* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA No. 1335/2010**

Reserved on: 3rd May, 2012
% **Date of Decision: 21st May, 2012**

DIRECTOR OF INCOME TAX ....Petitioner
Through Ms. Suruchi Aggarwal, Sr. Standing Counsel.

Versus

MARUTI CENTER FOR EXCELLENCE …Respondents
Through Mr. S. Ganesh, Sr. Advocate with
Ms. Kavita Jha and Mr. Somnath Shukla, Advs.

\+ **ITA No. 50/2011**

DIRECTOR OF INCOME TAX ....Petitioner
Through Mr. Abhishek Maratha, Sr. Standing Counsel

Versus

MARUTI CENTER FOR EXCELLENCE …Respondents
Through Mr. S. Ganesh, Sr. Advocate with
Ms. Kavita Jha and Mr. Somnath Shukla, Advs.

CORAM:
HON'BLEMR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA, J.

Director of Income Tax (Exemptions) has filed these two appeals against Maruti Center for Excellence (assessee/respondent, for short). In ITA No. 1335/2010, which relates to assessment year 2005-06, order dated 2nd September, 2009, passed by the Income Tax Appellate Tribunal (tribunal, for short) has been challenged. In

ITA No. 50/2011, order dated 12th May, 2010 which relates to the assessment year 2006-07, passed by the tribunal has been challenged. As the issue and question involved in the above two appeals are identical and similar, they are being disposed of by this common order. We heard the learned counsel for the parties on the following substantial question of law framed on 3rd May, 2012:-

> "Whether the Income Tax Appellate Tribunal was right in holding that the assessee is a charitable institution and has not violated the Section 13(1)(c)(ii) read with 13(3) of the Income Tax Act, 1961?"

2. The assessee is a society which was set up on or about 24th June, 2002. Its office was initially located at c/o Maruti Udyog Limited, 11th Floor, Jeevan Prakash, 25 Kasturba Gandhi Marg, New Delhi 110 001. The persons desirous of setting up the society and the initial members of the governing body were Mr. Jagdish Khattar, and six others. It is an undisputed position that Jagdish Khattar was the Managing Director of Maruti Udyog Limited. Rules and regulations of the society have been placed on record. Some of the relevant rules read as under:-

> *"**MEMBERSHIP:***
>
> *4. An individual, partnership firm, company or a body corporate who is associated with Maruti Udog Limited (MUL) as vendor, dealer, transportation, & logistic company, casual*

supplier or civil contractor or is sub-vender of big vendors of MUL, shall be entitled to apply to become a member of the society.

5. An application for membership shall be made in writing on the application form prescribed by the Governing Board and shall be accompanied by the prescribed admission fee for the membership.

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7.(a) The membership fee shall be determined by the Government Board from time to time. For the time being it shall be Rs.25,00,000/-.

(b) membership fee shall be determined by the Association shall be the founder members of the society and shall not be required to pay any admission fee. However, they have subscribed as nominees of MUL and shall remain as members of the society so long as they are not withdrawn by MUL.

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10. A member shall cease to be member of the Society, if,

(i) By notice in writing addressed to the Society he resign from his/its membership

(ii) In the case of an individual members upon the death of the said member.

(iii) In the case of his/its disassociation with MUL as its vendor, dealer, transportation & logistic company, casual supplier or civil contractor or as sub-vendor of big vendors of MUL.

(iv) On his /its expulsion of membership under the Rules & regulation of the Society.

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GOVERNING BOARD/COUNCIL

13. The property and affairs of the society shall be managed by the Governing Board/Council.

14. The Governing board shall consist of not less than seven members and not more that twelve members. Majority members, not exceeding severs shall be nominated by MUL, the founding member and the balance shall be elected members.

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MANAGING COMMITTEE

22. The Governing Board shall have powers to constitute a managing committee to provide it necessary guidance and supervision in important matters of the centre. The Managing Committee shall comprise of the following five members:

1. CEO

2. Four Governing Board members two each representing MUL and elected members."

3. The aims and objects for which the society was established are stated in the Memorandum and Articles of Association and read as under:-

"a. To propagate amongst organizations up-gradation in terms of quality, cost and technology orientation through training, consultancy and other supportive services.

b. To help organizations to reach world class levels of performance and to gain word vide respect for professional competency in the field of quality management.

c. *To help organizations thorough training, consultancy and supportive services to achieve total Quality Management(TOM), TPM, ISO 9000/QS9000/TS16949, ISO14000.*

d. *To organize short term and certification training courses in the fields of quality management.*

e. *To provide consultancy in the field of TQM-Deming prize, 6Sigma, NPD, QFD, FMEA< TPM, Kaizen, TS16949/QS9000 and ISO 9000 and ISO 14000.*

f. *To provide support services in the field of measurement of IQS/CST for OEMs, vendor auditing for OEMs/big vendors,*

g. *To provide library, standards and research papers and internet centre relating to quality management and related fields.*

h. *To provide support services as benchmarking clearing house and tired party certification services for ISO 9000.*

i. *To establish and/or acquire, maintain and/or support schools. College, Seminary, Study Centres, Universities and other Institutions for imparting and training of students in the field of quality management.*

j. *To establish and support Professorships, Fellowships, Lectureships, Scholarships, and prizes at Schools, Colleges or other education Institutions.*

k. *To establish, maintain and support Hostels and /or Boarding houses and grant of free food and lodging to deserving students upon such terms and for such periods in each case as the Governing Board may think fit.*

l. To grant endowment at Universities, Research Institutions and other educational and scientific institution for spread of education and knowledge in all or any branches of quality management.

m. To avoid scholarship and fellowship on such terms and conditions as the Governing Board may thing proper.

n. Establish, maintain and support Libraries, Museums and Reading Rooms for advancement of Education and Knowledge in all or any branches of quality management.

o. To Carry out any other charitable activity as the Governing Board think proper."

4. Paragraph 4 of the said Memorandum and Articles of Association is also relevant and reads as under:-

4. All the income earning (including amount received by way of sale of know how premium and royalty fee charged for a research project) moveable, immovable properties at the society shall be solely utilized an applied towards promotion of its aims and objectives only as set forth in the memorandum of association and not profit and thereof shall be paid for transferred directly or indirectly by way of dividends, bonus, profits or any manner whatsoever to the present or past members of the Society or to any person claiming through anyone or more of the present to past members. No member of the claiming through anyone or more of the present to past members. No member of the society shall have any personal claim on any moveable or immovable properties of the society or make any profit whatsoever by virtue of its membership."

5. The admitted position is that the respondent society granted registration under Section 12AA of the Income Tax Act (Act, for short), by the Director of Income Tax (Exemptions). We have been informed at the Bar that this exemption was cancelled by an order passed by the Director of Income Tax (Exemption) but the said order has been set aside by the tribunal with a direction of remit. This decision proceeds on the position that the registration granted under Section 12AA of the Act has not been revoked.

6. The Assessing Officer in the two assessment years has held that the assessee was not performing charitable activities as defined under Section 2(15) of the Act and the purpose of the formation of the society appeared to be for mutual benefit of Maruti Udyog Limited and members of the respondent. It has been held that the society had violated Section 13(1)(c)(ii) read with Section 13(3) of the Act as the society was for the private benefit of the members. Accordingly, the entire income of the assessee was held to be taxable including corpus receipts of Rs.5.25 crores received in the assessment year 2005-06. In the assessment year 2006-07, an excess of income over expenditure of Rs.69,16,879/- was held to be taxable in addition to interest on Fixed Deposits of Rs.43,84,753/-.

7. The assessee succeeded in the first appeal before the (Appeals), who referred to the decision of the Supreme Court in ***ACIT vs. Surat City Gymkhana***, (2008) 300 ITR 214 (S.C.). By the impugned orders, the tribunal has affirmed the decision of the first appellate authority.

8. Sections 2(15) {as it existed prior to amendment w.e.f. 1.4.2009}, 13(1)(c)(ii) and 13(3) of the Act read as under:-

> ***Section 2*** *Definitions.— In this Act, unless the context otherwise requires,—*
>
> *xxx*
>
> *(15) "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility;*
>
> ***Section13(1)(c)(ii)*** *(1) 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—*
>
> *……..*
>
> *(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—*
>
> *(i) ……..*
>
> *(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3) :*

Provided *that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution :*

Provided further *that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3) in so far as such use or application relates to any period before the 1st day of June, 1970;*

[Explanation.—For the purposes of sub-clause (ii) of clause (c), in determining whether any part of the income or any property of any trust or institution is during the previous year used or applied, directly or indirectly, for the benefit of any person referred to in sub-section (3), in so far as such use or application relates to any period before the 1st day of July, 1972, no regard shall be had to the amendments made to this section by section 7 [other than sub-clause (ii) of clause (a) thereof] of the Finance Act, 1972.]

Section 13(3)*(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely :—*

(a) the author of the trust or the founder of the institution;

(b) any person who has made a substantial contribution to the trust or institution, [that is to say, any person whose total contribution up to the end of the relevant previous year exceeds [fifty] thousand rupees];

(c) where such author, founder or person is a Hindu undivided family, a member of the family;

[(cc)any trustee of the trust or manager (by whatever name called) of the institution;]

(d) any relative of any such author, founder, person, [member, trustee or manager] as aforesaid;

(e) any concern in which any of the persons referred to in clauses (a), (b), (c) [, (cc)] and (d) has a substantial interest."

9. Section 2(15) of the Act defines "charitable purpose". The last portion thereof includes "advancement of any other object of general public utility". It is accepted position that the respondent claims that it was/is a charitable institution because its activities fall in the last portion or the residuary part of the aforesaid clause. The Supreme Court in ***Surat City Gymkhana (supra)***, did not permit and allow the Revenue to challenge the ratio expounded by the Gujarat High Court in ***Hiralal Bhagwati vs. CIT,*** (2000) 246 ITR 188 (Guj.). It has been held in ***Hiralal Bhagwati's*** case (supra) that once an institution has been registered under Section 12A/12AA, the Assessing Officer cannot go into and reexamine whether or not objects for which the institution was established is charitable within the meaning of Section 2(15) of the Act. This aspect has to be

examined at the time of registration and cannot be re-exam every time at the time of assessment. At the time of the registration, the authority is to examine the objects for which the institution was created as well as conduct an empirical study of the past activities.

10. To this extent, we find merit in the contention raised by the assessee who has drawn our attention to the aims and objects for which the respondent society was established. He has also drawn our attention to the paragraph 4 of the Memorandum of Association which has been also reproduced above. A reading of the said objects ex-facie shows that the respondent is established for advancement of an object of general public utility. However, the aims and objects of association which are incorporated in the Memorandum is one aspect and the other aspect is the actual working and the activities undertaken by the assessee with reference to the assessment year in question. These are two separate aspects and have to be examined independently. We are concerned with the second aspect i.e. the application of income and use of property of the institution, during the assessment years in question. The activities undertaken and performed should be charitable and should not violate the specific stipulations mentioned in the Act. Incorporated in Sections 11, 12 and 13, are various provisions/stipulations regarding the actual

working and functioning of an institution, which claims that its object and purpose is charitable. Violation of these provisions, have their own consequences and effect.

11. Section 13(1)(c)(ii) is a provision in the Act which deals with actual functioning and activities undertaken during the assessment year in question. The said Section has to be read along with Section 13(3). Section 13(1)(c)(ii) states that no part of the income or any property of the institution should be used or applied directly or indirectly for the benefit of any person referred to in sub-section (3). The words "directly or indirectly"are important and reflect the intention of the Legislature that income or property should not be even indirectly used for benefit of a member. The word 'indirectly' used in Section 13(3)(c)(ii) shows the expansive and comprehensive scope and intention behind incorporation of the said provision. The provision postulates and states that charity for self or closely related/associated persons as defined in Section 13(3) is an anathema and not acceptable. Income and the property of the charitable institution should be used for charitable activities which benefit third persons and should not directly or indirectly benefit the persons covered under Section 13(3).

12. Section 13(3) of the Act, as noticed, consists of several paras. These clauses refer to the author or founder of the trust/institution; in case of HUF any member of the family; trustee or the manager, any person who has made substantial contribution as stipulated; or any relative of the said persons or any concern in which any of the said persons have substantial interests. Reading of sub-clauses again indicates the broad and expansive coverage which the Legislature wanted to give to Section 13(3). The obvious intention is to prevent abuse and misuse of theprovisions. However, care and caution must be taken not to expand the scope beyond the legislative intent. We should not be understood to mean and imply that income or property of the institution cannot be paid or utilized by any person covered by Section 13(3) of the Act. What is postulated by Section 13(1)(c)(ii) is that the income or the property should not be used directly or indirectly for the benefit of the persons mentioned in Section 13(3). The term 'benefit' is important and shows that reasonable and fair payments made for the actual services rendered and provided by persons under Section 13(3) will be and are allowed. Justified and reasonable payments and adequate compensation for services rendered, goods supplied etc. cannot be regarded as providing a"benefit" to a person under

Section 13(3). What is prohibited and barred is applicatic income or use of the property of the institution directly or indirectly for "benefit" of a person mentioned in Section 13(3) i.e. he is paid beyond what is reasonable, adequate, commensurate and justified for the services rendered or goods supplied. The said person should not profit at the expense of the trust/institution. Charity should not become the primary or important source of business profits and a façade to promote business interest or secure advantage, for persons mentioned in Section 13(3) in the name of charity. The word "benefit" need not be restricted to direct material benefit, but is of wide significance comprehending whatever would be beneficial in any respect, materially or otherwise. Benefit can be pecuniary or non pecuniary. This would be the correct legislative intent.

13. Under Section 13(1)(c)(ii) of the Act, the purpose of the society must be to benefit the public or sub-serve the object of general public. Thus, where the dominant motive of the application of income or property is to help the members of a society, and remotely and indirectly to benefit the public, it cannot be said that the institution meets the requirements of the said Section. Again, where the primary purpose is to benefit the private interests of persons under Section 13(3), provisions of Section 13(1)(c)(ii) are

attracted. Thus, the general purpose or object as stated in the Memorandum may be a beneficial one, but it would violate Section 13(1)(c)(ii) read with Section 13(3), where the benefit is primarily confined to the members of the institution itself or employees of a particular firm or company covered under the ambit of 13(3), however large the number of beneficiaries may be. Where the institution/charity operates and uses its income/ property for the benefit of its members, it violates Section 13(1)(c)(ii) and has to be denied the privilege bestowed. A word of caution, we are not concerned, and are not examining the question "business held under trust", the income of which subserves charity. We are answering and examining the actual utilization and deployment of income/ property, i.e., the end use and not generation of income for the end use.

14. This brings us to the factual position in the present case and the findings recorded by the tribunal, keeping in mind the aforesaid exposition with reference to Section 13(1)(c)(ii) and Section 13(3) of the Act. In the order dated 2nd September, 2009 of the tribunal for the assessment year 2005-06, the entire discussion is limited to two paragraphs and they read as under:

> *"3. Having heard the arguments of the ld. DR supporting the grounds of appeal raised, we do*

not find any merit therein. The ld. CIT(A) found as undisputed facts that registration u/s 12A of the I.T. Act, as granted to the assessee, was followed for the period under consideration; that during this period, a certificate u/s 80G of the Act had also been granted to the assessee; that therefore, the assessee was entitled to exemption 11 of the Act; that as per the assessee's balance sheet and Income & Expenditure Account, no income or asset or property of the Society had been used or applied during the year for the benefit of either the Settlor or the Maruti Udyog Limited; that the income of the assessee Society was mainly from interest on fixed deposits and bonds, data processing charges, consultancy fee, training programme fee and incentive received; that none of these items could be said to have been used for the benefit of the Supplier; that the assets in the balance sheet of the assessee were fixed assets, investments in RBI bonds, fixed deposits with banks, current assets and loans and advances; that none of them had been placed with the Settlor or the Maruti Udyog Limited; that therefore, 13(1)(C) (ii) of the Act was not attracted; and that neither in the assessment order, nor in the remand report submitted before the CIT9A), had the AO brought out any such user of the income or the assets of the Society for the benefit of the Settlor or the Maruti Udyog Limited.

4. The above facts, as noted by the ld. CIT (A) while deciding in favour of the assessee, remain patent on record. No material to the contrary has come on the file. As such, the ld. CIT(A) cannot be said to have committee any error in passing the impugned order. The findings of the ld. CIT(A) are therefore upheld and the grounds raised by the Department are rejected."

15. For the assessment year 2006-07, there is no discussion a[illegible] the factual matrix and the tribunal has recorded that adhering to principle of stare decisis, there was no justification to interfere with the well reasoned order passed by the first appellate authority.

16. The order of the tribunal in the assessment year 2005-06 is devoid of reasoning and does not refer to factual matrix and details which have to be examined and considered while deciding the question whether or not Section 13(1)(c)(ii) read with Section 13(3) is violated. The facts, figures mentioned in the income expenditure account and the activities undertaken etc. have not been mentioned or specifically examined. What was and whether any benefit or advantage was enjoyed by the person mentioned in Section 13(3) has not been adverted to and considered. General observations have been made. The order of the tribunal is cryptic and cannot be categorized as a reasoned and speaking order which is mandated and required to be passed by the final fact finding authority.

17. We may, in this regard refer to some observations and findings recorded by the Assessing Officer in the two assessment orders including the reply given by the assessee and "donor members" in the assessment proceedings. In the two orders, the Assessing Officer had made a specific reference to clause 4 of the

Rules which postulates and prescribes conditions for becoming a member of the society, which has been quoted above. It was noticed that the assessee had received corpus donation of Rs.5.25 crores from 30 parties in the assessment year 2005-06. They were the vendors or the original equipment suppliers of Maruti Udyog Ltd.Though clauses (a) and (c) to (d) may not be attracted, but clause (b) to Section 13(3) would be attracted in case the contributions made upto the end of the previous year exceed Rs.50,000/-. Accordingly, clause (e) to Section 13(3) would apply.

18. Notices were issued to the said vendors/suppliers and in an identical worded reply, they had stated as under:-

> *"(1) "Maruti Centre for Excellence, a society registered under the Societies Registration Act XXI of 1860 accepted our donation with a specific direction that the said money shall from a part of Corpus of the Institution to provide us Quality Up gradation, Productivity Improvement, Reduction in Delivery Failures, Training of Manpower, Improvement in customer satisfaction, Implementation of Maruti production System and support to Tier-2 Suppliers to upgradation to achieve world class standards."*
>
> *(2) "Your goodself has asked to specify the purpose for which donation have given are as under mentioned:*
>
> ** Quality Up gradation*
>
> ** Productivity Improvement*
>
> ** Reduction in Delivery Failures*

** Training of Manpower*

** Improvement in Customer Satisfaction*

** Implementation of Maruti production System*

** Support to Tier-2 Suppliers to upgrade them."*

(emphasis supplied)

19. The Assessing Officer thereafter has observed that :

"From the above, it is clear that the benefit of the above training goes to the Maruti Udyog Ltd' production, not to general public at large."

20. The assessee had stated and submitted to the Assessing Officer as under:-

"Suzuki Corporation, Japan has promised to the Govt. of India that Maruti Udyog Ltd. shall be made an export oriented unit for supplying cars in other parts of the world. Working in that direction, it has been felt that suppliers of Maruti have to be upgraded to world class levels in terms of quality, cost and technology orientation through consultancy training and other support services. To achieve these objectives the idea to launch "Maruti Center for Excellence" was conceived.

The vision of this center is to become an Indian Equivalent of JUSE, helping organizations reach world class levels of performance and gain worldwide respect for professional competency in the field of Quality Management.

This 'CENTER" encourages vendors to attain and implement world class best practices like TOM, TPM, Lean manufacturing. Six Sigma Business Excellence programmers etc. under the guidance of foreign consultants. The "Center"

provides external support to implementation & teaching of foreign consultants at the operating level."

(emphasis supplied)

21. In the reply given by the vendors/suppliers they have stated that money was paid to provide them with quality upgradation, productivity improvement etc. They have stated this was the purpose for which the donation was given. The assessee, in its reply in the form of notes on activities, has averred that the Center encourages the vendors to attain and implement world class best practices.

22. The orders of the Assessing Officer, though somewhat confusing and unclear, with reference to the aforesaid assertions states that the training given by the respondent institution was for the benefit of the Maruti Udyog Limited or the vendors or suppliers connected with the Maruti Udyog Limited. Training facilities were not available to general public at large and was not for the benefit of the public at large. He observed that the membership was only open to the parties associated to the Maruti Udyog Limited and not to others and the activities undertaken by the assessee were for the benefit of the members.

23. Clause 13(3) of the Act quoted above, states that a person whose total contribution upto the end of the relevant previous year

exceeds Rs.50,000/-, is covered and must not be the beneficia[illegible] any benefit, directly or indirectly. This is the restriction/requirement of Section 13(1)(c)(ii). Thus all the vendors or suppliers of the Maruti Udyog Limited who had paid contribution of more than Rs.50,000/- have to meet and should not violate the mandate of Section 13(1)(c)(ii).

24. Learned counsel for the assessee, during the course of hearing had specifically relied on and drawn our attention to the order of the assessment year 2006-07. The assessment order refers to the letter dated 20th November, 2008, written by the assessee, in which it was stated that the assessee was engaged in the activities of imparting education and training in the field of quality, cost and technology orientation to public at large including its members. The programmes undertaken were attended by employees of various companies/firms which were engaged in the automotive sector. He had submitted that the Assessing Officer had recorded that 39 non-Maruti vendors were given training in the period relevant to the assessment year 2005-06. Our attention was drawn to the names of 12 unconnected concerns/companies, whose officers/employees were given two days training in the period relevant to the assessment year 2006-07. It was stated that same fee was charged

from the participants, whether or not they were members o respondent society. Thus, it was submitted that charitable purpose/activities is proved and there was no violation of Section 13(1)(c)(ii).

25. This to our mind may be relevant to determine and decide whether an institution was carrying on charitable activities and whether or not it is violating Section 13(1)(c)(ii) of the Act but this alone is not the only or sole requirement to determine and decide the question/aspect of benefit. What the said Section postulates and requires is no benefit directly or indirectly must accrue to a person mentioned in Section 13(3) of the Act by application of income or use of property of the charitable institution. Thus, charging the same fee may be relevant but may not determinative for deciding whether or not direct or indirect benefit in the form of use of property or income of the institution, by a member has taken place during the relevant previous year. The issue/question is much broader and requires deeper scrutiny and verification. In the present case, it will require examination of the expenditure incurred on the training and whether this was a "benefit" to the persons mentioned in Section 13(3). For example, in case training was subsidized, then it can be said and argued that benefit was given to

the member, even if same fee was charged from non-mem[illegible] Further and importantly, Section 13(1)(c) (ii) will get attracted if the benefit was confined primarily and predominantly to the persons mentioned in Section 13(3) (b) and (e) and incidentally some benefit had percolated and flowed to the public/third persons.

26. During the course of hearing, learned counsel for the assessee had drawn our attention to paragraph 8 of the order passed by the CIT (Appeals) for the assessment year 2005-06, in which he had recorded as under:-

> *"8. On examination of the Balance Sheet and Income & Expenditure Account at pages 6 and 7 of the paper Book , I do not find that any income or asset or property of the Society has been used or applied during the year for the benefit of the Settlor or for that matter the Maruti Udyog Ltd. (MUL). The income of the Society is mainly from interest on Fixed Deposits and Bonds, data processing charges received, consultancy fee, training programme fee, and incentive received. None of these items could be said to be used for the benefit of the Settlor. The assets in the Balance Sheet of the assessee are fixed assets, investments in RBI bonds, fixed deposits with Bank, current assets, loans and advances. None of these have been placed with the settler or the Maruti Udyog Ltd. Therefore, the conditions necessary for the application of Section 13 (1)(c)(ii) are not fulfilled in this case. Even according to the judgment of the Hon'ble Allahabad High Court (supra), the AO has, neither in his assessment order nor in the remand report, pointed out any income or asset of the Society or any part thereof, having been used for*

> *the benefit of the Settlor or the Maruti Udyog Ltd. Therefore, on a plain reading of the Act and the Balance Sheet and Income & Expenditure Account, it has to be held that the appellant Society is not in violation of Section 13(1)(c)(ii) of the Income Tax Act."*

27. The aforesaid paragraph does not help us to decide the question in favour of the assessee. The said paragraph/reasons ignore and do not refer to aspects and issues which require elucidation and verification. In this connection, we may reproduce the findings recorded by the CIT (Appeal) in the same order, which are to the following effect:-

> *10. …The beneficiaries of this education and training programme are the Auto ancillarie' manufactures who may also be suppliers of MUL, apart from other auto companies. The direct benefit is to the people i.e. employees of these concerns who may also, incidentally, change their jobs. Therefore, education and training is to the public at large facilitated by auto ancillaries and imparted by the appellant Society it was claimed.*
>
> *11. I have considered appellant's submission. I find that this issue does not arise from the order of the AO. Hence, I dismiss ground No. 6 of the appellant as infructuous."*

Thus, the findings/observations of the CIT (Appeal) are not conclusive and are ambiguous.

28. We note that CIT(Appeal), in the order for the assessment year 2006-07, has not recorded any independent findings but merely

recorded that the issue was decided by the tribunal in the ea assessment year and he was bound by the said decision.

29. In view of the aforesaid position, we answer the aforesaid question of law in negative with the order of remit. Question of law is partly decided in favour of the appellant Revenue. The tribunal will examine the factual matrix and position in the light of legal position mentioned above. Before applying the ratio/law, they shall first examine and record finding on facts relevant and which are to be examined.

30. The appeals are accordingly disposed of. There will be no order as to costs.

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(SANJIV KHANNA)
JUDGE

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(R.V. EASWAR)
JUDGE

May 21st, 2012
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