclosures. Thus such letter itself is not containing any specific adverse material/evidence or finding.

2. Copy of letter dated 02.05.2017 of Income Tax Officer (Exemption), Agra bearing reference no. F.No.ITO(Exemption)/AGRA/TEP/2016-17/61 Sub:- Call for report in the case of Shri Digamber Jain Shiksha Samiti, Hari Parwat, Agra (PAN: AADAS9404Q) - sending of report - regarding addressed to The Joint Commissioner of Income Tax, Exemption Range, Ghaziabad.

(Two Pages)

According to such letter, to know about the genuineness of the allegations framed by the complainant that the assessee society is engaged in commercial activities by renting its playground/ auditorium/swimming pool of its inter college for the purposes of marriages and other social activities, the ITO(Exemption), Agra directed the ITI to make discreet/spot enquiry. The ITI submitted his detailed spot enquiry report dated 1<sup>st</sup>May, 2017 and collected ITRs, audit reports, registration U/S 12AA/80G, bank account details etc. The ITO(Exemption), Agra on the basis of details/documents before him





and in the light of spot enquiry of ITI, finally concluded that the assessee society besides carrying out main charitable and religious activities is also engaged in business activities by renting out its college ground/auditorium, hall for marriages and other social activities to the general public. The society got registered itself in Service Tax Department in the year 2014-15 as "Mandap Keeper and Renting of Immovable Property". The society is filing its return of income from A.Y.2014-15 and onwards and also registered U/S 12AA/80G of the Act. Thus such letter is not containing any adverse finding.

3. Copy of Spot Enquiry Report dated 01.05.2017 of Inspector Income Tax bearing reference no.NIL Sub: Spot Enquiry Report in the case of M/S Shree Digamber Jain Shiksha Samiti, Hari Parwat, Agra - regarding addressed to The Income Tax Officer (Exemption), Agra.

(Three Pages)

4. That on 13<sup>th</sup> October, 2017 the ITO(HQ) O/o CIT(E), Lucknow provided the 'Assessee Society' the adverse material, solely on the basis of which the show cause notice dated 16<sup>th</sup> August, 2017 was issued by the Id.CIT(E), which was comprising of following documents consisting of 8 pages :-

PB 313 - 322

1. Copy of letter dated 09.05.2017 of Joint Commissioner of Income Tax, Exemption Range, Ghaziabad bearing reference no. F.No. JCIT(E)/GZB/TEP/2017-18/264 Sub: Call for report in the case of Shri Digamber Jain Shiksha Samiti, Hariparwat, Agra (PAN-AADAS9404Q) - sending of report-Reg. addressed to The Commissioner of Income Tax, Exemption, Lucknow.

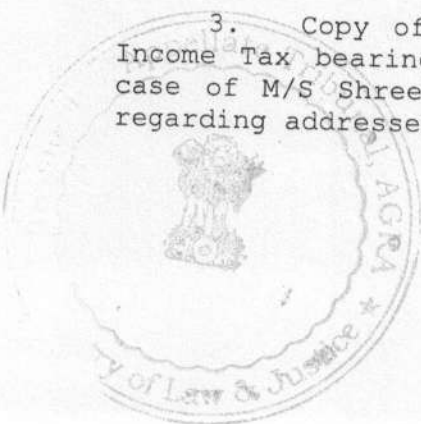
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2. Copy of letter dated 02.05.2017 of Income Tax Officer (Exemption), Agra bearing reference no. F.No.ITO(Exemption)/AGRA/TEP/2016-17/61 Sub:- Call for report in the case of Shri Digamber Jain Shiksha Samiti, Hari Parwat, Agra (PAN: AADAS9404Q) - sending of report - regarding addressed to The Joint Commissioner of Income Tax, Exemption Range, Ghaziabad.

(Two Pages)

3. Copy of Spot Enquiry Report dated 01.05.2017 of Inspector Income Tax bearing reference no.NIL Sub: Spot Enquiry Report in the case of M/S Shree Digamber Jain Shiksha Samiti, Hari Parwat, Agra - regarding addressed to The Income Tax Officer (Exemption), Agra.

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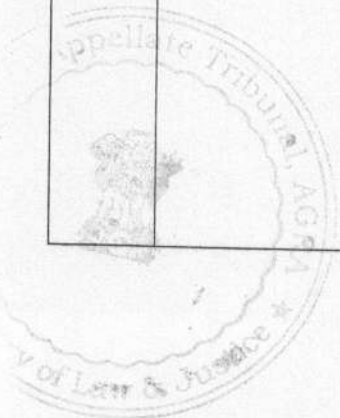


4. Copy of Complaint letter dated 01.05.2017 of Mrs. Bhavna Jain, 685, Narain Tower, Sanjay Place, Agra addressed to Commissioner of Income Tax (Exemptions), Gomti Nagar, Lucknow, U.P. alongwith copy of Bye-laws page 1.

(Two Pages)

5. i) That on 27.11.2017, the AR filed paper compilation dated 27.11.2017 comprising of 35 documents and furnished the complete and detailed explanation with regard to 8 (eight) documents, provided by the CIT(E), Lucknow to him and further submitted the allegationwise explanation with regard to the report of Income Tax Inspector(ITI), some of which are reproduced hereunder for your Honours' ready reference.

SNO.	Allegation of ITI	Explanation
1.	That the society is engaged in the charitable & religious activities through its four limbs - (i) a inter college (under the name & style as M/S Mahavir Digamber Jain Inter College, Agra), (ii) a temple of Jain religion (M/S Shri ShantinathDigamber Jain Mandir), (iii) a jain literature sansthan (M/S Jain Sahitya ShodhSansthan) and, (iv) a charitable homeopathy clinic (M/S Shri Mahavir Digamber Jain Homeopathic Aushdhalaya, Agra)	1) a) That as already submitted earlier towards the attainment of charitable objects for propogating and imparting education the assessee society is primarily running Inter College under the name and style of Mahavir Digamber Jain Inter College, Hariparvat, Agra wherein about 3000 students from various caste, creed, religion and community for the benefit of the public, are studying in Class VI to Class XII, which has separate blocks for both Hindi and English medium.  b) That it is pertinent to apprise your Honour that while no fees is charged from students studying in Class VI to VIII, nominal fee of Rs.450 per annum is charged from the students studying in Class IX to XII out of which 60% is passed on to Department of Education, Government of Uttar Pradesh. Further in many cases looking to the financial status of the parents/guardian, concession in fee is allowed to the number of students and even in many cases the



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fees is waived. Such Inter college has well equipped science (1) Physics lab (2) Chemistry lab (3) Biology lab and Air conditioned Computer training lab having about 130 computers with qualified & experienced and knowledgable trainers. The college has very highly qualified and dedicated lecturers and teachers numbering about 60. It has outdoor games and qualified games and gymnasium teachers. The college is having examination results for both High School and Intermediate Boards examination 100% pass, out of which about 70% of the students passing in first division. For moral upliftment of the students "**NAITIK SHIKSHA**" is also imparted to the students. This college has been assessed as "A" Grade by the Directorate of Education, Government of Uttar Pradesh. The students of this college have been awarded Trophy/Certificate in various fields like science, various games and debate, social-service and other important activities.

2. That apart from the aforementioned primary charitable activity of propogating and imparting education the assessee society has another charitable limb styled as 'Shri ShantinathDigamber Jain Mandir', which is of religious

and historical importance. In such charitable limb the assessee society is actively engaged in propogating messages, teachings, ideals and philosophy of religious and spiritual reformers to create a sense of non violence, brotherhood,

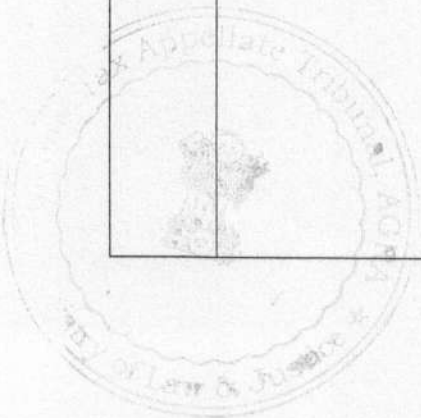


humanity, communal harmony and equality among general public. Hundreds of visitors from various religious community or caste or creed participate in the discourses for the spiritual and moral upliftment.

3. That in the other charitable limb styled as 'Jain Sahitya SodhSansthan' the assessee society is maintaining a library wherein more than 3000 rare books, shastras are preserved/maintained and the public from various section/society visit such library for reading and even for research work.

4. That in the fourth charitable limb the assessee society is running charitable homeopathic dispensary under the name and style of 'Shri Mahavir Digamber Jain Homeopathic Aushadhalaya', for the benefit of public at large for providing medical relief to the poor and needy patients irrespective of caste, creed, religion or community. In such dispensary two qualified and experienced doctors and three compounders are working both in the morning and evening and around 82 to 100 patients are attended every day.

5. a) That so far so Shree Digamber Jain Shiksha Samiti is concerned, towards the attainment of its objects of social welfare, it is providing space to poor/weaker section and needy persons irrespective of caste, creed, religion or community for performing



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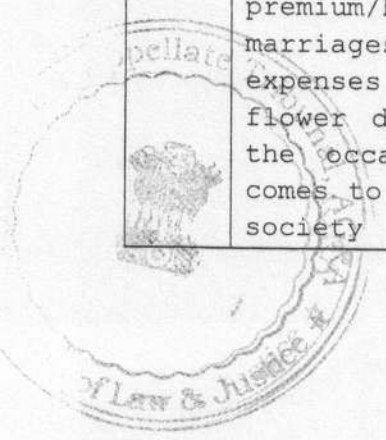


	<p>marriages, group marriages and other social functions, free of cost or at very nominal charges without any profit motive. Normally the space is provided for use after the educational institution and other charitable institutions are over or on holidays so that charitable activities are not hampered. The funds generated from such charges recovered are utilized wholly and exclusively towards the attainment of the charitable objects of the assessee society, which is evident from financial statement particularly income and expenditure and receipt and payment account filed at pages 33 to 111 of paper compilation dated 16<sup>th</sup> August, 2017.</p> <p>b) That various documents mentioning details where space was provided without any charge or against nominal charges stands filed at pages 250 to 292 of paper compilation dated 16<sup>th</sup> August, 2017. On account of such charitable activity the poor/weaker section and needy persons are able to perform marriages in limited budget because these days performing marriage in hotels or marriage homes involves exorbitant expenditure beyond means of majority of middle class. Such charitable activity provided by the assessee society is appreciated by all. The space is provided to all without any discrimination of caste, creed, religion or community.</p>
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<p>2. That besides the said charitable &amp; religious activities, the society is widely involved in carrying out commercial activities in the shape of renting out its grounds/ auditorium(hall)/Narayan Bhawan/Bal Mandir Bhawan for the purpose of marriages &amp; other social</p> <p>activities/events to the general public with preference to jain community. From discreet enquiries it is gathered that the M.D.Jain venue is well known for its premium/high class marriages and the minimum expenses for booking/tent/flower decoration etc. on the occasion of marriage comes to rs.6-7 lakhs. The society is charging</p>	<p>i) That such allegation is completely contrary to the facts of the assessee's case. In fact all the limbs of assessee's society namely Shree Mahavir Digamber Jain Inter College, Shree ShantinathDigamber Jain Mandir, Shree Jain Sahitya ShodhSansthan and Shree Mahavir Digamber Jain Aushdhalay are actively carrying out charitable activities towards the attainment of</p> <p>charitable objects laid down in Bye-laws. As stated above, towards the attainment of its object of social welfare the space is provided to poor/weaker section and needy persons irrespective of caste, creed, religion or community to all section of society for performing marriages, group marriage and other social functions free of cost or at very nominal rates, without any profit motive.</p> <p>ii) That it is categorically submitted that maximum charges towards the use of space during 2015-16 amounting to Rs.91,000 which is evident from statement of accounts and records of Service Tax which are produced before your Honour. Further such facts are verifiable with reference to pages 250 to 292 of the paper compilation dated 16<sup>th</sup>August, 2017.</p> <p>iii) That ordinary and simple low budget marriages and other functions are performed by poor/weaker section or needy person. The premium/high class marriages are performed in luxury and five star hotels and marriage homes. The funds generated from such charges recovered are wholly and exclusively utilized towards the attainment of charitable objects of the assessee society, which is evident from</p>
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<p>Rs.81,000/- (plus 15% service tax) for main ground and Rs.25,000/- (plus 15% service tax) for auditorium hall at the time of marriage booking and Rs.1 lakh is separately taken at the time of engagement of halwai/caterer on behalf of tent contractor. The balance amount is taken by the tent contractor- Purshottam Tent House (Prop.Mr. Sonu Agrawal) who is singly managing all the affairs of the society for the last many years. It is gathered from reliable sources that the society had leased the venues to Purshottam Tent House under certain agreed terms &amp; conditions and it is receiving an amount of Rs.1-1.5 lakhs per marriage from the tent contractor under the table as the society receives itself an additional amount of Rs.1 lakh at the time of engagement of halwai/caterer on behalf of said tent contractor. However, when I asked Dr. J.K. Jain, the secretary about the lease agreement/ lease amount with the tent contractor, he stated that</p>	<p>financial statements particularly income and expenditure accounts filed at pages 33 to 111 and pages 293 to 295 of paper compilation dated 16<sup>th</sup>August, 2017.</p> <p>iv) That it is categorically submitted that apart from charges realized from the persons who book the space, no sum is taken from the tent contractor or halwai or caterer etc. The allegation that at the time of marriage booking and at the time of engagement of halwai/caterer Rs.1 Lakh is separately taken is completely false and baseless.</p> <p>v) That neither there exists any arrangement between Purshottam Tent House nor any venue has been leased out to them and no fixed amount being received by the assessee society in lieu of the same. As stted above, the assessee society towards the use of space recover charges from the persons who book the space. Further the allegation that the assessee society receives an amount of Rs.1-1.5 lakhs from Purshottam Tent House, tent contractor under the table is completely false and baseless. In support of such fact duly notorized affidavit of Mr. Saurabh Goyal alias Sonu S/O Late Shri Vipin Goyal, Prop. Purshottam Tent House, Agra dated 16<sup>th</sup>November, 2017, affirming on oath that there exist no contract between Shree Digamber Jain Shiksha Samiti and Purshottam Tent House and the persons performing function straight away contact him for their work and get the work done according to their choice and further no amount or commission has been given by Purshottam Tent House to Shree</p>
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the society has given the tent contract free of cost to Mr. Sonu Agrawal and it is not charging anything from the tent contractor.

Further, at the time of booking, a prescribed booking form is also got filed up from the party after taking entire booking amount. The copies of such sample duly filed in forms collected at the time of enquiry are enclosed herewith for ready reference. In case of other social activities, the society is charging 20,000/- to 25,000/- (plus service tax) per event as lease rent.

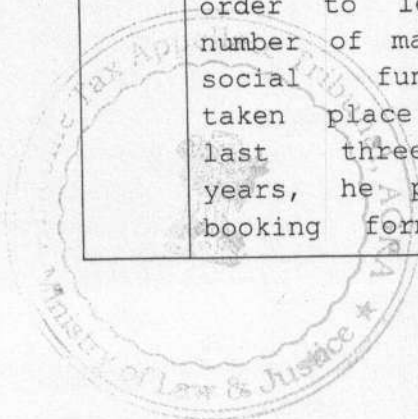
During the course of spot enquiry when I asked Shri Rajesh Dixit, the booking manager to produce the booking registers/ booking forms for inspection in order to let know the number of marriages/other social functions/events taken place during the last three financial years, he produced some booking forms only and

Digamber Jain Shiksha Samiti for work done by it in the premises of the said society, is filed herewith.

vi) That further affidavit of Mr. Jitendra Kumar Jain S/O Late Shri Babulal Jain, General Secretary of Shree Digamber Jain Shiksha Samiti dated 16<sup>th</sup> November, 2017 affirming on oath that proper receipt is being issued against the booking of the space by Shree Digamber Jain Shiksha Samiti on which service tax is charged which is regularly deposited with the Service Tax department within the stipulated time. The assessee society only provides space and nothing else is provided/ arranged. The person concerned directly contacts the tent contractor and other contractors for arranging tent, decorative lights, catering, flowers etc. Further there is no contract between the assessee society and Purshottam Tent House, is filed herewith.

vii) That since the inception the assessee society is maintaining proper books of account and records which are audited. Whatever records were required they were duly produced before authorities below. The receipts from providing space and booking amount are verifiable with reference to relevant records which are produced for your Honour's verification.

viii) That it is reiterated that the assessee society towards the attainment of its objects of social welfare, provided space to poor/ weaker section and needy persons irrespective of caste, creed, religion or community for performing



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	<p>none of the booking registers/compiled details were produced for inspection. It is also told that the society is registered under Service Tax department as mandap keeper and renting of immovable property since 2015 and paying due taxes on entire receipts under these heads.</p>	<p>marriages, group marriages and other social functions free of cost or at very nominal rates. When the charges recovered from providing the space exceeded the threshold limit as provided under Service Tax Act, immediately the assessee society got itself registered under Service Tax as a society under the specified head of Mandap Keeper.</p> <p>ix) That affidavits of various persons who have booked the space provided by the assessee society, affirming on oath that the booking was made by them after furnishing the requisite booking form and after making the payment of booking amount and service tax, for which a receipt has been issued by the assessee society. Apart from the same no additional/extra amount was demanded and paid. Further he individually had made arrangement of tent, decorative lights, catering, flowers etc. and made payment towards the same to the concerned persons and the assessee society had nothing to with such arrangement or payment with regard thereto.</p>
3.	<p>That there is no swimming pool in the campus. It is told to me that there used to be a swimming pool in the college campus 20 years ago and due to some causality, the society closed it permanently and converted into a bridegroom living all adjacent to the main marriage ground.</p>	<p>That it is true that there used to be a swimming pool in the campus but on account of tragic death of one of the student, it was closed long back and such space is filled by mud and no activity of whatsoever nature is carried out on it. It is categorically submitted that the space where the swimming pool existed has not been converted into a bridegroom hall.</p>
4.	<p>It is gathered that the</p>	<p>This allegation is also completely</p>





	<p>auditorium hall being used for marriage purposes, was earlier used to be the library of the college. Similarly, the main marriage ground used to be the college main play ground.</p>	<p>against the facts of the case of assessee society and even false. The educational institution namely Shree Mahavir Digamber Jain Inter College has got separate library. Further the college has got a play ground where sports activities are carried out regularly. The space is provided for performing marriages, group marriages and other social functions only after the educational institution and other charitable activities are over or on holidays so that the educational/charitable activities are not hampered.</p>
<p>5.</p>	<p>That the society is basically dominated by Jain community and preferences/privileges in the bookings for marriages/other social events are given to the jain community. It is estimated that every year, this venue is booked for approx 40-50 marriages besides other social activities.</p>	<p>This allegation is absolutely wrong, untrue and completely against the facts of the case of assessee society. As stated in foregoing paras the assessee society towards the attainment of its object of social welfare is providing space to poor/weaker section and needy persons irrespective of caste, creed, religion or community to all section of society for performing marriages, group marriages and other social functions free of cost or at a very nominal charges without any profit motive. It is vehemently submitted that no special consideration is given to Jain community. Such facts are borne out and verifiable with reference to pages 250 to 292 of the paper compilation dated 16<sup>th</sup> August, 2017.</p>
<p>6.</p>	<p>That the society has registered itself under Service Tax department for aforesaid commercial activities in the year 2015.</p>	<p>That as stated above, the assessee society towards the attainment of its object of social welfare provides space to poor/weaker section and needy persons irrespective of caste, creed,</p>



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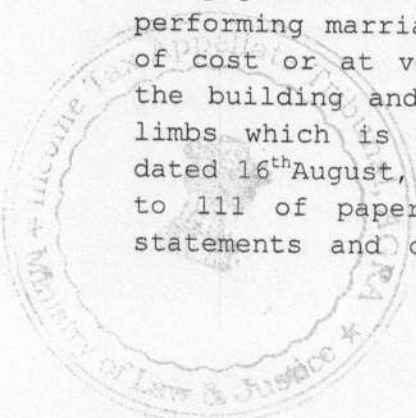
		<p>religion or community for performing marriages, group marriages and other social functions free of cost or at very nominal rates. As the charges recovered from providing the space exceeded the threshold limit as provided under Service Tax Act thus the assessee society was under statutory obligation to get it registered under Service Tax as a society under the specified head of Mandap Keeper.</p>
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4. Copy of Complaint letter dated 01.05.2017 of Mrs. Bhavna Jain, 685, Narain Tower, Sanjay Place, Agra addressed to Commissioner of Income Tax (Exemptions), Gomti Nagar, Lucknow, U.P. alongwith copy of Bye-laws page 1.

(Two Pages)

a) That from the perusal of complaint letter dated 01.05.2017 of Mrs. Bhavna Jain, 685, Narain Tower, Sanjay Place, Agra addressed to your Honour, it is evident that according to the complainant the assessee society had obtained registration U/S 12AA and perhaps approval U/S 80G of the Act, by furnishing the false documents. In this regard, it is most humbly submitted that in the light of facts and circumstances of the case of the assessee society submitted vide its paper compilation dated 16<sup>th</sup> August, 2017 and in the foregoing paras and further in the light of letter dated 2<sup>nd</sup> May, 2017 of Income Tax Officer (Exemption),

Agra, it is beyond doubt established that the assessee society is undoubtedly carrying out/conducting charitable activities through its four limbs and in addition thereto, towards the attainment of its objects of social welfare, provides space to poor/weaker section and needy persons irrespective of caste, creed, religion or community for performing marriages, group marriages and other social functions free of cost or at very nominal rates. There is substantial expansion in the building and infrastructure of educational institution and other limbs which is evident from pages 293 to 295 of paper compilation dated 16<sup>th</sup> August, 2017, Income & Expenditure A/C etc. filed at pages 33 to 111 of paper compilation dated 16<sup>th</sup> August, 2017 and financial statements and other evidence/material produced before your Honour.



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The assessee society is continuously expanding its building and infrastructure to ensure successful attainment of its charitable objectives. The complainant has filed the old objects alongwith her complaint letter dated 1<sup>st</sup> May, 2017, the latest amended objects both in Hindi and its English translation are filed at pages 4 & 5 of paper compilation dated 16<sup>th</sup> August, 2017.

b) That now it is evident that the contents of the complaint letter dated 01.05.2017 are contrary to the facts of the case of the assessee society, false and baseless. These are not substantiated by any adverse material/evidence and thus have no legs to stand."

ii) That he duly apprised the CIT(E), Lucknow that a charitable institution, like 'Assessee Society' with the object of general public utility need not to loose its registration merely because it incidentally has commercial activities. If the dominant object is not to carry on business or trade or commerce, then an incidental or ancilliary activities for which a sum is charged does not destroy the character of a charitable institution. No taboo, if business, is incidental to the object and it feeds charity it could not be said that the object of the institution is to carry on the business. **Issue as to whether activities of assessee are commercial in nature has to be considered by the AO while giving exemption under section 11 and not by the Commissioner for cancellation of registration.**

PB 322/1 - 336/15

iii) That during such proceedings the AR demonstrated that charges recovered for providing space for marriages, group marriages and other social function, had never ever exceeded the limit of twenty percent prescribed under proviso to sub section (15) of section 2 of the Act, the relevant portion of, such explanation are reproduced hereunder :-

a) That from the perusal of consolidated Income & Expenditure A/C for F.Yrs.2013-14, 2014-15 and 2015-16, it is evident that the income from providing space by Shree Digamber Jain Shiksha Samiti to the poor/weaker section and needy persons for weaker section, total receipts of the 'Assessee Society' and percentage of charges from providing space with reference to total receipts were as under :-



	F.Y. 2013-14	F.Y. 2014-15	F.Y. 2015-16
Charges from providing space	739,564	2,157,600	2,385,543



Total receipts	50,255,981	46,969,769	48,566,592
% of charges from providing space	.07%	4.59%	4.91%

Thus the charges recovered from providing space for marriages, group marriages and other social functions never exceeded the limit prescribed under proviso to sub section(15) of section 2 of the Act.

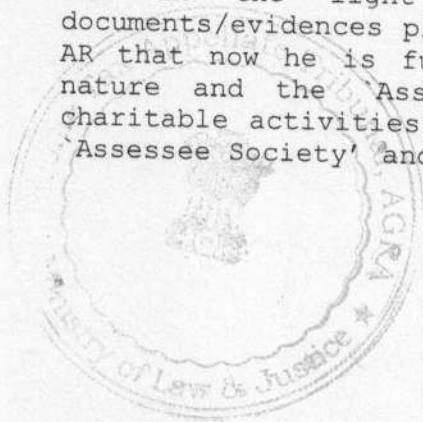
b) That finally the AR requested Ld.CIT(E), Lucknow that as the provisions laid down under section 12AA(3) of the Act are not attracted over the case of Assessee Society, thus the present proceedings may kindly be dropped.

c) That further during such proceedings when the AR apprised the CIT(E), Lucknow that the complainant is wife of Dr. Rajiv Jain, Former Principal of Mahavir Digamber Jain Inter College, Agra, one of the charitable limb of the assessee society, who on account of various grave irregularities has been relieved from duties in 2015 and since then he has started number of litigations with the assessee society before many authorities and Courts. His wife Mrs. Bhavna, the complainant since then is revengefully making false complaint(s) to various officials/departments with ulterior motive and malafide intention. Since her complaint(s) are general in nature, solely based upon 'hear say' and 'mere say' and not supported by any specific adverse evidence/material, thus no one takes cognizance thereof, then he requested the AR to inform him the outcome of her complaints with the CGST Officials and with Sub Registrar of Firms, Societies & Chits, which may help him in dropping the present proceedings.

6. a) That on 06.02.2018 the AR personally appeared before the Ld.CIT(E), Lucknow and filed paper compilation consisting of 233 documents to substantiate that after the detailed investigation the CGST officials and Sub Registrar of Firms, Societies & Chits, Agra, to whom also Mrs. Bhavna Jain, the complainant filed the complaint against the Assessee Society, did not draw any adverse inference from her general nature of complaint made revengefully and with ulterior motive against the Assessee Society.

PB 357 - 375

b) That on the basis of facts of the case of Assessee Society and in the light of details, informations, explanation and documents/evidences placed on records, the CIT(E), Lucknow assured the AR that now he is fully satisfied that the complaint is of general nature and the 'Assessee Society' is genuinely carrying out the charitable activities, strictly in accordance with the objects of the 'Assessee Society' and thus he will drop the present proceedings.



*[Handwritten signature]*



7. That thereafter on the basis of telephonic call of ITO(HQ), CIT(E), Lucknow the AR personally appeared before CIT(E) on 05.02.2019 and filed paper compilation comprising of 8 (eight) documents and a copy of Circular No.21/2016 (F.No.197/17/2016-ITA-1) dated 27.05.2016 and apprised the CIT(E), Lucknow that the Deputy Registrar of Firms, Societies & Chits, Agra for examining the correctness of aforementioned complaint made by Mrs. Bhavna Jain, had appointed M/S Priya Ranjan and Associates, Chartered Accountants, 23/272, Wazirpura, Agra-282003 for submitting the investigation report on the issues raised by the complainant, who vide their investigation report dated 23<sup>rd</sup> November, 2018, after making detailed investigation and enquiry, could conclude that there exists no irregularity as alleged by the complainant. In support of said fact the AR filed a copy of investigation report submitted by M/S Priya Ranjan and Associates, Chartered Accountants, Agra dated 23<sup>rd</sup> November, 2018 to Deputy Registrar of Firms, Societies & Chits, Agra. On even date the AR invited the attention of CIT(E), Lucknow to the aforementioned Circular dated 27.05.2016 of Hon'ble CBDT and explained him that by way of such Circular the Board has advised the field authorities, not to cancel the registration of a charitable institution granted U/s 12AA just because the proviso to section 2(15) comes into play.

PB 376/1 - 383/8, 384

8. That though the 'Assessee Society' was expecting the order from CIT(E), Lucknow dropping the proceedings U/S 12AA(3) of the Act but unexpectedly it received notice U/S 129 of the Act dated 12.10.2020 fixing 26.10.2020 for compliance. According to para 3 of such notice the 'Assessee Society' was assured that "In case of non submission of any further documents/information, the case will be considered on the basis of materials available on records.

PB 385 - 386

9. a) That on the basis of telephonic message, the AR in compliance of aforesaid notice U/S 129 of the Act, the AR Advocate Pradeep Kumar Sahgal, despite of corona pandemic highly restrictive movements personally appeared and apprised Ld.CIT(E), Lucknow with datewise past proceedings before her predecessor and about the paper compilations, submissions and material/evidences placed on records from time to time and requested her that as since the inception the 'Assessee Society' is genuinely carrying out the charitable activities strictly in accordance with the objects and invited her kind attention to the circular no.21/2016 (F.No.197/17/2016-ITA-I) to substantiate that even if from academic point of view the income from providing space be considered to be an activity in the nature of trade commerce or business, but the aggregate value of receipts from such alleged commercial activity being less than 25,00,000 or changed cut-off benchmark of 20% of total receipts, the purpose of such trust/institution shall be deemed as 'Charitable' despite it deriving consideration from such activities.

b) That during such proceedings the AR submitted that the temporary excess of receipts beyond the specified cut-off in one year



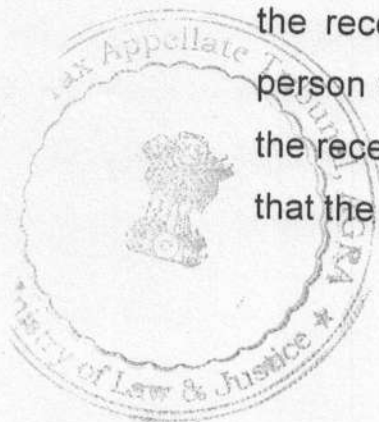
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may not necessarily be the outcome of alteration in the very nature of the activities of the trust or institution requiring cancellation of registration already granted to the trust or institution. Hence, section 13 of the Act has been amended vide Finance Act, 2012 by inserting a new sub-section (8) therein to provide that such organization would not get benefit of tax exemption in the particular year in which its receipts from commercial activities exceed the threshold whether or not the registration granted is cancelled.

c) That during such proceedings the AR further invited the kind attention of the Ld.CIT(E) that as the 'Assessee Society' had came into existence on 22<sup>nd</sup> August, 1959 i.e. prior to commencement of the Income Tax Act, 1961, thus the provisions laid down under clause(b) of sub section(1) of section 13 of I.T.Act, 1961 (hereinafter referred to as 'the Act') according to which "in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste," are inapplicable over the assessee's case."

3. The Ld.AR had drawn our attention to the order passed by the Commissioner exemption whereby the registration was cancelled by her. It was the contention of the Ld.AR that the assessee was involved into imparting the education to various category of students without any discrimination on the basis of caste creed or religion. It was also submitted that the assessee was established even prior to coming into force the income tax act 1961. It was also submitted that the assessee had provided all the details as sort by the Commissioner exemption, in the form of books of account maintained by the assessee showing the receipt of the rental income of party hall along with the person who had apply the premises for the said purposes and the receipt of money from them. The Ld.AR had also submitted that the assessee had also provided the various documents to



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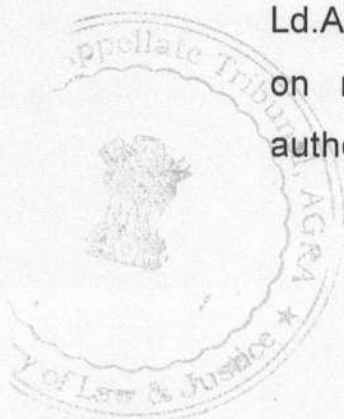
<p>Page 11 of CIT(A)(EXE )</p>	<p>The assessee submitted the replies from time to time but failed to substantiate the following issues:</p> <ol style="list-style-type: none"><li>1. The assessee is, earning income through Swimming pool, playground and auditorium but failed to provide the proper accounts of the income earned from commercial activities. The assessee has to maintain proper account of the commercial income but in spite of providing specific opportunity, assessee, society failed to furnish complete details of same it implies that assessee is not maintaining proper book of accounts with respect to commercial income.</li><li>2. The assessee failed to provide the list relating to bookings of playground for the Purposes of marriage, sale exhibition etc through which income is received.</li></ol>
<p>Page 13</p>	<p>The fact regarding earning ncome through renting Of auditorium (hall) is never, denied by the assessee society. 'Thus it is undisputed fact that the assessee society is engaged in commercial activities of letting of proPerties which is not part of the objects.</p> <p>The society has not mentioned the renting of auditorium (hall) for the purposes of marriages etc. as one of the objects set forth in the memorandum of the society, The society is not only, engaged in commercial activity of renting out premises of its educational institutions but also charging huge fees for the same and the receipts are not being utilized for the benefit of any act of charity.</p> <p>The assessee society never furnished the list of the persons to whom the properties were let out which was categorically asked for. It is clear that the assessee society has never rented out the properties for marriages of the economically weaker / backward sections of the society which clearly proves that the society is existing only for commercial motives and not for any act of charity.</p>





<p>Page 14</p>	<p>During the course of proceedings the assessee also failed to furnish the complete details of the booking register/booking forms so as to gauge the number of bookings in the past years but the assessee produced only a few booking forms and no complete details were produced. It clearly proves that despite having ample business activities during the entire year, as is evident from the well-established venue which is a premier marriage hall, the assessee society has failed to produce its financial statement and booking registers. This clearly shows the intention of the assessee society to understate the actual profit made from the rental business. The audit reports/accounts submitted during the, course of proceedings do not show true and correct financial status of the assessee society .</p>
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4. show that the activities of the assessee are not violating of either the trust deed or any of the objects for which the assessee was established. It was also the contention of the assessee that the total receipt from renting of the hall was much below that the threshold limit as mentioned in section 2(15) of the Act. The Ld.AR had also submitted that the commission exemption while passing the order impugned before us had grossly neglected to consider the documents placed on record and our attention was drawn to the paper books file before us along with the relevant paragraphs of the impugned order which shows the total non-consideration of the documents. For the purposes of completeness we are reproducing hereinbelow some of the examples cited by the Ld.AR to buttress his argument that the documents though one on record but have not been considered by the lower authorities.





5. The Ld.AR had drawn our attention to the paper book filed before us where the list of the person who book and availed the party hall and ground were given. Further the assessee has drawn our attention to various other pages showing the complete breakup of the income earned from commercial activities. The assessee has submitted that all the receipts of the assessee were subjected to GST scrutiny as well as the auditors were appointed by the registrar of society to look into the affairs of the assessee however nothing adverse were found by any of the authority.
6. Lastly it was submitted that since the order was passed by the CIT exemption without considering the material on record, therefore it was submitted that the matter may kindly remanded back for granting the personal hearing and passing a detail order after considering documents already on record by the lower authorities.
7. Per contra DR for the revenue had vehemently relied upon the order passed by the Commissioner exemption.it was submitted that necessary opportunity was granted to the assessee before passing the speaking order. It was submitted that the complete details were not provided to the authority below as sought by the lower authorities . further it was submitted that the assessee was indulging into commercial activities which are not permissible in accordance with the bylaws of the assessee



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and therefore the order passed by the Commissioner exemption was in accordance with law.

8. We have considered the rival contention of the parties and perused the material available on record, including the judgments cited at bar during the course of hearing by both the parties. As is evident from the paper book filed before us that the assessee has provided the requisite details of the name and addresses and the amount received from the persons who had booked the party hall before the Commissioner exemption further the assessee had also furnished the books of account showing the bifurcations of the commercial receipt and the income derived from commercial activities. However from the perusal of the order passed by the Commissioner exemption, it is abundantly clear that she had mentioned that the requisite details have not been provided by the assessee during the proceedings before her. The above said facts are contrary to the record and it seems to us that the impugned order was passed by the lower authorities without considering the complete record furnished by the assessee during the proceedings. In the light of the above we set aside the order passed by the Commissioner exemption and remand the matter to CIT exemption. The CIT(exemption) is directed to pass fresh speaking order, in terms of direction given herein above , after following the principle of natural justice and affording the opportunity of hearing to the assessee.



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9. The Commissioner exemption is directed to give a detailed finding dealing with the documents and detail furnished by the assessee with respect to utilization of the party hall for commercial purposes and Commissioner exemption is also directed to examine the accounts and books of accounts of the assessee for the purpose of coming to the conclusion whether the assessee was involved into commercial activities or not. We also direct the Commissioner exemption to examine the case of the assessee in the light of the proviso to section 2(15) of the Act and return a finding whether the case of the assessee falls within or outside the purview of the provision proviso to section 2(15) of the Act.

10. The assessee is also directed to provide any other document as the assessee deem it appropriate within the time frame granted by the Commissioner exemption.

11. In the light of the above the appeal of the assessee is allowed for the statistical purposes.



(Dr. Mitha Lal Meena)  
Accountant Member

(Laliet Kumar)  
Judicial member

Dated: 31/05/2021

Copy of order forwarded to:

- (1) The appellant Shri Digambar (2) The respondent  
(3) Commissioner Joint Shiksha Samiti (4) CIT(A)

04/06/21

व. निजी सचिव/डी.डी.ओ.  
Sr. Private Secretary/D.D.O.  
आयकर अपीलीय अधिकरण  
Income Tax Appellate Tribunal/  
आगरा पीठ, आगरा/Aggra Bench