IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER

I.T.A. Nos. 312 to 314/VIZ/2018
(Asst. Years : 2008-09, 2011-13 & 2012-13)

DCIT (Exemptions), Vijayawada.	vs.	M/s. Cargo Handling Pvt. Workers Pool Trust, S.J. Ward Building, VDLB Hospital, Port Area, Visakhapatnam.
		PAN No. AAATC 1920 F
(Appellant)		(Respondent)

Assessee by	:	Dr. C.P. Rama Swami, Adv.
Department By	:	Shri S.R.S. Narayan, CIT DR
Date of hearing	:	10/03/2020.
Date of pronouncement	:	09/06/2020.

O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER

These appeals by the Revenue are directed against the separate orders of Commissioner of Income Tax (Appeals)-2, Visakhapatnam, all dated 13/03/2018 for the Assessment Years 2008-09, 2011-12 & 2012-13. Since facts and issues are common, clubbed and heard together and disposed of by way of this consolidated order.

2. There is a delay of 10 days in ITA Nos. 312 & 314/VIZ/2018. The Revenue has filed the affidavits for condonation of delay. We

have gone through the affidavits and find that there is a sufficient cause to condone the delay. Accordingly, delay is condoned.

ITA No. 312/VIZ/2018

3. The Department has raised the following grounds of appeal:-

"1. The order of the ld. CIT(A) is erroneous both on facts and in law.
2) Ld. CIT(A) erred in facts and in law in deleting addition of Rs. 1,75,34,760/- u/s. 13(1)(c).
3) Ld. CIT(A) erred in facts and in law in allowing assessee's appeal on the issue of applicability of provisions of section 164(2) and Circular 387 dated 06/07/1984 issued by the CBDT with regard to disallowance of expenditure made by the AO thereby granting relief of Rs. 1,14,08,663/-
4) ld. CIT(A) erred in facts & in law in deleting additions made by the AO towards advancing loans to the staff as welfare measure of Rs. 2,85,000/-, vehicle loans of Rs. 57,844/- building security deposit of Rs. 7,11,708/- purchase of canteen equipment of Rs. 3,150/- and computer system & printer of Rs. 36,000/-
5) Any other ground that may be urged at the time of hearing of the case."

4. Ground Nos. 1 & 5 are general in nature, no adjudication is required, therefore same are dismissed.

5. Ground No.2 relates to addition of Rs. 1,75,34,760/-. The assessee is a trust, filed its return of income and assessment was completed u/sec.143(3) of the Act on 15/12/2010. Subsequently, case was selected for scrutiny and was reopened and assessment was completed u/sec. 143(3) r.w.s. 147 of the Act, dated 13/03/2015. In the assessment order, the Assessing Officer has

noted that assessee has refunded an amount of Rs.3,51,90,879/- to M/s. SICL, out of which an amount of Rs.1,57,47,623/- had been refunded in A.Y. 2008-09 and the remaining balance was refunded in the A.Ys. 2009-10 & 2010-11. According to the Assessing Officer, the assessee refunded an amount of Rs.1,57,47,623/- to M/s. SICL was out of income for the year under consideration. The said payment was reflected as an outgoing in the receipt and payment of the assessee and refund was made by the assessee on the basis of resolution passed by the trust at the instance of the 'authors' or 'founders' and therefore same is hit by the provisions of section 13(1)(c) & 13(2)(g) r.w.s. 13(3) of the Act. Accordingly, the same amount is added to the total income of the assessee.

6. On appeal, ld. CIT(A) by following the decision of the ITAT, Visakhapatnam Bench in ITA No.269/VIZ/2013 dated 22/05/2015 deleted the addition made by the Assessing Officer.

7. On appeal before us, ld. counsel for the assessee has submitted that the issue involved in this appeal is squarely covered by the decision of the coordinate bench of the tribunal in assessee's own case in ITA No. 690 & 691/VIZ/2013 by common order dated 22/07/2016 and submitted that same may be followed.

8. On the other hand, ld.DR relied on the grounds of appeal.

9. We have heard both the sides, perused the material available on record and orders of the authorities below.

10. In this case the assessee has charged excess amount from M/s. SICL which was refunded in the normal course of business. According to the Assessing Officer, the assessee ought not to have refunded to M/s. SICL and he was of the opinion that the refund is hit by the provisions of section 13(1)(c) & 13(2)(g) r.w.s. 13(3) of the Act. The very same issue came up for consideration in A.Ys. 2009-10 & 2010-11 whereby this tribunal has considered the issue and allowed the expenditure claimed by the assessee and deleted the addition made towards refund of excess made to M/s. SICL. For the sake of convenience, the relevant portion of the order is extracted as under:-

> *"8. The next issue that came up for our consideration is denial of exemption u/s 11 of the Act for violation of the provisions of section 13(1)(c) & 13(2)(g) r.w.s. 13(2) of the Act and addition towards refund of excess amount to M/s. South India Corporation Ltd. The Ld. A.R. for the assessee, submitted that the issue involved in this appeal is squarely covered by the decision of ITAT, Visakhapatnam in assessee's own case in ITA No.269/Vizag/2013. The A.R. further submitted that the ITAT, while examining the issue of cancellation of registration u/s 12AA(3) of the Act, in para 16.2 of the order, observed that the excess amount charged from M/s. South India Corporation Ltd. is refunded in the normal course of business of the assessee and accordingly the A.O. was not right in holding that the assessee has diverted its funds to the interested persons, thereby violated the provisions of section 13(1)(c) & 13(2)(g) r.w.s 13(3) of the Act. We find that the coordinate bench of this Tribunal, in assessee's own case in ITA No.269/Vizag/2013 held that excess amount collected from M/s. South India Corporation Ltd and refunded subsequently does not amounts to diversion of funds as defined u/s 13(2)(g) of the Act and accordingly the*

assessee has not violated the provisions of section 13(1)(c) & 13(2)(g) r.w.s 13(3) of the Act. The relevant portion of the order is reproduced below:

> *16. The last question is whether the assessee has violated the provisions of S.13(3)(g) r.w.s. 13(cc) of the Act. At the outset the violation has to be looked into at the time of the assessment and not for applying the provisions of S.12AA(3) of the Act. Sec.12AA(3) does not permit the CIT to examine violation u/s 13 etc.*
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> *16.1. Be it as it may, on facts we find that the Representative of M/s South India Corporation Ltd. was not a trustee of the assessee trust, during the period when excess fee collected was refunded. This factual position, as already stated, was not controverted by the Ld.CIT, D.R. Thus prima facie, invocation of S. 13(2)(g) of the Act r.w.s. 13(3)(cc) is bad in law.*
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> *16.2. Even otherwise, the fee to be charged by the assessee trust is fixed by the Visakhapatnam Port Trust through the Visakhapatnam Dock Labour Board, in the case on hand, it is the Visakhapatnam Dock Labour Board, which found that fee charged from MIs South India Corpn. Ltd. for a particular period was excessive. - This amount was refunded by the Dock Labour Board to the assessee on the ground that excess levy was collected. The assessee is bound to return the said amount to the party, from which such excess levy was collected. Otherwise it would amount to undue enrichment. In this case the Visakhapatnam Port refunded an aggregate amount of Rs7,99 crores, of which, an amount of Rs.4,39 crores was adjusted by credit notes and the balance only was refunded to the party to which it was due. This amount was refunded to South India Corporation Ltd. on various dates during the A.Y. 2008-09, 2009-10 and 2010-11. Refunding the amount legally due to a party cannot be considered a violation of any of the provisions of the Act much less violation of S13 of the Act, The amount is rightfully and legally due to MIs South India Corporation. In fact the Ld.CIT, Visakhapatnam has without proper verification of the facts, come to such wrong conclusions, Thus we reverse this finding of the Ld.CJT, Visakhapatnam and hold that there is no violation of Sec.13(1)(c) read with sections 13(2)(g) and 13(3) of the Act."*

9. Considering the facts and circumstances of the case and also respectfully following the decision of coordinate bench, in assessee's own case in ITA No.269/Vizag/2013, we are of the view that the excess amount refunded to M/s. South India Corporation Ltd. does not amount to diversion of funds as defined u/s 13(2)(g) of the Act. The assessee has refunded excess amount collected from the party by way of anonymous decision of the Board of Directors of the Trust further supported by proof of payment. Therefore, we are of the view that the A.O. was not correct in holding that the assessee has violated the provisions of section 13(1)(c) & 13(2)(g)

r.w.s 13(3) of the Act. Hence, we direct the A.O. to allow the exemption as claimed by the assessee and delete the additions made towards refund of excess amount to M/s. South India Corporation Ltd."

11. By respectfully following the decision of the coordinate bench of the tribunal in assessee's own case in A.Ys. 2009-10 & 2010-11, we find no infirmity in the order passed by the ld.CIT(A). Thus, this ground of appeal raised by the Department is dismissed.

12. So far as ground Nos.3 & 4 relate to the addition of Rs.1,14,08,663/-, out of which Rs. 9,11,880/- and Rs.91,16,768/- are in respect of income-tax payment. According to the Assessing Officer, the income-tax payment made by the assessee for the A.Ys. 2004-05 & 2005-06 amounting to Rs. 9,11,880/- and Rs.91,16,768/- which comes to Rs. 1,00,28,648/- is not allowable deduction, therefore added the same to the total income of the assessee.

13. On appeal, ld. CIT(A) allowed these payments by following the decision of the Hon'ble Andhra Pradesh High Court in the case of *CIT Vs. Trustees of H.E.H. the Nizams Supplemental Religious* [(1981) 127 ITR 378 (A.P.)] as an application of income.

14. Before us, ld. counsel for the assessee has submitted that coordinate bench of the tribunal in assessee's own case in ITA No. 525/VIZ/2014 by common order dated 01/07/2016 has

considered the issue and held that income-tax payment made by the assessee is an application of income, hence, addition cannot be made. For the sake of convenience, the relevant portion of the order is extracted as under:-

> *"19.1. We have heard both the parties and perused the material available on record. The AO disallowed income tax while computing income available for application for charitable purposes. The AO was of the opinion that income tax is not allowable as deduction while computing income available for charitable purpose. It is the contention of the assessee that income tax is allowable as a deduction while computing income in the case of trust claiming exemption u/s. 11 of the Act. We find force in the arguments of the assessee for the reason that income of any trust or society claiming exemption u/s. 11 has to be computed under normal commercial principles. Income tax payable is necessarily an out go from the income of the trust. Therefore, once there is out go towards income tax payment, it has to be allowed as a deduction towards income available for application of income for charitable purpose as held by the Hon'ble AP High Court in the case of CIT AP-1 Vs. Trustee of V.H.E.H. the Nizams Supplemental Trust [127 ITR 378]. The CIT(A) after considering the relevant submissions rightly allowed the claim of the assessee. We do not see any error or infirmity in the order passed by the CIT(A). Hence, we inclined to upheld the order of CIT(A) and reject the grounds raised by the Revenue."*

15. We have considered the entire facts of the case and find that ITAT, Visakhapatnam Bench by following the decision of the Hon'ble Andhra Pradesh High Court in the case of Trustees of H.E.H. the Nizams Supplemental Religious (supra) has considered that the payment of income-tax is an allowable deduction while computing income in the case of trust claiming exemption u/sec. 11 of the Act. Therefore, respectfully following the decision of the

coordinate bench of the tribunal in assessee's own case for the A.Y. 1997-98, we dismiss the ground raised by the department.

16. Insofar as other additions i.e. building security deposit amounting to Rs. 7,11,708/-, canteen equipment of Rs. 3,150/-, computer system and printer of Rs. 36,500/-, advancing loans to the staff of Rs. 2,85,000/-, vehicle loan of Rs. 57,844/- and TDS payable of Rs. 2,85,813/- are concerned, the Assessing Officer has disallowed these expenditure on the ground that in absence of registration u/sec. 12A of the Act.

17. On appeal, ld. CIT(A) considered the same and held that these are the allowable expenses. We find that when the Assessing Officer passed the assessment order the assessee was not having 12A registration. Subsequently, on 22/05/2015 the ITAT in ITA No. 269/VIZ/2013 has restored 12A registration to the assessee. Therefore, the ld. CIT(A) by considering the same is of the opinion that these are the expenditure incurred by the assessee are in the nature of application of income, hence, allowed. We find no infirmity in the order passed by the ld.CIT(A). Thus, this ground of appeal raised by the department is dismissed.

ITA No. 313/VIZ/2016

18. The grounds of appeal raised by the department are as follows:-

"1. The order of the ld. CIT(A) is erroneous both on facts and in law.

2. ld. CIT(A) erred in facts and in law in directing the AO to allow the exemption u/sec. 11 to the assessee society basing on the ITAT order without going into the fact that assessee has violated the provisions of section 13(1)(c) for the present A.Y. i.e. 2011-12

3. ld. CIT(A) has erred in allowing benefit of section 11 to the assessee ignoring the fact that AO has the authority to verify whether activities of the assessee are as per the objects or not. In the case of the assessee, the AO has rightly held that assessee is in the business of providing labour services as assessee is charging fees for the same and it is in violation of objects of the trust.

4. ld. CIT(A) erred in considering the fact that the assessee society violated the provisions of section 13(1)(c) by making payment to M/s. SICL.

5. ld. CIT(A) erred in coming to a conclusion that AO rejected the books of account without finding any defects in spite of the fact that AO vide para 6 of page No. 12 of the assessment order, clearly discussed as to why the books of account are being rejected i.e. in the absence of trust and correct recording of transactions related to 'refund due to M/s. SICL' which was not brought into the books and estimated income at Rs. 1,81,90,970/-

6. Any other ground that may be urged at the time of hearing of the case."

19. Ground Nos. 1 & 6 are general in nature, no adjudication is required, therefore same are dismissed.

20. Ground Nos. 2 to 4 are relate to excess payment refunded to M/s. SICL, which are adjudicated and dismissed as ground No.2 in ITA No.312/VIZ/2018. Therefore, this ground of appeal raised by the department is also dismissed.

21. Ground No.5 relates to rejection of books of account and estimation of income. In the assessment order, the Assessing Officer has noted that from the balance sheet and its schedules III

& VII enclosed in the return of income for the A.Y. 2010-11, it is found that various current assets and liabilities in the nature of receivables and payables have been accounted, whereas refund dues which are in the nature of ascertained liability as per the Board resolution referred above at paragraph No. 5 are found not to have been accounted in the books of account in the balance sheet. Contrary to the details of current assets and current liabilities in the nature of receivable and payables accounted in the balance sheet for the year ending 31/03/2010, the assessee has preferred to take a stand that, it has been following cash system of accounting and hence the ascertained liabilities due to M/s.SICL have neither been accounted in the books of account nor in the balance sheet filed with the return of income. The Assessing Officer not satisfied about the correctness and completeness of the accounts of the assessee, hence rejected the books of account u/sec. 145 and proceed to estimate the income under section 144 of the Act. Accordingly estimated the income of the assessee by treating the assessee as AOP at 12% of the receipts.

22. On appeal, ld. CIT(A) deleted the addition made by the Assessing Officer on the ground that assessee is consistently following cash system of account the same is accepting by the Assessing Officer. Therefore, the action of the Assessing Officer in

rejecting the books of account without finding any defects in the account cannot be upheld. Accordingly, directed the Assessing Officer to delete the addition.

23. On appeal before us, ld. counsel for the assessee has submitted that the issue involved in this appeal i.e. method of accounting system has been considered by the coordinate bench of the tribunal in assessee's own case in ITA No. 690 & 691/VIZ/2013 by common order dated 22/07/2016, therefore requested to follow the same.

24. On the other hand, ld.DR relied on the grounds of appeal.

25. We have heard both the sides, perused the material available on record and orders of the authorities below.

26. In this case, the Assessing Officer rejected the books of account and also method of accounting followed by the assessee and estimated the income at 12%. On appeal, ld. CIT(A) deleted the addition on the ground that assessee is following consistently cash system of accounting, the same is accepting by the Assessing Officer, but rejecting the same in the year under consideration is inconsistent and not correct. We find that the issue has been considered by the coordinate bench of the tribunal in assessee's own case in ITA No. 690 & 691/VIZ/2013 (supra) wherein it has been held as under:-

"6. The first issue that came up for our consideration is method of accounting followed by the assessee. The Ld. A.R. for the assessee, submitted that the issue involved in this appeal is squarely covered by the decision of ITAT, Visakhapatnam Bench, in assessee's own case for the assessment years 1999-2000 to 2004-05 in ITA Nos.272 to 274/Vizag/2005 and submitted that the ITAT, has upheld the cash system of accounting followed by the assessee. We find that the coordinate bench of this Tribunal, in assessee's own case for the assessment years 1999-2000 to 2004-05 held that the assessee is following cash system of accounting for the purpose of determination of income u/s 11 of the Act. The relevant portion of the order is extracted below:

> *"15. The next issue that came up for our consideration is method of accounting followed by the assessee. The Ld. A.R. for the assessee submitted that the issue involved in this appeal is squarely covered by the decision of the ITAT, Visakhapatnam Bench in assessee's own case for the AYs. 1999-2000 to 2004-05 in ITA Nos. 272 to 274/Vizag/2005. We find that the Co-ordinate Bench of this Tribunal, in assessee's own case for the earlier period held that the assessee is following Cash System of accounting for the purpose of determination of income u/s. 11 of the Act. The relevant portion of the order is extracted below:*
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> > *"11.3 The next issue is whether there is any violation of section 13(1)(c) r.w.s. 13(2) of the Act. The impugned amount of Rs.30.00 lakhs and Rs.5.00 lacs have been advanced to the two settler associations. Since they are the authors of the assessee trust and the trustees of the assessee trust are also the office bearers in the above said two associations, the AO treated the two associations as the persons referred to in section 13(3) of the Act. As pointed out in Para 11.1 supra, a charitable trust will loose exemption u/s 11, if any income or property is used or applied for the benefit of any person referred to in Section 13(3). According to Ld AR, though the assessee did not charge interest on these two loans initially, later on both the amounts were collected along with the interest @ 12%. According to Ld AR, since the impugned loans are covered by adequate security and adequate interest, there is no violation of section 13(1)(c) r.w.s. section 13(2) of the Act. In this regard, Ld AR has placed reliance on the decision of the Hon'ble Jurisdictional AP High Court in the case of Polisetty Somasundaram Charities, supra. The relevant observations of the Hon'ble High Court are extracted below:*
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> > *"Section 13(2)(a) provides that the exemption under section 11 cannot be denied in the event of lending the amount jacked up by interest or adequate security or both. The*

lending as such is not prohibited if adequate interest and security are taken care of. Section 13(2) (h) interdicts investment and the act of investment alone is sufficient to deny the exemption. In view of this seminal distinction, the Revenue endeavoured to bracket the transaction under investment so as to attract the denial of exemption under clause (h). The amount is advanced on an agreed rate of interest and, therefore, the transaction is within the fold of lending and it cannot be considered as an investment. The lending in clause (a) should be supported by adequate interest or security. The Appellant Assistant Commissioner found that the rate of interest at 12% is normal and adequate and the firm is financially sound and the Appellant Tribunal confirmed the finding. Therefore, the assessee is entitled to exemption under Section 11 and the conditions under Section 13(2) are satisfied and Section 13 (2) (h) is not applicable".

The Ld AR also submitted that for the purpose of computing the income u/s 11 to 13 of the Income Tax Act, the assessee is following the cash system of accounting. The interest collected from the impugned two loans has been offered to tax in the year of receipt. The details of loans granted and receipt of interest and principal on these two loans have been extracted below from the written submissions of Ld AR.

VISAKHAPATNAM STEVEDORES ASSOCIATION

Date				Rs. Ps.
03-04-1995	Loan amount granted			30,00,000.00
	Interest accrued on loan			46,60,451.86
				76,60,451.86
Less				
15-10-2003	Interest amount received	22,56,000.00		
07-07-2007	Interest amount received	12,51,121.86		
26-11-2007	Interest amount received	10,98,248.00		
29-01-2008	Interest amount received	20,000.00		
24-03-2008	Interest amount received	35,082.00		
26-11-2007	Principal amount received		10,00,000.00	
29-01-2008	Principal amount received		10,00,000.00	
24-03-2008	Principal amount received		10,00,000.00	
		46,60,451.86	30,00,000.00	76,60,451.86
				NIL

VISAKHAPATNAM CUSTOMS CLEARANCE & FORWARDING AGENTS' ASSOCIATION

Date			*Rs. Ps.*
03-04-2005	*Loan amount granted*		*5,00,000.00*
	Interest accrued on loan		*3,62,137.00*
			8,62,137.00
	Less		
26-02-2001	*Principal amount received*	*5,00,000.00*	
15-05-2002	*Interest amount received*	*3,62,137.00*	*8,62,137.00*
			NIL

According to Ld AR, the interest rate of 12% was more than the interest earned by the assessee by parking the surplus funds in the fixed deposits of the Scheduled banks. Thus, there cannot be any dispute that the interest rate of 12% received by the assessee is adequate. The AO has not expressed any doubt about the financial stability of the two settler associations. Thus the amounts lent to the two founder associations were adequately secured and also earned adequate interest @ 12%. It was stated that the assessee is following cash system of accounting for the income tax purposes and hence the interest can be offered to tax only in the year of receipt. Though initially the assessee trust did not charge interest, later it has fully collected the due interest. According to the cash system, the interest has been offered to tax in the year of receipt which is also in accordance with the provisions of the Income tax Act".

7. Considering the facts and circumstances of this case and also respectfully following the Co-ordinate Bench decision in assessee's own case, we are of the view that the assessee is following Cash System of accounting for determination of income for the purpose of application of income for charitable purpose. Therefore, we direct the A.O. to compute the income as per the method of accounting followed by the assessee."

27. By respectfully following the decision of the coordinate bench of the tribunal in assessee's own case in ITA No. 690 & 691/VIZ/2013 (supra), we find no infirmity in the order passed by

the ld. CIT(A). Thus, this ground of appeal raised by the department is dismissed.

ITA No. 214/VIZ/2018

28. The Revenue has raised the following grounds of appeal:-

"1. The order of the ld. CIT(A) is erroneous both on facts and in law.
2. Ld. CIT(A) erred in facts and in law in deleting addition of Rs. 15,96,89,694/- by considering that the exemption u/sec. 11 is restored by the ITAT without considering the factual position in detail.
3. Ld. CIT(A) erred in facts and in law in allowing assessee's appeal on the issue of Rs. 1,54,52,215/-.
4. Any other ground that may be urged at the time of hearing of the case.

29. Ground Nos. 1 & 4 are general in nature, no adjudication is required therefore same are dismissed. Ground No.2 relates to deletion of addition of Rs. 15,96,89,694/-.

30. Facts of this issue in brief are that assessee is a charitable trust and was registered u/sec. 12A of the Act. Accordingly, assessee has been claiming exemption u/sec. 11 over the years and the same was allowed by the department. However, the Commissioner of Income Tax-1, Visakhapatnam had cancelled the registration of the trust u/sec. 12AA(3) w.e.f. 01/04/2009 vide his order dated 06/02/2013. During the course of assessment proceedings, Assessing Officer has observed that assessee has claimed the following expenditure:-

a)	Voluntary Retirement Scheme to the staff / workers	10,14,92,293
b)	Payment to PWP workers	67,29,257
c)	Retrenchment compensation	2,18,66,837
d)	Gratuity payment	2,96,01,351
	Total	15,96,89,738

The Assessing Officer disallowed the above amount on the ground that assessee is not having 12A registration and it has to be treated as business expenditure as the activity of the assessee is treated as business activity.

31. On appeal, the ld. CIT(A) by following the order of the ITAT in assessee's own case in ITA Nos. 272 to 274/VIZ/2005 by order dated 085/01/2010 restored 12A registration to the assessee. Accordingly, the ld. CIT(A) allowed the appeal of the assessee, however, while allowing the appeal ld. CIT(A) has observed that all the payments are made through bank accounts as confirmed by the appellant and in accordance with the Board resolution filed by the appellant.

32. As against the order of the ld. CIT(A), on appeal before us, the ld.DR has pointed out that the ld. CIT(A) has not examined whether the payments are actually made or not, simply on the basis of submissions of the ld. CIT(A) allowed the appeal of the assessee.

33. On the other hand, ld. counsel for the assessee has submitted that he is ready to furnish the details before the Assessing Officer, the same may be examined and the income of the assessee has to be computed as per sections 11 to 13 of the Income Tax Act.

34. We have heard both the sides, perused the material available on record and orders of the authorities below.

35. We find that the Assessing Officer has disallowed various expenditure claimed by the assessee on the ground that assessee is not having 12A registration. The ITAT in ITA Nos.272 to 274/VIZ/2005, dated 08/01/2010 in assessee's own case has restored back 12A registration to the assessee. The relevant portion of the order is extracted as under:-

> *"9. Now let us deal with the first issue. There is no dispute with regard to the fact that the assessee trust has been granted registration by Ld CIT, Visakhapatnam u/s 12A of the Act from the date of its inception. In this regard, it is pertinent to note the case law relied upon by Ld AR. In the case of ACIT Vs. Surat City Gymkhana (2008) (300 ITR 214), the Hon'ble Supreme Court has affirmed the decision of Hon'ble Gujarat High Court in the case of Hiralal Bhagwati vVs. CIT (2000) (246 ITR 188 (Guj) in holding that the registration of a Trust u/s 12A of the Income-tax Act of 1961 once done is a fait accompli and the Assessing Officer cannot thereafter probe into the objects of the Trust. For the sake of convenience, we extract below the head notes of the Surat City Gymkhana case cited supra:*
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> > *"The registration of a trust under section 12A of the Income-tax Act, 1961, once done is a fait accompli and the Assessing Officer cannot thereafter make further probe into the objects of the trust. The decision of the High Court in the Hiralal Bhagwati v.CIT (2000) 246 ITR 188 (Guj) attained finality on this point also since that decision also covered this point and the Department had not challenged that decision before the Supreme Court"*

We notice that the assessing officer has dealt in detail to state that the objects of the trust are not charitable in nature. In view of the decision of the Hon'ble Apex Court, the Assessing Officer is not right in law in probing into the objects of the Trust during the course of the assessment proceedings. Accordingly the denial of exemption u/s 11 is also not in accordance with law.

10. The next question that comes for consideration is whether the activities carried on by the assessee trust can be termed as business activity as per the view of the AO. It is now well settled preposition that the term "Business" denotes "continuous and systematic exercise of an occupation or profession with the object of making income or profit. Hence the profit motive is one of the main ingredients to test the nature of activity carried on by the assessee.

10.1 The preamble of the Trust Deed states that the assessee trust was constituted in order to organize the functioning of private workers pool for the benefit of such workers. Clause 16 of the Trust Deed states that the Board of Trustees shall not be entitled to any remuneration and shall work in an honorary capacity. Clause 34 of the Trust Deed states that the in the event of the dissolution of the Trust, the remaining property shall not be distributed among the members of the Trust but shall be given or transferred to any other institution with similar objectives and aims and which is registered u/s 12A of the Income-tax Act. The main objects for which the trust was formed, as extracted in Para 4 supra, does not depict any profit motive. The primary object of the Trust is to identify, enroll, allot the work and regulate the operation of the private workers. It is not in dispute that the assessee is carrying on the very same activity since its inception. The surplus earned on carrying on the said activity are not to be distributed between the trustees, but to be retained by the assessee trust for the purpose of carrying on the objects of the trust. Hence in the absence of the profit motive attached to the activities carried on by the Trust, in our opinion, the activities carried on by the Trust cannot be treated as a business activity. Further the assessee trust was formed only for the purpose of the regulating the operations of the private workers in the Dock yard and said object have been approved as "Charitable purpose" by the Ld CIT. Further as pointed out by Ld AR, as per Sec.42 of the Major Port Trust Act, 1963, the Performance of service by Board or other person include receiving, removing, shifting, transporting, storing or delivering goods brought within the Board Premises. Hence the activities of the assessee trust falls in the category of one of the services as defined in the Major Port Trust Act, 1963. Since the activities carried on without any profit motive and only for the purpose of the welfare of the workers, in our opinion, it cannot be treated as business activity for the detailed reasons discussed supra."

36. Further, ITA No.269/VIZ/2013, A.Y. 2009-10 by order dated 22/05/2015 in assessee's own case, the ITAT has held that cancellation of registration u/sec. 12A is bad in law. For the sake of convenience, the relevant portion of the order is extracted as under:

> "*15.5 Applying these propositions to the facts of the case on hand, we hold as follows:-*
>
> *(a) The finding of the ld. CIT(A), Visakhapatnam is that the assessee falls under the category 'advancement of any other object of general public utility' u/s 2(15) of the Act. Hence is a charitable organization. The only issue is whether the assessee falls within the ken of the provisos inserted to s.2(15) of the Act by the Finance Act, 2010 w.e.f. 1.4.2009; When the finding of the ITAT is that the assessee activities are not with any 'profit motive' and when it is held that the assessee is not carrying on any business, then the provisions to sec.2(15) of the Act are not attracted in the case on hand and exemption cannot be withdrawn.*
>
> *(b) In this case the fee / labour charge that has to be charged, are fixed by Visakhapatnam Port Trust through the Visakhapatnam Dock Labour Board and this fee is charged for supply of labour, which is in turn paid to the labour force. Such charge of fee, cannot in our opinion be construed as commercial activity carried out by the Trust, when the tests laid down by various Courts are applied to the facts of this case.*
>
> *(c) The main and predominant object of the assessee is to promote the welfare of the workers. The assessee is admittedly formed for supply of labour when there is shortage of work force in the port and for taking care of the welfare of the workers. The maximum expenditure incurred by the assessee is towards payment for the workers and for their welfare. The prime object of the assessee is not to do trade, commerce or business or rendering of any activity or services in relation to trade, commerce or business etc. The assessee has no profit*

motto. Hence the Proviso to S.2(15) does not apply to the case of the assessee.

Thus the cancellation of registration granted u/s 12A(a) of the Act is bad in law."

The ld. CIT(A) keeping in view of the order passed by the ITAT, allowed the appeal of the assessee by observing that these payments are made through bank accounts as confirmed by the counsel for the appellant. As pointed out by the ld.DR we find that the ld. CIT(A) without examining actually payments are made are not, simply based on the submissions made by the appellant's counsel, these expenditure incurred by the assessee are allowed, in our opinion, this issue needs verification. Accordingly, we set aside the order passed by the ld. CIT(A) and remit the issue back to the Assessing Officer to examine whether these expenditure are actually incurred or not, after that Assessing Officer has to compute the income of the assessee as per the provisions of section 11 to 13 as the assessee being 12A registration granted by the ITAT. It is also directed that the assessee has to file all the relevant details before the Assessing Officer. Thus, this ground of appeal raised by the Revenue is allowed for statistical purpose.

36. So far as ground No.3 relates to disallowance of Rs.1,54,52,215/- is concerned, these are also various expenditure incurred by the assessee, the ld. CIT(A) has not examined and

gave a finding that whether these expenditure actually incurred by the assessee or not. Therefore, ld.DR has pointed out that without examining, simply ld. CIT(A) allowed the expenditure and prayed that issue may be remitted back to the Assessing Officer.

37. On the other hand, ld. counsel for the assessee has submitted that he will place all details before the Assessing Officer for examination. In view of the above, we set aside the order passed by the ld. CIT(A) and remit the issue back to the Assessing Officer for consideration of the details filed by the assessee and income of the assessee has to be computed as per sections 11 to 13 of the Act as the assessee being already 12A registration. Thus, this ground of appeal raised by the Revenue is allowed for statistical purpose.

38. In the result, appeals filed by the Revenue in ITA Nos. 312, 313/VIZ/2018 are dismissed and ITA No. 314/VIZ/2018 is allowed for statistical purpose.

Order Pronounced in open Court on this 09th day of June, 2020.

Sd/-	sd/-
(D.S. SUNDER SINGH)	**(V. DURGA RAO)**
Accountant Member	**Judicial Member**

Dated: 09th June, 2020.

vr/-

Copy to:

1. *The Assessee - M/s. Cargo Handling Pvt. Workers Pool Trust, S.J. Ward Building, VDLB Hospital, Port Area, Visakhapatnam.*
2. *The Revenue – DCIT (Exemptions), Vijayawada.*
3. *The CIT (Exemptions), Vijayawada.*
4. *The CIT(A)-2, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.