

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC-3' NEW DELHI**

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER  
I.T.A .No.-3767 & 3768/Del/2016  
(ASSESSMENT YEAR-2011-12 & 2012-13)**

Tapindu Educational Society, A-14, Ring Road, Lajpat Nagar-IV, New Delhi-110024. PAN-AAAJT1020B (APPELLANT)	Vs	DDIT (E), Trust Circle-IV, New Delhi.  (RESPONDENT)
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<b>Assessee by</b>	<b>None</b>
<b>Revenue by</b>	<b>Sh.Rajesh Kumar, Sr.DR</b>
<b>Date of Hearing</b>	<b>10.10.2016</b>
<b>Date of Pronouncement</b>	<b>07.12.2016</b>

**ORDER**

Both these appeals have been filed by the assessee assailing the correctness of the separate orders dated 15.03.2016 & 16.03.2016 of the CIT(A)-36, New Delhi pertaining to 2011-12 & 2012-13 AYs on various grounds. However, at the time of hearing, an adjournment was moved by a counsel whose Power of Attorney was not found on record. The appeal was passed over twice in order to afford the proxy counsel to seek instruction if any qua the Power of Attorney in favour of a counsel. In the third round also, the person stated to be appearing as proxy counsel was unable to state whether the counsel who had instructed him had a Power of Attorney in his favour as admittedly there was no Power of Attorney on record. The proxy counsel merely stated that he was not aware of the facts. In these circumstances, considering the material available on record and after hearing the Ld.Sr.DR, it was considered appropriate to reject the petition moved and proceed with the present appeal ex-parte qua the assessee appellant on merits.

2. A perusal of the record shows that the assessee's society as per record is stated to be running following institutions to impart education:-

- a. *Indirapuram Public School at Indirapuram, Ghaziabad*
- b. *Radiant International School at Patna*
- c. *Tapindu Institute of Higher Studies at patna*
- d. *AKS Institute of Management Excellence at Noida.*

2.1. The aims and objects as discussed in the assessment order pertaining to 2012-13 AY are stated to be as under:-

1. "To promote literacy, cultural activities by organizing libraries, reading rooms nursery and primary schools, adult education classes, lectures, essay competitions symposium and cultural.

2. To organize sports clubs, sports, meet, sports competitions to promote sports, meet, sports competitions to promote sports spirit amongst the youth.

3. To make correspondence in lawful manner regarding the recognition of school with the concerned authorities etc."

2.2. The assessee is stated to be registered u/s 12A of the Act vide order dated 04.08.2000, F.No.DIT(E)/2000-01/T-603/2000/261. The assessee is also notified u/s 80G(5)(VI) by DIT(E) New Delhi, vide his order dated 22.08.2005.

2.3. Considering the facts that the assessee had invested Rs.1,82,800/- and Rs.31,12,350/- in share application in the year under consideration respectively. The AO required the assessee to furnish the requisite details. Considering the details, it was found that in 2011-12 AY, the assessee had invested the said amount as share application money in one "The Tapindu Urban Co-operative Bank Ltd." In view of the fact that the investment was not covered under the allowed modes of investments u/s 11(5), it was held to be in violation of 13(1)(d) of the I.T..Act, 1961.

3. Aggrieved by this, the assessee challenged the issues in both the years before the CIT(A).

4. The CIT(A) noted that despite seeking adjournments on 10 different occasions, the assessee remained unrepresented. Accordingly the appeal was dismissed holding as under:-

*6. "I have considered the assessment order and the submissions of the assessee. During the appellate proceedings, there has been made no submission of the accounts or other details submitted by the assessee to the AO to verify the details of the income applied and accumulated. The assessment order also just shows return of income as 'Nil' in the computation part. The AO has disallowed the investment u/s 13(1)(d) and not u/s 11(2) r.w.s. 11(5). Section 13(1)(d) expressly disallows exemption u/s 11 if any fund is deposited / invested in any other mode than specified in Sec 11(5). It has no relation to Sec 11(2) in this context as incorrectly claimed by the assessee. Further, the claim of the assessee that the investment is a permitted mode of investment as per clause 11(5)(iii) of the Act since the Tapindu Urban Co-operative Bank Limited, Patna is a co-operative Bank is not fully verifiable in terms of its area of operation. The licence of RBI submitted is subject to the condition that the area of operation of the bank shall be confined only to the area as indicated in the bye-laws duly approved by the Registrar of Co-operative Societies. In absence of any submissions, the area of operation could not be confirmed. Another submission made which was not a part of Grounds of appeal is that this investment was not made during the year. No evidence in the*

*form of copy of Accounts, etc. was submitted. Even so, if this is the case then it could very well have been requested by the assessee to rectify u/s 154 being mistake apparent from record. Just because it was the same amount as in A.Y. 2011-12 does not qualify it to be not added in A.Y. 2012-13 if it was invested in A.Y. 2012-13 too. I am therefore inclined to reject the grounds of appeal and confirm the addition made by the AO."*

5. Accordingly, considering the submission of the Ld.Sr.DR wherein the orders of the CIT(A) in both the years are ex-parte orders and the grievance of the assessee persists, it is deemed appropriate to restore the issues back to the file of the CIT(A). While so directing it is deemed appropriate to mention that the Ld.CIT(A) must address the specific dates on which the appeals are fixed for hearing and the mode and manner of communicating the notice of the same to the assessee. The lack of discussion on this relevant fact lays the order open to the challenge of being violative of natural justice. While so directing, it is made clear that incase the assessee despite specific notice chooses not to participate fully and fairly in the appellate proceedings, the CIT(A) would be at liberty to pass a speaking order in accordance with law. It is hoped that the opportunity so provided in good faith is not abused by the assessee.

6. In the result, the appeals of the assessee are allowed for statistical purposes.

**The order is pronounced in the open court on 07<sup>th</sup> of December, 2016.**

**Sd/-**

**(DIVA SINGH)  
JUDICIAL MEMBER**

*\*Amit Kumar\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR, ITAT NEW DELHI