आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No.273/Ahd/2022
Assessment Year :2016-17

Gujarat Council of Science City Science City Road Sola Santej Road, Sola Ahmedabad 380060. PAN : AAABG 0071 B	Vs.	DCIT, Cir.1 (Exemption) Ahmedabad.

(Applicant)		**(Responent)**

Assessee by	:	Shri S.N. Divatia, AR
Revenue by	:	Shri Kamlesh Makwana, CIT-DR

सुनवाई की तारीख/**Date of Hearing : 21/08/2023**
घोषणा की तारीख /**Date of Pronouncement: 13/09/2023**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order of the ld.Commissioner of Income Tax(A), National Faceless Appeal Centre (NFAC),Delhi [hereinafter referred to as "Ld.CIT(A)"]dated 10.11.2021passed under section 250(6) of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short]for the Asst.Year 2016-17.

2. At the outset, it is noticed, the Registry has notified that the appeal filed by the assessee is time barred by 178 days. To explain the impugned delay the assessee has filed delay condonation application, in which it has *interalia* pleaded as under:

b. The applicant states that though the books of accounts and other records are subject to audit by a Chartered Accountant, the filing of ITR and other routine Income-tax work is looked after by the office staff of the applicant society who consult or seek advice of the specialists whenever the need arises and it is so sanctioned by the governing body. Since the office of Executive Director/ Secretary (DST) look after and decide these matters and there are frequent changes/transfers of these officers, delay takes place in taking the decision. Now, when the appellate order dated 10/11/2021 was received, DR Narrottam Sahoo was holding additional charge till 26-12-2021 and when he relieved the additional charge was given to Shri Harshvardhan Modi was given from 27-12-2021 . When the papers/file were put up to him for deciding to go for further appeal or not, he orally directed to refer the matter to CA/tax consultant -CA Sh. B J Shah & Associates but he declined the offer. Hence the new appointment was on 01-12-2021 of M/s NPKU & Associates CA to handle the matter but he declined the offer stating that he was not handling the appellate work at Tribunal. Meanwhile the lower staff also changed at least twice and presently Sh Jignesh Patel has taken over the charge of accounts & taxation work. Since he is not conversant with the taxation matters and the pending work relating to income-tax, he took considerable time in appraising himself and preparing the report before the higher authority. Ultimately, in the last week of April, 2022 it was decided to go for completing the unfinished task in respect of income-tax matter and a letter dated 29/04/2022 was addressed to the tax advocate Shri S.N. Divatia giving assignment to finish the pending work which included the filing of appeal before Income-tax Appellate Tribunal for A.Y.2016-17. Therefore, there is delay in filing the present appeal. The applicant states that even the appeal before NFAC against the order of assessment u/s.144 r.w.s 144B passed on30/04/2021 for A.Y2018-19 has been delayed for identical reasons. The applicant states that when a high pitched income has been assessed resulting into huge demand of Rs.3,98,63,170/- and the past record indicates that such assessment is not justified, there cannot be intention to accept such an order and not preferred appeal against the same, especially when the institution is run by the State Govt."

The ld.counsel for the assessee accordingly submitted that since the delay was caused due to bureaucratic issues, and therefore in order to advance substantial justice, the impugned delay in filing appeal before the Tribunal may be condoned.

3. After hearing both the parties, we find that the assessee is attributing the impugned delay of 178 days due to procedural delay on account of some bureaucratic issues like frequent changes/transfers of the concerned officers and staff of the assessee, change of counsel for the assessee etc. These reasons cannot be

completely ignored because considering the quantum of delay, these are justifiable handicaps faced by the assessee being a government establishment. Such reasons cannot be completely attributed to any gross-negligence and deliberate inaction being shown on the part of the assessee. The Hon'ble Apex Court has taken cognizance of the peculiar and slow manner of functioning of government departments being plagued by red tape in decision making, while determining what constitutes sufficient cause for delay in their cases in many decisions as under:

i) In G. Ramegowda, Major & Ohters Vs. Special Land Acquisition Officer, Bangalore (1988) 2 SCC 142;

ii) In State of Haryana Vs. Chandra Mani & Ohters (1996) 3 SCC 132;

iii) In State of UP and Others Vs. Harish Chandra & Others (1996) 9 SCC 309

iv) In National Insurance Co. Ltd. Vs. Giga Ram & Ohters (2002) 10 SCC 176;

v) In State of Nagaland Vs. Lipok AO and Others (2005) 3 SCC) 752

4. Further, at the outset itself, it was pointed out to us that the issue involved in the appeal pertained to denial of exemption of income as claimed by the assessee u/s. 11 of the Act on account of carrying out charitable activities. That the denial has resulted in income of Rs.9,95,43,470/- being subjected to tax. And it was also submitted that the issue is covered by the decision of the ITAT in the preceding years, i.e A.Y 2013-14 to A.Y 2015-16 , wherein the issue was restored back to the AO for determining whether the activities qualified as commercially carried out general public utility activities so as to take it out of the purview of charitable activities as defined

u/s 2(15) of the Act, following the directions laid down by the Hon'ble Apex Court in this regard in the case of ACIT vs Ahmedabad Urban Development Authority (2022) 449 ITR 1(SC).

5. The assessee, we find, has adduced sufficient and reasonable cause for the delay which cannot be attributed to any laxity on its part and even otherwise if the appeal is dismissed as non maintainable on account of delay in filing it would result, we find, in grave injustice to the assessee since his income would be liable to be assessed multiple times as opposed to that returned, when apparently the issue in the appeal already stands adjudicated by the ITAT in the preceding years and needs to be restored back to the AO for reconsideration in the light of the order of the Hon'ble apex court. In the interest of justice therefore we consider fit to condone the delay of 178 days in filing of the present appeal. The order was pronounced in open court.

6. We now proceed to adjudicate the appeal of the assessee on merit.

7. In the appeal, the assessee has raised the following grounds:

> *"1.1 The order passed by U/s.250 passed on 10.11.2021 by NFAC Delhi confirming that the activities of the appellant was not "education" but "advancement of other public utilities" u/s 2(15) so that the exemption u/s 11 was not admissible is wholly illegal, unlawful and against the principles of natural justice.*
>
> *2.1 The Id. NFAC has grievously erred in law and or on facts in not considering fully & properly the evidence/details produced and thereby confirming that the activities of the appellant was not "education" but "advancement of other public utilities" u/s 2(15) so that the exemption u/s 11 was not admissible and thereby assessing total income at RS. 9,95,43,470/-*
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> *2.2 That the in the facts and circumstances of the Id. NFAC ought not to have held that the activities of the appellant was not "education" but "advancement of other public utilities" u/s 2(15) so that the exemption u/s 11 was not admissible. Thereby the Id. NFAC has grievously erred in law and or on facts in upholding total income at RS. 9,95,43,470/- instead of NIL*

2.3 The Id. NFAC has grievously erred in law and or on facts in not following the precedent by way of appellate /assessment orders for earlier orders though the activities were identical for all these years.

2.4 The Id. NFAC has grievously erred in law and or on facts in upholding the disallowance of exemptions u/s 11 as under:

i). Accumulation of income RS.3,25,00,000
ii). Corpus donation . Rs. 5,00,00,000
iii). Application of income upto Rs.9,07,65,352

3.1 That in the facts and circumstances of the case as well as the law, the NFAC has failed to appreciate that mere collection of entry fees would not amount to carrying on activity in the nature of trade, commerce or business. Both the lower authorities have erred in holding that the activities of the appellant was not "education" but "advancement of other public utilities" u/s 2(15) so that the exemption u/s 11 was not admissible."

8. A perusal of the grounds would indicate that the only issue involved therein is, whether the assessee is a "charitable" trust within the meaning of section 2(15) of the Act in order to entitle the assessee to claim exemption of its income earned from its activities under sections 11/12 of the Act. The ld.AO while framing the assessment under section 143(3) held that since the activities carried out by the assessee were in the nature of "advancement of any other object of general public utility" as defined in section 2(15) of the Act and not "charitable", being found to be commercial in nature, as defined in first proviso to the said section, and therefore, the claim of the assessee to exemption of its income under sections 11 and 12 of the Act was not allowable. The action of the AO in holding so was upheld by the ld.CIT(A) dismissing categorically the assesses stand that it was imparting education, and held that rather it involved carrying on and rendering of activity in the nature of general public utility by indulging in trade, commerce or business. Therefore, the ld.CIT(A) upheld the order of the AO and dismissed the appeal of the assessee. Hence, the assessee is before the Tribunal.

9. Before us, at the outset, the ld.DR submitted that similar issue arose in the case of the assessee for the Asstt.Years 2013-14, 2014-15 and 2015-16, and the matter was dealt with by the Tribunal vide vide order in ITA No.2405/Ahd/2017 and Others, allowing the appeals of the Revenue, holding that the activities carried out by the assessee are not in the nature of imparting education, but are in the nature of general public utility activities provided in the section 2(15) of the Act. However, the ITAT concluded that for the purpose of determining whether they are commercial in nature so as to preclude the assessee from the benefit of exemption under section 11 and 12, the issue was sent back to the AO for reconsideration in the light of the parameters laid down by the Hon'ble Apex Court for the said purpose in the case ACIT vs Ahmedabad Urban Development Authority (2022) 449 ITR 1(SC). To bolster the findings, the ITAT also relied on various case laws including judgment of Hon'ble Apex Court in the case of New Noble Educational Society Vs. CCIT, 448 ITR 594 (SC). Therefore, the ld.DR submitted that in view of the decision of the ITAT in the case of the assessee for earlier years cited (supra), the present appeal, raising identical issue, requires to be decided accordingly.

10. On the other hand, the ld.counsel for the assessee fairly conceded the factum of earlier decision of the Tribunal on the issue, in the assessee's own case for the earlier assessment years, holding the nature of activities carried out by the assessee as that of general public utility activities. Therefore, the ld.counsel for the assessee expressed no objection of giving similar direction as that given in its case for earlier years.

11. We have considered submissions of both the parties. We have also gone through the order of the ITAT passed in the assessee's own case for earlier years on the similar issue, which has not been disputed by the ld.counsel for the assessee either. We also noted that the grounds raised in the earlier years are also similarly worded. Therefore, looking to the similarity of the issue on hand i.e. whether the activities carried out by the assessee is a "charitable" as defined in the first limb of section 2(15), and whether the activities related to general public utility services as defined in the last proviso of the said section, we apply the decision of the ITAT in the case of the assessee for the earlier year(in which the Accountant Member herein was also a party), where after detailed discussion made on the issue in the light of various judgments including that of the Hon'ble Apex Court, it has been held that the activities of the assessee qualify as general public utility activities. The ITAT also restored the issue to the AO to determine whether these general public utility activities are commercial in nature in the light of the directions laid down by the Hon'ble Apex Court in this regard in the case of Ahmedabad Urban Development authority (supra) Therefore, it is imperative upon us to reproduce hereunder the relevant part of that order being para No.27 to 39:

> *"27. We have heard both the parties at length and have also gone through the judgements of the Hon'ble Apex Court in the cases of New Noble Educational Society(supra) and Ahmedabad Urban Development Authority (supra), as also various case-laws referred to before us.*
>
> *28. The issue to be adjudicated and determined in the present case is the nature of charitable activity carried out by the assessee in terms of its definition provided in Section 2(15) of the Act for the purposes of enabling the assessee to claim its income as exempt in terms of Section 11/12 of the Act. The Revenue contending that it qualifies as general public utility and being carried out in a commercial manner does not, therefore, qualify as a charitable activity in terms of Section 2(15) of the Act. The learned CIT(A), on the other hand, holding that the activities*

qualify as imparting education and thus entitling the assessee to claim its income as exempt under Section 11/12 of the Act.

29. In view of the recent decision of the Hon'ble Apex Court in the case of New Noble Educational Society (supra) wherein the interpretation of the term "education" was dealt with at length by the Hon'ble Apex Court, arguments were heard by both the parties. Admittedly, the Hon'ble Apex Court in the said decision has interpreted the term 'education' in a narrower sense as imparting formal scholastic learning by way of systematic instruction, schooling or training given to the young. The arguments of the learned Counsel for the assessee before us is that this narrow interpretation was given only in the context of interpreting it for the purposes of Section 10(23C)(vi) of the Act which exempts income of Institutions existing "solely for the purpose of education", which was the issue before the Hon'ble Apex Court. The learned Counsel for the assessee has argued that the term "education" has not been interpreted by the Hon'ble Apex Court for the purposes of Section 2(15) of the Act defining charitable purpose to include education also.

30. We are not in agreement with this contention of the learned Counsel for the assessee. The Hon'ble Apex Court in fact has, in a very clear terms, given narrow meaning to the term 'education' for the purposes of Section 2(15) of the Act only. In its findings, as reproduced above, the Hon'ble Apex Court has categorically held that education means imparting formal scholastic learning for the purposes of qualifying as charitable purposes under Section 2(15) of the Act. The Hon'ble Apex Court has referred to its decision in the case of T.M.A Pai Foundation, wherein the meaning of the word "education" as scholastic structured learning was derived from the Article 21-A, Articles 29&30 and Articles 45 & 46 of the Constitution. It also referred to its decision in the case of Sole Trustee, LokaShikshana Trust Vs. CIT [1975] 101 ITR 234 (SC) (supra), pointing out that in the said decision, "education", in the context of the Income-tax Act, was defined as the systematic instruction, schooling or training given to the young; that it has not been used in a wide and extended sense. Deriving from its above two decisions, the Hon'ble Apex Court categorically held that, in terms of Section 2(15) of the Act, "education" means only imparting formal scholastic learning. We are reproducing the findings of the Hon'ble Apex Court in this regard as again hereunder:-

"32. Education ennobles the mind and refines the sensibilities of every human being. It aims to train individuals to make the right choices. Its primary purpose is to liberate human beings from the thrall of habits and preconceived attitudes14. It should be used to promote humanity and universal brotherhood. By removing the darkness of ignorance, education helps us discern between right and wrong. There is scarcely any generation that has not extolled the virtues of education, and sought to increase knowledge.

33. The subject of education is vast, even sublime. Yet, it is not the broad meaning of the expression which is involved in this case. As was held in T.M.A Pai Foundation (supra), education in the narrower meaning of the term as scholastic structured learning is what is meant in Article 21-A, Articles 29-30 and Articles 45- 46 of the Constitution. As to what is 'education' in the context of the IT Act, was explained in LokaShikshana Trust v. Commissioner of Income Tax15 in the following terms:

> *"5. The sense in which the word "education" has been used in section 2(15) is the instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge....All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling."*
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> ***Thus, education i.e., imparting formal scholastic learning, is what the IT Act provides for under the head of "charitable" purposes, under Section 2 (15)."***

31. We have also noted from the above, that in the case of LokaShikshana Trust (supra) on which the Hon'ble Apex Court has relied, museums were said to be imparting education in a wider sense and not in the narrower sense of systematic schooling or imparting instruction. Therefore, we reject the contentions of the learned Counsel for the assessee that the decision of the Hon'ble Apex Court in the case of New Noble Educational Society (supra) did not apply to the facts of the present case; and accordingly we hold that in view of the narrow and restricted meaning given to the term "education" as used in Section 2(15) of the Act, the activities carried out by the assessee being primarily run as a science museum does not qualify as education. The findings of the learned CIT(A), therefore, holding so are set aside.

"32. As for the contention of the learned Counsel for the assessee that the law declared by the Hon'ble Apex Court in the case of New Noble Educational Society (supra) was operative prospectively, we do not find any merit in the same. As a perusal of paragraph No. 78 of the order of the Hon'ble Apex Court reveals that the prospective operation was to the interpretation/meaning given to the term "solely" used in Section 10(23C)(vi) of the Act along with the word "education" where the exemption was allowed to institution existing "solely for education". The Hon'ble Apex Court at paragraph No. 78 of the order has noted in a very clear terms that

"since in the present judgment it has departed from the previous rulings regarding the meaning of the term 'solely', therefore, in order to avoid disruption, and to give time to institutions likely to be affected to make appropriate changes and adjustments, it would be in the larger interests of society that the present judgment operates hereafter. As a result, it is directed that the law declared in the present judgment shall operate prospectively". Therefore, it is very clear that the prospective operation of the judgment is only in the cases involving the interpretation of the term "solely" for the purpose of claiming exemption under Section 10(23C)(vi) of the Act. The prospective operation clearly is not for the meaning/ definition/ scope of the term "education" as used in Section 2(15) of the Act defining charitable purpose. As noted above, while giving a narrow interpretation to the term "education", the Hon'ble Apex Court has referred to the decision in the case of T.M.A Pai Foundation (supra) and its decision in the case of LokaShikshana Trust (supra) consistently holding that education is to be given a narrow meaning as imparting scholastic learning in a systematic manner. The Hon'ble Apex Court has not noted any inconsistency in this interpretation of the term "education" by it. Therefore also there arises no question as per the decision of the Hon'ble Apex Court in the case of New Noble Educational Society (supra) for giving it a prospective operation. This contention of the learned Counsel for the assessee is, therefore, also rejected.

As for the contention of the Ld.Counsel that its activities has consistently been held to be in the nature of imparting education in the past which position cannot now be disturbed, the same also merits no consideration since the nature of the activity being carried out has been determined in accordance with the interpretation by the Hon'ble apex court whose interpretation of law is to read as the law always was.

33. In view of the above, we hold that the assessee is not engaged in the charitable activity of imparting education as defined under Section 2(15) of the Act and the order of the learned CIT(A) holding so is, therefore, set aside.

34. Taking up the alternate contention of the assessee that its activities, if not in the nature of imparting education, they qualify as general public utility activity as held by the Assessing Officer also; but to exclude it from the definition of charitable purpose as defined under Section 2(15) of the Act invoking first and second proviso to the said section stating that all general public utility activities carried out in a commercial manner are not to be treated as charitable activities, the learned Counsel for the assessee has contended that the Hon'ble Apex Court in the case of AUDA (supra) has laid down certain guidelines for determining whether the general public utility activities qualify as commercial activities. He has drawn our attention to paragraph No. 253(A) of the order which is reproduced above containing the said guidelines. For the sake of convenience, the same is reproduced again hereunder:-

A. General test under section 2(15)

A.1 It is clarified that an assessee advancing general public utility cannot engage itself in any trade, commerce or business, or provide service in

relation thereto for any consideration ("cess, or fee, or any other consideration");

A.2 However, in the course of achieving the object of general public utility, the concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that (i) the activities of trade, commerce or business are connected ("actual carrying out..." inserted with effect from 1-4-2016) to the achievement of its objects of GPU; and (ii) the receipt from such business or commercial activity or service in relation thereto, does not exceed the quantified limit, of 20 per cent of total receipts of the precious year;

A.3 Generally, the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost-basis or nominally above cost, cannot be considered to be "trade, commerce, or business" or any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of "cess, or fee, or any other consideration" towards "trade, commerce or business". In this regard, the Court has clarified through illustrations what kind of services or goods provided on cost or nominal basis would normally be excluded from the mischief of trade, commerce, or business, in the body of the judgment.

A.4 Section 11(4A) must be interpreted harmoniously with section 2(15), with which there is no conflict. Carrying out activity in the nature of trade, commerce or business, or service in relation to such activities, should be conducted in the course of achieving the GPU object, and the income, profit or surplus or gains must, therefore, be incidental. The requirement in section 11(4A) of maintaining separate books of account is also in line with the necessity of demonstrating that the quantitative limit prescribed in the proviso to section 2(15), has not been breached. Similarly, the insertion of section 13(8), seventeenth proviso to section 10(23C) and third proviso to section 143(3) (all with retrospective effect from 1-4-2009), reaffirm this interpretation and bring uniformity across the statutory provisions.

35. His contention in this regard is that the Assessing Officer has not treated the activities carried out by the assessee as commercial in the light of these guidelines, but merely by noting that the assessee was collecting fees for various activities carried out by it and was generating surplus, he held that the activities of the assessee qualified as being commercial in nature. His request before us, therefore, was that the matter may be restored back to the Assessing Officer to determine its character as commercial or not in the light of the guidelines laid down by the Hon'ble Apex Court in the case of AUDA (supra). The learned DR has fairly admitted before us to the fact that the Assessing Officer has not arrived at his finding of the assessee's activities being commercial in nature in the light of the guidelines as laid down by the Hon'ble Apex Court and has agreed to the matter being restored back to the Assessing Officer for the said purpose.

36. In vie w of the same, we restore the issue back to the Assessing Officer to determine whether the activities carried out by the assessee being in the nature of general public utility can be said to be commercial in nature so as to disqualify it from being categorised as charitable activities in terms

of the first and second proviso to Section 2(15) of the Act by following the guidelines laid down by the Hon'ble Apex Court in the case of AUDA (supra) for the said purpose.

37. Having said so, we have noted that both the parties are in dispute regarding the manner of treatment of specific purpose funds received by the assessee from the Government – whether to be treated as capital receipts as claimed by the assessee or to be treated as revenue receipts as claimed by the Department.

38. We have gone through the order of the learned CIT(A) and we have noted that he has given specific finding that the project specific grants will have to be considered as capital receipts at paragraph No. 4.5 of his order and he has directed the Assessing Officer to verify the nature of the grants received by the assessee and thereafter treated as capital or revenue in accordance with his order that the projects specific grants are to be treated as capital receipts. This finding of the learned CIT(A) has not been challenged by the Revenue before us. Therefore, for all purposes, this issue stands settled as held by the learned CIT(A).

39. In view of the above, therefore, we hold that the activities carried out by the assessee are not in the nature of imparting education, but are in the nature of general public utility activities in terms of Section 2(15) of the Act; and for the purpose of determining whether they are commercial in nature so as to disqualify them from being charitable activities in terms of first and second proviso to Section 2(15) of the Act, the matter needs reconsideration by the Assessing Officer in terms of the guidelines laid down by the Hon'ble Apex Court in the case of AUDA (supra) for determining the commercial nature of such activities. For the said purpose all the appeals are restored back to the AO. The AO is directed to determine the same and thereafter determine the income liable to tax in accordance with law."

12. The ld.counsel for the assessee has not pointed out any disparity of facts of the earlier years with that of present year in appeal before us. Nor has he pointed out fate of the ITAT order being disturbed by any higher appellate authorities in further litigation. Therefore, in view of the above order of the ITAT, which had threadbare discussed the issue on hand, with the support of various judicial authorities, we do not find any infirmity in the impugned order of the ld.CIT(A), holding the activities of the assessee as qualifying as general public utility activities, which we uphold. The issue is further restored back to the AO to decide the commercial nature of the activities in accordance with the direction given by the ITAT in the earlier years.

Ground No. 1.1 – 2.3, relating to assesses claim of its activities qualifying as education in terms of section 2(15) of the Act are accordingly dismissed.

No separate arguments were made by the Ld.Counsel for the assessee vis a vis ground No.2.4, hence the same is also dismissed.

13. Ground No.3.1 relating to the issue of commercial nature of activities carried out by it is restored back to the AO and hence allowed for statistical purposes.

14. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the Court on 13th September, 2023 at Ahmedabad.

Sd/-	**Sd/-**
(SIDDHARTHA NAUTIYAL)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad,dated 13/09/2023