

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 698/JP/2014  
निर्धारण वर्ष/Assessment Year :2010-11

M/s Bansal Classes Private Limited, Kota	बनाम Vs.	JCIT, Range-1, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCB8403D		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 738/JP/2014  
निर्धारण वर्ष/Assessment Year :2010-11

Asstt. Commissioner of Income-tax, Circle-1, Kota	बनाम Vs.	M/s Bansal Classes Pvt. Ltd. 2-K, Vigyan Nagar Kota (Raj)
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCB8403D		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 699/JP/2014  
निर्धारण वर्ष/Assessment Year :2011-12

M/s Bansal Classes Private Limited, Kota	बनाम Vs.	JCIT, Range-1, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCB8403D		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 739/JP/2014  
निर्धारण वर्ष/Assessment Year :2011-12

Asstt. Commissioner of Income-tax, Circle-1, Kota	बनाम Vs.	M/s Bansal Classes Pvt. Ltd. 2-K-5, Vigyan Nagar, Kota(Raj)
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स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCB8403D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 435/JP/2016  
निर्धारण वर्ष / Assessment Year :2012-13

M/s Bansal Classes Pvt. Ltd., Kota	बनाम Vs.	ACIT, Circle-1 Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCB8403D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 298/JP/2016  
निर्धारण वर्ष / Assessment Year :2012-13

ACIT, Circle-1 Kota	बनाम Vs.	M/s Bansal Classes Pvt. Ltd. 2-K-17, Vigyan Nagar, Kota(Raj)
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCB8403D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 345/JP/2017  
निर्धारण वर्ष / Assessment Year :2013-14

ACIT, Circle-1 Kota	बनाम Vs.	M/s Bansal Classes Pvt. Ltd. 2-K-15, Vigyan Nagar, Kota(Raj)
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCB8403D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 296/JP/2017  
निर्धारण वर्ष / Assessment Year :2013-14

M/s Bansal Classes Pvt. Ltd., Kota	बनाम Vs.	ACIT, Circle-1 Kota
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स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCB8403D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri B.V.Maheshwari (CA)  
राजस्व की ओर से / Revenue by: Shri Varindra Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 11/10/2017  
उदघोषणा की तारीख / Date of Pronouncement: 31/10/2017

आदेश / ORDER

PER: SHRI VIKRAM SINGH YADAV, A.M.

These are cross appeals filed by the assessee and the revenue directed against the orders passed by Id. CIT(A), Kota dated 21.08.2014, 22.08.2014, 19.01.2016 & 03.02.2017 for A.Y. 2010-11, 2011-12, 2012-13 & 2013-14 respectively. Given the similarity of facts and common grounds of appeal involved in all these cases, all these appeals were heard together and are being disposed off by this consolidated order.

**ITA No. 698/JP/14 & 738/JP/14**

2. First, we take up the cross appeals for AY 2010-11 wherein respective grounds of appeal are as under:

**Assessee's grounds of appeal (ITA No. 698/JP/14)**

"1. That the Id. CIT(A) grossly erred in not allowing the Software expenses of Rs. 99031.00 treating them as Capital expenditure. The Id. AO disallowed Rs. 119429.00 out of this and the Id. CIT sustained the disallowance of Rs. 99031.00.

2. That the Id. CIT(A) grossly erred in not deleting the addition made by Id. AO on account of caution money of Rs. 5,00,000/-. The Id. AO made the addition of caution money Rs. 1668525/- out of that Id. CIT(A) sustained the addition of Rs. 5,00,000/-.

3. That the Id. CIT(A) grossly erred in sustained the addition u/s 40A(2)(b) on A/c of Smt. Arti Bansal Rs. 2,42,000/-. The Ld. AO made addition of Rs. 7,94,000/- out of this Id. CIT(A) sustained Rs. 2,42,000/-."

**Revenue's grounds of appeal (ITA No. 738/JP/14)**

"On the facts and in the circumstances of the case, the Id. CIT(A) has erred in:-

(i) deleting the addition of Rs. 11,68,825/- out of total addition of Rs. 16,68,825/- made by AO on account of refund of caution money.

(ii) deleting the addition of Rs. 19,65,348/- made by the AO on account of depreciation on PLD unit building on the basis of additional evidence admitted in violation of Rule 46A.

(iii) deleting the addition of Rs. 5,52,000/- out of total addition of Rs. 7,94,000/- made by the AO u/s 40A(2)(b) out of salary paid;

(iv) deleting the addition of Rs. 4,90,07,505/- made by the AO on account of disallowance of deduction claimed by assessee u/s 80G."

3. In its first ground of appeal, the assessee has challenged the action of Id. CIT(A) in not allowing the software expenses of Rs. 99,031/- as revenue expenditure and treating them as capital expenditure.

4. Briefly stated, the facts of the case are that during the course of assessment proceedings, the AO observed that the assessee has claimed software licences expenses of Rs. 1,19,429/- which has been shown under the head "miscellaneous expenses". In response to the show cause notice, the assessee submitted copy of 3 bills before the Assessing

Officer and submitted that these are software licences expenses which are paid every year. Hence, the same were claimed as revenue expenditure and not capitalized in the books of account. The Assessing Officer observed that the reverse side of the bill dated 18.2.2010 issued by Momentum Infocare Pvt Ltd., it is mentioned that "required for our IT section to keep them update with the latest Technology and Development Tool required for our Internal Software development for LAN and website related Application" and on the basis of same, it was held by the AO that the assessee company has acquired the software. The amount of Rs 1,19,429 was therefore disallowed as revenue expenditure and held to be capital in nature which should be capitalized in the hands of the assessee.

5. Before the Id. CIT(A), the assessee submitted that the software licences expenses are paid to 2 entities namely M/s Taxsoft Marketing Pvt Ltd. and M/s Momentum Infocare Pvt Ltd. It was submitted that Taxsoft Marketing Pvt. Ltd is the maker of computation software which is installed for filing of TDS return and allied work and for which annual renewal charges are paid every year by the assessee. Regarding payment to M/s Momentum Infocare Pvt Ltd, it was submitted that it relates to renewal of yearly licence pack software which is used for internal operating system and its firewall protection amount and it is paid every year. It was submitted that for using any software of these softwares for which annual renewal fee is paid by the assessee, it cannot be said that capital expenditure has been incurred by the assessee and which has any enduring benefit. The Id.CIT(A) has gone through the details and held that expenditure of Rs. 99,031/- relate to purchase of

software whereas expenditure of Rs. 2,750/- and Rs. 17,648/- was related to use of software for one year and renewal of software respectively. Accordingly, the expenditure of Rs. 20,398/- was held as revenue in nature and addition of Rs 99,031 was confirmed. Now the assessee is in appeal before us.

6. It was submitted by the Id AR that the Company has incurred software expenditure of Rs. 1,19,429/-. These are the expenditure for taking software licences for a year. The company is engaged in coaching business; it has to buy so many softwares and each of these softwares cannot be used for more than 1 year. Further, for renewal of the licence also, it is done every year. Hence these expenditure cannot be capitalized. It has no enduring benefits because it becomes obsolete in a year or rather before a year itself because in the changing environment upgraded applications come and the earlier one becomes obsolete. Out of the said expenditure of Rs. 1,19,429/- the learned CIT(A) allowed small expenditure of Rs. 20,398/- and in relation to the fees paid to Microsoft Software Developers of Rs. 99,031/- it was stated that this software was required for official software for LAN and Website related applications. This is the reason quoted by the learned CIT(A) and the expenditure was not allowed. He has stated that the expenditure is related to purchase of capital goods whereas it was purchased for Website related application for LAN and being a small expenditure the Company has claimed in Revenue Expenditure which ought to have been allowed by the learned CIT(A), but the learned CIT(A) has repeated the theory of the learned A.O who has not gone into the details and the sustained the addition. We again submit that this software licence

expenses require renewal every year, hence it has not enduring benefit and no assets have been created. Therefore, the expenditure is to be allowed fully, therefore, kindly allow the same.

7. On the other hand, Id. D/R supported the orders of the lower authorities.

8. We have heard the rival contentions and pursued the material available on record. The Id CIT(A) has gone through the invoices submitted by the assessee during the course of appellate proceedings and has arrived at a finding that Rs 99,031 relates to purchase of software. There is nothing on record to suggest that said finding is perverse. Further, the assessee in its submissions has also stated that it had paid for purchase of software for Website related application for LAN. In light of the same, we do not see any infirmity in the findings of the Id CIT(A). The expenditure of Rs 99,031 is held to be capital expenditure and being in the nature of intangible assets, the assessee shall however be entitled for depreciation as prescribed for intangible assets under section 32 of the Act. The ground of the assessee's appeal is disposed off accordingly.

9. Regarding the 2<sup>nd</sup> ground of appeal wherein assessee has challenged the sustenance of addition made by the AO on account of caution money of Rs. 5 lakh. The Revenue is also in cross appeal in ground No. 1 wherein it has challenged the deletion of addition of Rs. 11,68,525/- made by the Id. CIT(A) out of total addition of Rs. 16,68,525/- made by the AO on account of caution money.

10. In this regard the facts of the case are that the AO made a disallowance and an addition of Rs. 16,68,825/- towards caution money to the returned income by observing as under:-

The assessee has shown caution money refund closing balance as on 31.03.2010 at Rs. 71,53,000/-. Details of the receipts and payment during the year under consideration in respect of caution money is stated as under:-

	Particulars	Amount (Rs)
	Opening Balance as on 01.04.2009	55,24,500/-
<b>Add:</b>	Receipts during the year	1,27,54,000/-
	<b>Total</b>	<b>1,82,78,500/-</b>
<b>Less:</b>	Payment During the year	1,11,25,500/-
	Closing balance an on 31.03.2010	<b>71,53,000/-</b>

Perusal of the details filed by the assessee reveals that sufficient amount of caution money has been refunded in cash, for which no proper receipt/evidence has been adduced. Details of caution money distribution for the year under consideration are available on sheets, examination of which reveals that neither the signature of the recipient nor the stamp (Paid) have been indicated against many places, examples of which are indicated as under:-

S.No.	Batch	Roll No.	Name of the student	Amount (Rs)
1	AO1	16	Kumar Saurav	1000
2	AO1	12245	Hardik Agarwal	1000
3	AO1	12266	Srijan Mishra	1000
4	AO1	12469	Harvineet Singh	1000
5	BO1	523	Anup Kumar	1000

6	BO1	533	Gaurav Joshi	1000
7	CO1	860	Manish Kumar	1000
8	DO 1	1768	Manish	1000
9	DO 1	1773	Nikil Patil	1000
10	CC	23104	Ashish Mohapatra	1000

Similar is the position in many other cases. Moreover, no serially numbered cash receipts are kept by the assessee. In the absence of proper evidence regarding refund of caution money in cash and due to non appending of the signatures of the respective recipients, the caution money refunded during the year under consideration cannot be verified in entirety. Moreover, all the cases where caution money has been refunded in cash, cannot be verified in the absence of complete particulars of the concerned students. In view of these facts, 15% of the total caution money refunded at Rs. 1,11,25,500/- i.e a sum of Rs. 16,18,825/- was disallowed and added to the assessee's total income.

11. Being aggrieved, the assessee carried the matter in appeal before the Id CIT(A) and vide its letter dated 24.6.2014 submitted as under:-

"Caution Money: The learned A.O. has disallowed amount out of the payment of Caution Money based on surmises and conjectures.

The Caution Money is explained that when any student is admitted for education in our institute, Rs. 1000/- on account of Caution Money has been fixed to be received from him. The said amount is deposited by him and it is kept intact till he is in our institute and when he leaves the institute the said Caution Money is refunded to him. Therefore, it is not

an income; it is a liability of the institute and hence the balance is shown under the head Current Liabilities. Same is the position every year and whatever the money is refunded to the students, is dealt with in a particular and it has been handled by 4 persons of our staff.

To ensure that the Caution Money is properly refunded to the students and on the basis of their report, the treatment is given in the books of accounts. This feature is in every year. In this Company there is a strong control on the amount received from the students and it has been checked by the higher management and it is ensured that the amount received as Caution Money from the students, is paid to them properly. The Caution Money is been paid on "Pull Model" Basis that is when an student approaches for refund he is paid to ensure only right hand have been receiving the amount and so sometimes it happens that student may be coming even after 1-2 years for the refund.

The learned A.O. has due to some very less unpaid refunds of the Caution Money i.e 10 out of Student strength in thousands, has disallowed 15% of caution money stating that there is no proper receipt or evidence. In this matter we submit that we have given details of refund and a copy of the page of the register and the system what we are following in case of refund of money. No particular incidence has been noticed by the learned A.O. that the same has not been refunded to the students.

It could be checked anytime by calling the student anytime about receiving the money which we also apply practically to ensure proper

disbursal but no such exercise has been done and straight away deducted 15%. He has made up his mind that due to non-legibility of signatures of the recipients, money refunded during the year, cannot be verified in entirety whereas we have submitted that we have strong procedure for refund of Caution Money.

We got the signatures of the students or the parents those who take back the Caution Money and all those sheets were filed along with our reply before the learned A.O. We are sorry to state that even in such a situation how he has doubted that whether it was refunded or not, but this is a probability and his assessment. There is no concrete finding that the same was not refunded. Therefore any estimate of disallowance, made by him out of the total refund, is totally wrong, baseless, based on his own thinking, hence it should be deleted. We also submit that this is the procedure followed by the Company since its inception and in no year such type of baseless disallowances were made in the past.”

12. We now refer to the findings of the Id CIT(A) which are under challenge before us:

*"I have gone through assessee's submission and AO's findings. The assessee claimed that it has not claimed any expenditure against repayment of caution money. The AO added a sum of Rs. 16,68,825/- on the basis of example of Rs. 10,000/- paid in cash without obtaining any signature. In my opinion, caution money is received during the course of business and if the same is not refunded, the same can be treated as income as and when the liability to pay such amount is written off in the books of accounts. During the year, assessee had shown to have paid*

*Rs. 1,11,25,500/- . If any of the repayment was not actually made, the same would form the income of assessee. Considering the above, I am of the opinion that some addition was justified. However, making addition of Rs. 16,68,825/- on the basis of defects of Rs. 10,000/- was not justified. Considering the facts of the case, in my opinion, an addition of Rs. 5,00,000/- would meet the end of justice. The AO is directed to delete balance addition of Rs. 11,68,825/-. This ground of appeal is therefore partly allowed.*

13. Before us, Id. AR has contended that before the lower authorities, it was submitted that caution money is a capital receipt kept for a year or two or so long the student is taking coaching in our institution. When he is leaving, the same is refunded to him. Therefore, it can never become in the character of income. Further, for the payments made during the year, a detailed list, as per register, was submitted, but the learned AO has made ad hoc addition of 15% based on certain missing signatures of the recipients and the learned CIT(A) has sustained the said addition of Rs. 5,00,000/- in place of Rs. 16,68,525/- added by the learned AO.

We submit before your honour that on perusal of the payment sheet of Rs. 1,000/- each in signature columns, though payment has been made, unfortunately the signatures were not obtained and on the basis of report, given by the cashier or the person who was In-charge of refund of the caution money, the payment has been debited in the books although there is no doubt about the non-payment of the same. The amount entered in the register, has entirely been paid during the year itself and if something is not claimed in the year itself then it is kept credited in caution money till the student claims and the matter of

written off comes in picture after 4-5 years but no such case has come in the case of Bansal classes and, there has never been a chance to written off.

The learned CIT(A) observed that the learned AO made addition of Rs. 16,68,525/- on the basis of out of Rs. 10,000/- and held not justified, but again he also came on the estimation. Our submission is that out of the total payment of Rs. 1,11,25,500/- there are instances of 10 students (Rs. 10,000/-) on which there were no signatures. In such a situation even if you do not believe the authenticity of the coaching institute who has paid such a huge amount, at the most Rs. 10,000/- can be disallowed since, except this one, there are no instances and when there are no instances, then there is no question of estimation of such a case. In view of this we submit that the caution money, paid to the students, is to be allowed fully and there is no scope of any disallowance.

14. We have heard the rival contentions and pursued the material available on record. The caution money is received from the students at the time of seeking admission for the various coaching classes being run by the assessee. It is a security deposit which is refundable to the students at the time of either completion of their classes or leaving the institute, as the case may be. The character of the caution money at the time of receipt is therefore clearly capital in nature. The same is evidenced by the fact that during the year under consideration, the assessee has received caution money of Rs 12,754,000 from the students who have sought admission during the year and which has been treated by the assessee as current liabilities and duly accepted by the Revenue

by accepting the said treatment and not bringing the same to tax as revenue receipt.

15. The limited case of the Revenue is that caution money amounting to Rs 1,11,25,500 has been refunded in cash during the year and for which no proper receipt/evidence has been adduced by the assessee and he accordingly stated that 15% of caution money refunded amounting to Rs 16,18,825 is disallowed and added to the assessee's total income. The Revenue is thus not disputing the fact of repayment of the caution money by the assessee company to the students. Even before us, the Id DR has not disputed or brought to our notice any facts which prove that the caution money has not been refunded to the students. Where the Revenue is not disputing the fact of repayment of caution money, the question of writing off such liability or forfeiture of such caution money doesn't arise for consideration. Therefore, merely on account of the fact that some of the repayments which have been made by the assessee in cash are not verifiable, the same cannot form the basis for disallowance. During the course of hearing, the assessee has submitted that it has adequate internal controls for repayment of caution money to the students and books of accounts have been audited and no adverse finding has been given by the auditors. Further, details of repayments in terms of caution money ledger, vouchers and other details were submitted during the course of assessment proceedings which is also not disputed by the Revenue. Further, the question of disallowance comes where there is a claim of expenditure at first place which is not the case before us. In the entirety of facts and circumstances of case, we are of the considered view that there is no basis for adhoc disallowance of 15%

of caution money which has been refunded to the students during the year. We accordingly set-aside the findings of the AO and the Id CIT(A) and the disallowance of caution money so refunded is deleted in entirety. In the result, ground of assessee's appeal is allowed and ground of revenue's appeal is dismissed.

16. In ground no. 3, the assessee has challenged the sustenance of addition u/s 40A(2)(b) on account of salary payment to Arti Bansal amounting of Rs. 2,42,000/-. The revenue is also in cross appeal in ground no. 3 relating to deletion of addition of Rs. 5,52,000/- out of total addition of Rs. 7,94,000/- made by the AO u/s 40A(2)(b) of the Act.

17. Briefly stated facts of the case are that the the AO made an addition of Rs. 7,94,000/- observing as under:-

"As per detailed filed alongwith Audit Report and examination of further details filed during the course of assessment proceedings, it is noticed that the assessee company has made payment of salary to the following persons specified u/s 40A(2)(b);

S. No.	Name of the person	Relation with the Director	Salary paid in F.Y. 08-09	Salary paid in F.Y. 09-10	Increase in salary during the F.Y. 09-10	Percentage of increase in salary
1.	Smt. Aarti Bansal	Daughter	34,00,000/-	40,50,000/-	6,50,000/-	19.11%
2.	Smt. Mahima Bansal	Wife of Director	16,50,000/-	24,00,000/-	7,50,000/-	45.45%

Considering the hefty increase in salary payment to the above noted ladies covered u/s 40A(2)(b); the assessee was asked to justify salary increase

vide order sheet entry dated 05.03.2013. The assessee has failed to explain such abnormal increase in payment of salary to the said ladies, with any supportive evidence. Smt. Aarti Bansal has been looking after the business affairs at Ajmer Branch of the assessee company. As per details filed, total students during the year under consideration were 246 from whom total tuition fees was received at Rs. 1,56,99,720/-. In the immediate preceding assessment year, number of students were 226 from whom total amount of tuition fees received amounted to Rs. 1,34,32,411. This shows that increase in the tuition fees during the year under consideration is to the extent of 16.88% only, which does not warrant such huge increase in salary to Smt. Aarti Bansal. Hence, salary payments made to these two ladies is considered to be excessive, unreasonable and unjustifiable. In view of the incremental factor and inflationary trends, increase of salaries @ 12% is considered to be fair and judicious. Hence; excess salary, as computed below, is disallowed u/s 40A(2)(b):-

<b>S. No.</b>	<b>Name of the person</b>	<b>Relation with the Director</b>	<b>Salary paid in F.Y. 08-09</b>	<b>Increase in salary during the F.Y. 09-10</b>	<b>Percentage of increase in salary</b>	<b>Increase in salary @ 12%</b>	<b>Excess Salary</b>
1.	Smt. Arti Bansal	Daughter	34,00,000/-	6,50,000/-	19.11%	4,08,000/-	2,42,000/-
2.	Smt. Mahima Bansal	Wife of Director	16,50,000/-	7,50,000/-	45.45%	1,98,000/-	5,52,000/-

Therefore, total excess salary of Rs. 7,94,000/-(2,42,000+5,52,000) paid to the above said relatives of the Directors is disallowed u/s 40A(2)(b) and added to the assessee's total income. "

18. During the course of appellate proceedings before the Id CIT(A), the assessee vide letter dated 24/06/2014 submitted as under:-

"Salary : In course of assessment the details of salary paid to various persons were filed. In the details the learned AO took up the salary of two persons – Smt. Arti Bansal and Smt. Mahima Bansal. Smt. Arti Bansal is not only looking after the entire classes at Ajmer but also taking lectures at Kota Bansal Classes and, therefore, she has been made the General Manager for the Classes at Ajmer by the institute. Looking to work, her qualification degree certificate enclosed, experience and time devoted, the salary was increased from Rs. 34 lacs to 40.5 lacs and this increase is justified with the turnover of the Ajmer which has been increased from 134.32 lacs to 156.99 lacs. That growth as calculated by Ld. A.O. comes to around roughly 17% and increase in salary comes to roughly around 19% but he forget to consider the most important fact that she is not only managing Ajmer Branch but also contributing to Kota Head Office and in that scenario the increase is well deserved justified.

Also the comparison between Profitability and Salary is not well justified it is evident that even some companies that are incurring losses are increasing staff remuneration as due to business expediency then as per Id. AO these employees are not even deserving salary as company is loss making but it is not so the case. The profitability of the Company is

around 60% hence on the increased turnover of Rs. 22 lacs the increase @ 60% comes to Rs. 13.2 lacs out of that Rs. 6.5 lacs have been increased whereas this increase or the income is due to the entire efforts of said Smt. Arti Bansal. Therefore, the salary increase for her is totally justified. There is nothing to disallow because it was paid due to her qualification.

The salary being paid to Smt. Mahima Bansal was Rs. 16.5 lacs and in this year she was entrusted with more classes looking to the increased need of the students and her salary was accordingly increased. Also as it is been presumed by the Ld. A.O. that she is getting high remuneration because she is relative of Bansal Group then sir here to mention that there are 10 more teachers in Bansal Classes that are earning more than the Mahima Bansal. Her degree certificate copy is also enclosed. So if relation being sole criteria of earning remuneration in Bansal Classes then why there are 10 more people above Mahima Bansal getting higher remuneration.

It cannot be said that looking to the relation she was paid this much increase in the salary. We have submitted the details of salary and informed to the learned A.O. that there are so many other persons of whom list is enclosed who are drawing salary more than Smt. Mahima Bansal whereas the work done by Smt. Mahima Bansal is much more in comparison to other teachers.

Salary of other teachers that are not in Related Party payment are considered right by the Ld. A.O. but to mention that out of those 10 teachers who are getting higher salary then Mahima Bansal only 1 is currently serving in Bansal Classes rest all joined other classes or opened

there own ventures so loyalty should also be considered while considering increase in salary as more and more load of teachers leaving is falling on older ones.

As such, looking to her qualification devotion and work done, the salary was increased and it can be compared with other teachers. As such, the salary payment is fully justified. It cannot be treated as a case U/s 40A(2)(b) because no comparative case has been given by the learned A.O. He has just given the calculation that this much of percentage of salary is increase; it should also increase accordingly. This cannot be the basis. There is separate basis for justifying every person in this line of business, hence should be allowed fully.”

19. The relevant finding of the CIT(A) is reproduced as under:-

*"I have gone through assessee's submission and AO's findings. It was seen that Smt. Arti Bansal was looking after Ajmer Branch of the assessee company. The total receipts of Ajmer Branch was Rs. 1,56,99,720/-. Payment of Rs. 40,50,000/- to Smt. Arti Bansal appeared to be excessive, considering the fact that total turnover was only Rs. 1,56,99,720/- and there were other teachers also. Therefore, disallowance of Rs. 2,42,000/- related to Smt. Arti Bansal is confirmed.*

*The AO has not given any reason for disallowance of salary to Smt. Mahima Bansal. Therefore, AO is directed to delete addition of Rs. 5,52,000/-."*

20. During the course of hearing, the Id. AR submitted that this is in relation to the payment made to Mrs. Arti Bansal treating it to be the

payment u/s 40A(2). It is submitted that Mrs. Arti Bansal is the daughter of Mr. V.K. Bansal and after getting her qualifications, she started taking coaching classes along with her father in Kota. After her marriage, she shifted to Ajmer and a branch of Bansal Classes was opened there and she started taking coaching classes over there as a Head of the branch. In consideration to that she was paid the salary. Since she was looking after entire institution at Ajmer, hence salary of Rs. 40.50 lacs was paid in place of Rs. 34 lacs paid in earlier year. It was an increase of 19.11%. The learned CIT(A) linked it with the increase in the tuition fee and observed that 12% increase is reasonable. We have given so many instances that there has been increase in other cases also. Further looking to her qualification and a part of family of Bansal Classes she was paid salary, hence the payment was reasonable since there are so many teachers those who are getting salary more than her though they were taking only classes whereas she was taking care of all the classes, giving coaching and also administering the Ajmer branch. Looking to these facts, the salary increase was most justified. Therefore, the addition, sustained by the learned CIT(A), may kindly be deleted.

21. The Id DR is heard who has relied on the order of the AO.

22. We have heard the rival submissions and perused the material available on record. The issue under consideration relates to disallowance of salary payment to Arti Bansal and Mahima Bansal which is found to be excessive by the AO and disallowed under section 40A(2)(b) of the Act.

23. For determining the reasonableness of the salary paid to a person what is essential to examine is the relevant qualification and experience which that person holds, and whether the same is commensurate with the work responsibilities she has been assigned and for which she is responsible for. Further, the reasonableness has to be seen vis-a-vis legitimate needs of the assessee company and benefit derived or accruing to the assessee company as well as fair market value of such services.

24. It is noted that Arti Bansal holds the degree of MSC (Maths) and is a faculty member in the Mathematics Department in IIT-JEE Division for Ajmer and Kota Centers with over 10 years of experience. Her Job responsibilities include taking 4-5 lectures each day of Class XI/XII/XIII Target IIT-JEE, test paper setting and its solutions, DPP/Literature development, etc. During the year, she was made responsible for the upliftment of the Ajmer center and managing the academic and administrative activities of the center and sharing dual responsibility of Ajmer center incharge academically and administratively. As per her annual appraisal report, keeping in view her past performance and her current responsibilities, her salary was fixed at Rs 40.5 lacs per annum.

25. Similarly, it is noted that Mahima Bansal holds the degree of BE and is a faculty member in the Mathematics Department in IIT-JEE Division for Kota Center with over 8 years of experience. Her Job responsibilities include taking 4-5 lectures each day of Class XI/XII/XIII Target IIT-JEE, test paper setting and its solutions, DPP/Literature development, etc. As per her annual appraisal report, keeping in view her past performance and her current responsibilities, her salary was fixed at Rs 24 lacs per

annum for the financial year 2009-10 which was increased to Rs 37.50 lacs for the subsequent financial year 2010-11, thereafter increased to Rs 60 lacs for the financial year 2011-12 and thereafter, increased to Rs 69 lacs for the financial year 2012-13.

26. As per AO, salary payments made to these two ladies is considered to be excessive, unreasonable and unjustifiable and in view of the incremental factor and inflationary trends, increase of salaries @ 12% is considered to be fair and judicious and the remaining salary was held excessive and disallowed in all these financial years.

27. Regarding salary payment to Arti Bansal, the contention of the assessee is that besides being a qualified faculty member where she takes classes at Ajmer and Kota, she has been entrusted with the administrative responsibility for the Ajmer Branch during the year and commensurate with her qualification and area of responsibilities, the salary paid to her is commensurate. Further, it was contended that no comparative cases has been given by the AO to justify the determination of salary as done by him. The Id CIT(A) held that since Arti Bansal was looking after Ajmer Branch of the assessee company and the total receipts of Ajmer Branch was Rs. 1,56,99,720/-, payment of Rs. 40,50,000/- to Arti Bansal was held to be excessive and disallowance of Rs. 2,42,000/- related to Arti Bansal was confirmed. We find that firstly, there is no comparative case which has been highlighted by the AO which compares with the case of Arti Bansal, secondly, we donot find any basis for determination of annual increment @ 12% as determined by the AO and thirdly, the basis adopted by the Id CIT(A) is also not correct as the determination of salary was done at the beginning of the year and

what the Id CIT(A) has done is to compare the turnover which has been clocked during the financial year by the Ajmer branch and then compared it with salary which is already determined at the beginning of the year.

28. In our view, given the qualification and the experience of Arti Bansal and the fact that besides being a faculty member, she also managed the affairs of the Ajmer branch and closely and actively involved in management and day to affairs of the Ajmer branch, the salary paid to her is reasonable *vis-a-vis* legitimate needs of the assessee company and benefit derived or accruing to the assessee company. We do not see any justifiable reason to disturb the decision which has been taken by the management of the assessee company in terms of determining the appropriate remuneration payable to her. The only scenario where one can think of disturbing the said decision taken by the management of the assessee company is where people holding similar position and having similar experience and qualification have been drawing lesser remuneration compared to what has been paid to these persons by the assessee company. In other words, the test of reasonableness can be invoked where there is contemporary data in terms of identifiable third party transactions in similar field of competitive coaches classes being conducted by other companies. In the instant case, the revenue has not brought on record any such contemporary data in terms of other educational institutions of same scale-and size and having similar strength of student and infrastructure wherein faculty member holding the dual responsibility have been paid lesser salary. Further the Courts have held from time to time that the reasonableness of the expenditure is to be adjudged from the point of view of a business man and not of

the Revenue. In other words, the reasonableness has to be seen *vis-a-vis* legitimate needs of the assessee company and benefit derived or accruing to the assessee company and as determined by the assessee company. In the entirety of the facts and circumstances of the case, we are of the view that the salary paid to Arti Bansal is commensurate with qualifications and experience as well as area of her work responsibility in terms of faculty, management and day to day affairs of the Ajmer branch and commensurate *vis-a-vis* legitimate needs of the assessee company and benefit derived or accruing to the assessee company. In the result, disallowance of salary payment to Arti Bansal under the provisions of section 40A(2)(b) is hereby deleted.

29. Regarding salary payment to Mahima Bansal, the contention of the assessee is that she is again an experienced and qualified faculty member in the Mathematics Department in IIT-JEE Division for Kota Center with over 8 years of experience and her Job responsibilities include taking 4-5 lectures each day of Class XI/XII/XIII Target IIT-JEE, test paper setting and its solutions, DPP/Literature development, etc. Based on her annual appraisal report, her salary has been increased on annual basis which is commensurate with her past performance and her current/future responsibilities. Specifically, it was submitted that during the financial year 2010-11, due to sudden exit of other faculty members, she was entrusted with additional work responsibilities and her & subsequent salary increment is thus commensurate with her work responsibilities.

30. In this regard, we find that in financial year 2009-10, the Id CIT(A) has deleted the addition holding that no basis has been given by the AO.

In financial year 2010-11, the Id CIT(A) has again deleted the addition holding that there are many coaching institutes in Kota and salary higher than salary paid to Mahima Bansal has been paid to many faculty members.

In financial year 2011-12, the Id CIT(A) has examined the details of salary increase of other teachers and has given a finding that salary increase of the other faculty who is more experienced and qualified shows that comparatively there is a definite excessive increase in her case. Especially where she is only B.E and other faculty is B.Tech, IIT and having more than 3-4 years extra experience than her. The Id CIT(A) accordingly restricted the addition to Rs 8,00,000/- and the remaining addition of Rs. 35,20,000/- was deleted. Following the same reasoning, in financial year 2012-13, the Id CIT(A) restricted the disallowance to Rs 6,00,000 and balance disallowance was deleted.

31. Firstly, our reasoning as stated above in case of Arti Bansal shall apply with equal force to the present case. Further, we find that unlike the case of Arti Bansal, in case of Mahima Bansal, comparative data has been examined and analysed by the Id CIT(A) even though it is an internal data as provided by the assessee company. Based on the analysis of the said data, the Id CIT(A) has given a finding that the salary payment to Mahima Bansal is excessive by Rs 8 lacs in financial year 2011-12 relevant to assessment year 2012-13 and by Rs 6 lacs in financial year 2012-13 relevant to assessment year 2013-14. The said findings of the Id CIT(A) is therefore in consonance with our reasoning given above in case of Arti Bansal. However, there is no comparative

data that is available and analysed for the financial year 2009-10 and 2010-11. We accordingly confirm the deletion of addition of salary payments to Mahima Bansal for AY 2010-11 and AY 2011-12. For AY 2012-13 and AY 2013-14, we confirm the addition as sustained by the Id CIT(A) and balance addition is deleted. The respective grounds of appeal are disposed off accordingly.

32. Regarding ground no. 2 of revenue's appeal wherein the action of the Id CIT(A) has been challenged in deleting the addition of Rs. 19,65,348/- made by the AO on account of depreciation on PLD unit building on the basis of additional evidence admitted in violation of Rule 46A.

33. In this regard, briefly stated the facts of the case are that the AO made an addition of Rs. 19,65,348/- observing as under:-

The assessee has claimed that the PLD Unit Building was constructed and its construction was completed before 31.03.2010. The assessee was asked to produce completion certificate, occupation certificate and copy of the valuation report, vide the order sheet entry dated 08.02.2013, in support of its contention regarding completion of building during the year under consideration. Further, the assessee was also asked vide order sheet entry dated 05.03.2013 to produce the relevant electricity bills in respect of the PLD Unit Building for verification of the period of construction. It is also pertinent to mention here that copy of the valuation report from the Registered Valuer as well as the copy of completion certificate from the Competent Authority with regard to Building of PLD Unit were also called for previously vide this office letter

dated 29.10.2012. However; the assessee has failed to produce the above noted information/ documents in support of completion and subsequent occupation of the said PLD Unit. In the absence of the relevant documentary evidence, regarding completion and occupation of the said building, it is not proved that the assessee has used this asset for its business purposes. Accordingly; depreciation claimed at Rs. 19,65,348/- on the PLD Building is disallowed and added to the assessee's total income.

34. During the course of hearing before the Id CIT(A), the Id. AR submitted that:-

"Depreciation on PLD Unit building : During this year the Company has completed its PLD unit building which is adjacent to the existing premises of the Company in I.P.I.A. area. This is we can say the Motherboard of Bansal Classes considering it be a Computer as this is specifically the place where the Study Material, Question Papers and other related literature is being developed in strict vigil of Shri V.K.Bansal the patriarch himself. This PLD Unit building is responsible for quality control of Material of Bansal Classes and without this unit the classes would be handicapped. This is specifically designed as adjoining but separate to main building to ensure proper segregation and no disturbance of any kind.

In case of assessment proceedings the details of constructions were submitted. The construction work began in March 2008 and continued upto December, 2009. The major work was completed by end of September and thereafter the said building was taken in use. However, certain furniture & fixtures were carried on and that too was finished by

December, 2009. As such the Company claimed depreciation @ 5% treating it to be in use below 6 months. The learned A.O. has called upon some information such as electricity bill, completion certificate etc. However, we have submitted the copy of the electricity bill since the bills are common for the entire premises.

As regards completion certificate, it was submitted that it is not a system in Kota to obtain any completion certificate. However, we got it valued from the valuer. He has also mentioned about completion of it, but by that time the certificate was given, the assessment was complete. We are now submitting a completion certificate of a registered valuer which contains therein the details of the expenditure incurred. The foremost thing is that the expenditure was last incurred in December, 2010, hence it is presumed that by December, 2010 the said building was complete. We also submit that in relation to the valuation certificate the same query was raised by the learned A.O. in the last year and in our reply we filed the valuation certificate from a reputed architect of Kota which has also been confirmed by the same that it is a two page report, does not contain any details and in the next year also depreciation has not been allowed.

We further respectfully submit that first of all, when our books of accounts have been accepted, then the expenditure in the books towards building have been accepted fully. Secondly, if he was having any doubt of its own then it would have been got verified from his ownself, but without doing any efforts, the learned AO repeated own

version that there is no certificate whereas we have also informed him in our reply to check himself by the visit to the building which is complete and used by the Company. As such the learned AO has disallowed the depreciation without any enquiry, without having any regard for the documents filed by the Company. So far the light, power connection are concerned, we also submit that after completion of this unit the power load was got increased, the relevant documents are also submitted as this could easily justify our stand.”

35. We have heard the rival contentions and perused the material available on record. The issue under consideration relation to completion of the building and putting the same to use for the purposes of claiming depreciation under section 32 of the Act at half the normal rate being used for less than six months. The assessee has submitted that the major construction work of the building was completed in September 2009 and thereafter, certain furniture and fixtures/installed were finished by December 2009 and the building was put to use. In support, the construction account of the building evidencing the nature and period of expenditure was submitted which has subsequently been verified by the registered valuer. Further, usage of the building was corroborated by usage of electricity through common meter and increase in electricity load which was sanctioned in August 2009. Further, the assessee has requested for a physical verification of its building to establish the completion and usage of the building. All these facts have been duly considered by the Id CIT(A) and we have gone through his following findings and the same are hereby confirmed:

*"The AO disallowed the depreciation mainly on two counts. No electricity bill was produced and no completion certificate was produced.*

*The assessee submitted that the new building was adjacent to the existing building and both the buildings have common connection and the electricity bills are common for both the premises. The assessee submitted that after completion of new building, the electricity load was got increased. The assessee further submitted that in Kota, there is no system of obtaining a completion certificate. I have gone through the construction account of the building and it was seen that in the current financial year, last payment was made on 21.12.2009. It was also seen that assessee applied for increase in electric load from 350KW to 500 KW on 27.07.2009 and demand note was issued (by Jaipur Vidhyut Vitran Nigam Ltd.) on 21.08.2000, which was deposited on 28.08.2009. Considering the above, I am of the opinion that the building was completed and put to use during the second half of current financial year. The AO is therefore directed to delete addition of Rs. 19,65,348. This ground of appeal is allowed."*

In the result, the ground of the revenue is dismissed.

36. Regarding the ground No. 4 of revenue's appeal wherein the revenue has challenged the action of Id CIT(A) in deleting the addition of Rs. 4,90,07,505/- made by the AO on account of disallowance of deduction claimed by assessee u/s 80G of the Act.

37. The facts of the case are that the AO made an addition of Rs. 4,90,07,505/- observing as under:-

“During the year under consideration, the assessee company has made donations aggregating Rs. 9,80,89,200/- and claimed deduction of Rs. 4,90,07,505/- u/s 80G against gross total income of Rs. 98,01,50,108/-. The assessee vide this office letter dated 29.06.2011 was asked to justify the claim u/s 80G and file evidence in support of its claim. Vide reply filed on 27.02.2012, the assessee filed copies of receipts issued by Bansal Public Education Society, Registered Office, 5-A-13, Vigyan Nagar, Kota., in token of receipt of contribution towards corpus fund/ donation for building fund/ donation as per the under noted details:-

S.No.	Receipt No.	Date of receipt	Amount of receipt
1	1	07.10.2009	Rs. 50,00,000/-
2	2	07.10.2009	Rs. 25,00,000/-
3	3	13.10.2009	Rs. 15,00,000/-
4	4	03.11.2009	Rs. 10,00,000/-
5	5	09.11.2009	Rs. 50,00,000/-
6	6	09.11.2009	Rs. 20,00,000/-
7	7	12.11.2009	Rs. 10,00,000/-
8	8	08.12.2009	Rs. 50,00,000/-
9	9	26.12.2009	Rs. 10,00,000/-
10	10	08.01.2010	Rs. 50,00,000/-
11	11	11.01.2010	Rs. 10,00,000/-
12	12	14.01.2010	Rs. 10,00,000/-
13	15	01.02.2010	Rs. 10,00,000/-

14	22	24.02.2010	Rs. 50,00,000/-
15	23	25.02.2010	Rs. 10,00,000/-
16	29	15.03.2010	Rs. 1,00,00,000/-
17	39	16.03.2010	Rs. 1,00,00,000/-
18	40	17.03.2010	Rs. 1,00,00,000/-
19	41	17.03.2010	Rs. 1,00,00,000/-
20	46	19.03.2010	Rs. 1,00,00,000/-
21	47	19.03.2010	Rs. 1,00,00,000/-

The above noted donations aggregating Rs. 9,80,00,200/- have been disallowed by the assessee in the computation of income; but deduction of Rs. 4,90,07,505/- has been claimed u/s 80G against the gross total income computed at Rs. 98,01,50,108/-.

During the course of assessment proceedings, the assessee was asked vide this office letter dated 29.10.2012 to produce register u/s 301 of the Company Law, maintained by it for the year under consideration so as to verify the veracity of the provisions of donation factor. But no such register u/s 301 has been produced. The assessee company has, however, filed a copy of an extract dated 12.05.2009 from the minutes of meeting of the Board of Directors held at Kota on 01.05.2009, which reads as under:-

*"Certified copy of an extract from the minutes of meeting, of the Board of Directors of Bansal Classes Private Limited, duly convened and at which a proper quorum was present, held at Kota on 1<sup>st</sup> May, 2009.*

*We hereby certify that the following resolution of the Board of Directors of Bansal Classes Private Limited, was passed at a meeting of the Board held on 1<sup>st</sup> May, 2009 and has been duly recorded in the minute book of the said company.*

*Resolved that Bansal Classes Private Limited is authorized by its Board of Directors to give donation to any public/religious/charitable/any such kind of institution up to 10% of its gross profit.*

*Resolved further that the said resolutions shall continue in force till rescinded by the Board.*

*Signatures of*

*On Behalf of Board of Directors*

*BANSAL CLASSES PRIVATE  
LIMITED*

*-Sd/-*

*(Promod Kumar Bansal) Chairman  
Director.*

*-Sd/-*

*(Richa Bansal)  
Director.*

The so called resolution passed by the Board of Directors does not stand the legalities of the Company Law, as this resolution has not been signed by all the Directors of the Company. Only two Directors have signed this resolution and the remaining two Directors viz Sh. Vinod Kumar Bansal and Shri Samir Bansal are not signatories to the so called resolution. Further, in the absence of production of the register u/s 301

of the Company Law, it is not verifiable whether this resolution finds a mention in the said register or not. The assessee has categorically denied vide its reply filed on 21.12.2012 that during the, the company has not entered into any such contractor or arrangement as notified in section 301 of companies Act, 1956” Hence; there is no sanctity of the said resolution in the eyes of law. It is pertinent to mention here that the Directors are appointed by the shareholders of the company and they are trustees of the shareholders. As such, they are in a fiduciary position and cannot take undue advantage of their position using their office. Section 299(1) casts an obligation on a Director to disclose nature of his concern or interest in any contract or arrangement which is proposed to be entered into on behalf of the company. Such disclosure is to be made at the meeting of Board of Directors. Section 299(1) of the Companies Act, reads as under “ Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company, shall disclose, the nature of his concern or interest at a meeting of the Board of directors.

The words “in any way”, “whether directly or indirectly, proposed contract or arrangement” “entered into or to be entered into” would indicate that scope of the section is wider and covers all possible transactions with relatives, firms, companies in which the director is associated by virtue of his office or otherwise.”

In the case of assessee company, no such disclosure has been made in the so called resolution dated 12.05.2009. The Directors of the Company

are also either trustees of the Bansal Public Education Society, Registered Office, 5-A-13, Vigyan Nagar, Kota or close relatives of the trustees, as detailed below:-

- |                                    |                 |
|------------------------------------|-----------------|
| 1. Sh. V.K. Bansal (Director)      | Chairman        |
| 2. P.K. Bansal (Director)          | Secretary       |
| 3. Mahima Bansal (Director's wife) | Treasurer       |
| 4. Sameer Bansal (Director)        | Vice Chairman   |
| 5. Richa Bansal (Director)         | Joint Secretary |

There is no mention in the so called copy of extract of the resolution that donations would be made to the said society only. There is no nexus of the huge donations made to the said society with the business purposes of the assessee company. Moreover; there is no commercial expediency in making donations worth Rs.9,80,51,000/- to only one society i.e. Bansal Public Education Society, Registered Office, 5-A-13, Vigyan Nagar, Kota. Making such huge donations to this society is only a colorful design on the part of assessee company to divert its profits to the trust, having trustees which are either close relatives of the Directors or the Directors themselves. Diversion of its profits by way of donations is a clever strategy on the part of assessee company to transfer its profits under the garb of donations to the trust, having exempt income.

Considering the totality of the facts and non production of the material documentary evidence in support of provision of donation, the amount of Rs.9,80,51,000/- donated to the said trust is absolutely unnecessary and in genuine. This also gathers support from the fact that the assessee has not made any substantial donation to any other trust /

institution. Hence, deduction of Rs.4,90,07,505/- claimed u/s 80G is not considered genuine and accordingly, is disallowed.”

38. We now refer to the relevant findings of the CIT(A) which are under challenge before us:

*"I have gone through assessee's submission and AO's findings. The assessee had made payment of Rs. 9,80,51,000/- to Bansal Public Education Society. The AO held that there was no nexus of huge donation made to the said society with the business purpose of the assessee and there was no commercial expediency in making such donations. The AO held that it was a clever strategy to divert profits of the company under the garb of donations to the trust.*

*In the my opinion, for the purposes of section 80G, what is required is to donate the amount to any entity registered u/s 80G. If the activities of such entity are doubtful, then the donation can be added in the hands of such entity. The fact of donation was not doubted. Section 80G does not prohibit donations to exempted entities controlled by related persons. Section 80G does not require that the donation should have nexus with the business purposes of donee. Section 80G does not require that the donation should be for commercial expediency. Most of these things are required for allowing deduction of business expenditure u/s 37 of the I.T. Act. Considering the facts, it is held that assessee has fulfilled all the conditions necessary for claiming deduction u/s 80G. The AO is therefore directed to delete addition of Rs. 4,90,07,505/-"*

39. During the course of hearing, the Id AR reiterated his submissions made before the Id CIT(A). Further, he submitted that the donations have been made after due approval from the Board of Director's of the assessee's company. He further submitted that there is no violation of any of the provisions of the Companies Act. He further submitted that the Bansal Public School Education Society has been duly registered under section 12AA as well as section 80G of the Act and the assessee company has rightly claimed the deduction to the extent of 50% of donations made during the year.

40. The Id DR has vehemently argued the matter and relied upon the order of the Assessing Officer.

41. We have heard the rival contentions and perused the material available on record. During the year under consideration, the assessee company has contributed by way of donation of Rs 9,80,00,000 to Bansal Public School Education Society having registered office at 5-A-13, Vigyan Nagar, Kota, Rajasthan and a deduction to an extent of 50% of the said donation amounting to Rs 4,90,00,000 has been claimed in the return of income in terms of section 80G of the Act. The said society has been claimed to be approved by the Commissioner of Income Tax and duly registered under section 80G(5)(vi) of the Act.

42. We agree with the findings of the Id CIT(A) where he says that "Section 80G does not prohibit donations to exempted entities controlled by related persons. Section 80G does not require that the donation should have nexus with the business purposes of donee. Section 80G does not require that the donation should be for commercial expediency.

Most of these things are required for allowing deduction of business expenditure u/s 37 of the I.T. Act.”

43. On pointed question raised by the Bench as to whether, at the point in time, when the said donations were made during the financial year, the said registration was granted and in force and whether the registration documents are available in the paperbook through which it can be substantiated. The Id AR submitted that the registration under section 80G was granted by the Id CIT, Kota in August 2009 and it was granted for the period starting April 2009 to March 2011 and it covers the period of donation starting October 2009 till March 2010 and it was thus valid and in force for the period during which the donation was made by the assessee company. It was further submitted that the registration document is currently not available in the paperbook which has been submitted before the Bench and the same can be submitted at the next date of hearing where so permitted. It was further submitted that alternatively, the assessee has no objection where the Bench so desire, the necessary directions may be issued to the Assessing officer to verify the same. We are accordingly setting aside the matter to the file of the AO for a limited purpose to verify the validity of the approval granted by the Commissioner of Income Tax under the provisions of section 80G(5)(vi) to Bansal Public School Education Society for the financial year relevant to the impugned assessment year. Where the Assessing officer finds that the approval granted under section 80G(5)(vi) to Bansal Public School Education Society is valid and in force for the financial year relevant to the impugned assessment year, he is hereby directed to allow the necessary relief to the assessee company by way of allowing the

necessary deduction in terms of provisions of section 80G of the Act as claimed by the assessee company in its return of income. The ground of the revenue is disposed off accordingly.

**ITA No. 699/JP/14 & 739/JP/14**

44. We now come to cross appeals filed for AY 2011-12 wherein the respective grounds of appeal are as under:

**Assessee's grounds of appeal (ITA No. 699/JP/14)**

*"(1) That the Id. CIT(A) grossly erred in not deleting the addition made by Id. AO on account of caution money Rs. 5,00,000/-. The Id. AO made the addition of caution money Rs. 1650450/- out of that Ld. CIT(A) sustained the addition of Rs. 5,00,000/-.*

*(2) That the Id. AO as well as Ld. CIT(A) grossly erred in disallowing the Advertisement expenses Rs. 57200/-*

*(3) That the Ld. AO as well as Ld. CIT(A) grossly erred in making the disallowance of Rs. 2,00,000/- the expenses incurred on Public welfare i.e. contribution to Police welfare fund."*

**Revenue's grounds of appeal (ITA No. 739/JP/14)**

*"On the facts and in the circumstances of the case, the Id. CIT(A) has erred in:-*

*(i) deleting the addition of Rs. 11,50,450/- out of total addition of Rs. 16,50,450/- made by the AO on account of unpaid caution money;*

*(ii) deleting the addition of Rs. 10,62,000/- made by the AO u/s 40A(2)(b) out of salary paid;*

*(iii) deleting the addition of Rs. 4,53,00,000/- made by the AO on account of disallowance of deduction claimed by assessee u/s 80G;*

*(iv) deleting the disallowance of Rs. 43,088/- made by the AO out of depreciation on xerox machine;*

*(v) deleting the addition of Rs. 38,23,006/- made by the AO on account of depreciation on PLD unit building by following his decision dated 21.08.2014 in the case of the assessee for AY 2010-11 which has not been accepted by the Department;*

45. Regarding common ground No. 1 of assessee's as well as revenue's appeal relating to refund of the caution money, the relevant finding of the Id CIT(A) is reproduced as under:-

*"I have gone through assessee's submission and AO's findings. The assessee claimed that it has not claimed any expenditure against repayment of caution money. The AO added a sum of Rs. 16,50,450/- on the basis of example of Rs. 10,000/- paid in cash without obtaining any signature. In my opinion, caution money is received during the course of business and if the same is not refunded, the same can be treated as income as and when the liability to pay such amount is written off in the books of accounts. During the year, assessee had shown to have paid Rs. 1,10,03,000/-. If any of the repayment was not actually made, the same would form the income of assessee. Considering the above, I am of the opinion that some addition was justified. However, making addition of Rs. 16,50,450/- on the basis of defects of Rs. 10,000/- was not justified. Considering the facts of the case, in my opinion, an addition of Rs. 5,00,000/- would meet the end of justice. The AO is directed to delete balance addition of Rs. 11,50,450/-. This ground of appeal is therefore partly allowed."*

46. We have already examined this issue at length and our findings and directions contained in ITA No. 698/JP/14 & 738/JP/14 shall apply *mutatis mutandis* to this year as well. In the result, assessee's ground of appeal is allowed and revenue's ground of appeal is dismissed.

47. Regarding ground No. 2 of assessee's appeal, briefly stated facts of the case are that the AO made a disallowance towards advertisement expenditure of Rs. 57,200/- observing as under:-

"As per details filed, the assessee has claimed the following amounts as expenditure under the head "advertisement":-

Secretary RA.MA Vidyalaya Civil Lines	:	Rs. 5,100/-
Kota District Cricket Association	:	Rs. 50,000/-
Kota Zila Body Building	:	<u>Rs. 2,100/-</u>
Total	:	<u>Rs. 57,200/-</u>

Vide order sheet entry dated 04.03.2014, the assessee was asked to explain as to why the above said payments may not be disallowed, as there is no nexus of these expense with the business purposes. The assessee vide its written submissions filed on 13.03.2014 stated as under:-

"The company is also liable to do social work and in this relation & to promote the social cause help to poor, environment health it has contributed amount in souvenir with the different organization. As such the amount was contributed to Rotary Clubs, Lions Clubs, Poor Lady Fatima Sultana, Jim Khana etc. This is purely the business expenditure. '

The submissions made by the assessee have duly been considered and not found acceptable. There is no commercial expediency in making the above said expenditure, as no nexus of these expenses with the business purposes of the assessee is proved. Hence; the above noted expenses aggregating Rs.57,200/- are disallowed, being not incidental to the business of the assessee company."

48. The relevant findings of the Id CIT(A) are as under:

*"I have gone through assessee's submission and AO's findings. Last year, I have allowed similar payments on the ground that the same were made for the purposes of advertisement. However, no evidence was submitted to show that the payments in current year were for the purposes of advertisement. Therefore, it cannot be held that these payments were for the purposes of business. Alternatively, these payments can be claimed as donation. Donations etc. can be claimed under the provisions of Act after fulfilling certain conditions, e.g. donations can be claimed u/s 80G etc. As assessee has failed to fulfill any of the condition for claiming deduction, the disallowance by AO was justified. The addition of Rs. 57,200/- is confirmed. This ground of appeal is therefore dismissed."*

49. The Id CIT(A) has given a finding that no evidence has been submitted to substantiate the expenditure as claimed to have been incurred towards advertisement. Further, the assessee has failed to establish the necessary nexus of incurrence of such expenditure for

business purposes. In light of the same, the above findings of the Id CIT(A) remain uncontroverted before us and the same are hereby confirmed. In the result, assessee's ground of appeal is dismissed.

50. Regarding ground No. 3, briefly stated facts of the case are that the AO disallowed a sum of Rs. 2,00,000/- observing as under:-

"The assessee company has debited an amount of Rs. 2,00,000/- on 14.09.2010 under the head Public Welfare Expenses, with the following citation:- Conference Hall construction for Police Force.

During the course of assessment proceedings, the assessee was asked to justify the said payments as to how this amount qualifies for claim as revenue expenditure. The assessee has not been able to give any plausible explanation, except stating vide reply filed on 13.03.2014 that "Public welfare expenses are the need of today we have to contribute something for public it is part of business". Payment of this amount as per the assessee's version has no nexus with the business purposes of the assessee company and there was no commercial expediency to justify this expenditure, which is otherwise not admissible as per law. Hence; it cannot be held that the said expenditure has been incurred wholly and exclusively for the business purposes u/s 37(1). In view of these facts, this amount of Rs. 2,00,000/- is disallowed and added to the assessee's total income."

51. The relevant findings of the Id CIT(A) are as under:

*"I have gone through assessee's submission and AO's findings. This expenses were not wholly and exclusively for the purposes of business. The expenditure was in the nature of donation. Donations etc. can be claimed under the provisions of the Act after fulfilling certain conditions, e.g. donations can be claimed u/s 80G etc. As assessee has failed to fulfill any of the condition for claiming deduction, the disallowance by AO was justified. The addition of Rs. 2,00,000/- is confirmed. This ground of appeal is therefore dismissed."*

52. In ITA No. 435JP/16, in context of contribution to police welfare fund, we have held as under:

"71. In our view, the contention of the assessee that the contribution towards police welfare fund has a necessary nexus with the safety of the students in and around Kota and hence, with the business of the assessee cannot be rejected. It is an expenditure which has been laid down to develop and strengthen the coordination and working relationship with the local police department. Given the budgetary constraints which, at times, are faced by police department, where an assessee contributes certain amount for welfare of the police personnel to help improve their extreme work conditions where they are deployed in close proximity to assessee's area of operations, the necessary nexus is certainly established with the business of the assessee. In our view, such an expenditure will be eligible for allowance under section 37(1) as incurred for the purposes of its business. In the result, assessee's ground of appeal is allowed."

In our view, the above reasoning will apply with full force to contribution towards building the conference hall for use of the police personnel. In the result, the ground of appeal is allowed.

53. Now coming to the revenue's appeal. Regarding ground No. 2 of revenue's appeal relating to deletion of the addition of Rs. 10,62,000/- made by the AO u/s 40A(2)(b) out of salary paid to Mahima Bansal. We have already examined this issue at length in ITA No. 698/JP/14 & 738/JP/14 and as discussed therein, the order of the Id CIT(A) is confirmed. Accordingly, revenue's ground of appeal is dismissed.

54. Regarding ground No. 3 of the revenue's appeal relating to deletion of addition of Rs. 4,53,00,000/- made by the AO on account of disallowance of deduction claimed by assessee u/s 80G, the relevant finding of the CIT(A) is reproduced as under:-

*"I have gone through assessee's submission and Assessing Officer's findings. The assessee had made payment of Rs. 9,01,00,000/- to Bansal Public Education Society and Rs. 5,00,000/- to Indian Association of Muscular Dystrophy. The AO held that there was no nexus of huge donation made to the said society with the business purpose of the assessee and there was no commercial expediency in making such donations. The AO held that it was a clever strategy to divert profits of the company under the garb of donations to the trust.*

*In my opinion, for the purposes of section 80G, what is required is to donate the amount to any entity registered u/s 80G. If the activities of such entity are doubtful, then the donation can be added in the hands of*

*such entity. The fact of donation was not doubted. Section 80G does not prohibit donations to exempted entities controlled by related persons. Section 80G does not require that the donation should have nexus with the business purposes of donee. Section 80G does not require that the donation should be for commercial expediency. Most of these things are required for allowing deduction of business expenditure u/s 37 of the I.T. Act.*

*Considering the facts, it is held that assessee has fulfilled all the conditions necessary for claiming deduction u/s 80G. The AO is therefore directed to delete addition of Rs. 4,53,00,000/-. This ground of appeal is allowed.”*

55. We have already examined this issue at length and our findings and directions contained in ITA No. 698/Jp/14 & 738/Jp/14 shall apply *mutatis mutandis* to this year as well. In the result, revenue’s ground of appeal is allowed for statistical purposes.

56. Regarding ground No. 4 of revenue’s appeal relating to deletion of disallowance of Rs. 43,088/- made by the AO out of depreciation on xerox machine, the relevant facts of the case are that the AO made an addition of Rs. 54,763/- observing as under:-

“In the details of fixed assets filed by the assessee, the assessee has purchased the following items, which are debited in the Computer account:-

S. No.	Name of	Date of	Amount	Rate of	Amount of
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	the item	purchase		depreciation claimed	depreciation claimed
1	Xerox Machine	17.08.2010	Rs. 95,750/-	60%	Rs. 57,450/-
2	Canon Printers	23.10.2010	Rs. 45,900/-	60%	Rs. 13,770/-
		03.12.2010	Rs. 5,990/-	60%	Rs. 1,797/-
				Total	Rs. 73,017/-

However; depreciation on Xerox Machine and Printers is admissible @ 15% and not @ 60% claimed by the assessee. Hence; excess depreciation has been claimed by the assessee, as under:-

Item	Amount of depreciation admissible	Excess depreciation claimed
Xerox Machine	Rs. 14,362/-	Rs. 43,088/-
Canon Printers	Rs. 3,442/-	Rs. 10,328/-
HP Printer	Rs. 450/-	Rs. 1,347/-
	Total	Rs. 54,763

Accordingly, excess depreciation of Rs. 54,763/- is disallowed and added to the assessee's income."

57. The relevant findings of the Id CIT(A) is as under:

*"I have gone through assessee's submission and AO's findings. On similar facts, the Hon'ble ITAT in the case of Shri Ram Kishan Verma (ITA No. 589/JP/2011, A.Y. 2006-07) has allowed depreciation @ 60% on printers and deleted the addition. Following the decision of Hon'ble ITAT, the AO is directed to delete addition of Rs. 54,763/-. This ground of appeal is allowed."*

58. We have heard the rival contentions and perused the material available on record. Nothing has been brought on record to suggest that Xerox machine cannot function independent of the computer system unlike a printer whose functionality is interconnected with a computer system. In light of the same, we upheld the action of the AO in treating Xerox machine as eligible for depreciation @ 15% as a standalone machine. In the result, the appeal of revenue is allowed.

59. Regarding ground No. 5 of revenue's appeal relates to deletion of the addition of Rs. 38,23,006/- made by the AO on account of depreciation on PLD unit building by following his decision dated 21.08.2014 in the case of the assessee for AY 2010-11.

60. The AO made an addition of Rs. 38,23,006/- observing as under:-

"The assessee has claimed that the PLD Unit Building was constructed and its construction was completed before 31.03.2010. The assessee was asked to produce completion certificate, occupation certificate and copy of the valuation report, vide questionnaire dated 13.09.2013, in support of its contention regarding completion of the said building. It is also pertinent to mention here that copy of the valuation report from the Registered Valuer as well as the copy of completion certificate from the Competent Authority with regard to Building of PLD Unit were also called for during the assessment proceedings for the A.Y. 2010-11. However; the assessee had failed to produce the above noted information/ documents in support of completion and subsequent occupation of the said PLD Unit. Vide its reply filed on 05.12.2013, the assessee filed copy of two page valuation report

of the PLD Unit building, which is signed by one-Mr. V. Padma Nabhan on 20.04.2013, indicating therein the cost of construction of the said unit building at Rs. 3,89,43,952/- and date of completion as on 21.12.2009. The valuation report is a two page document and is dated is 20.04.2013 and does not contain the complete details of various relevant aspects, as are required of the legally valid valuation report. It was vividly held at the time of framing assessment for the A.Y. 2010-11 that the building remained incomplete as on 31.03.2010, for the detailed reasons recorded in the relevant assessment order and accordingly, depreciation on this unit building was validly disallowed. Even during the proceedings of the A.Y. 2011-12, the assessee has not been able to produce the completion certificate, complete valuation report and occupation certificate from the competent authority. Furthermore; during the year under consideration too, the assessee has further advanced amounts of Rs. 5,00,000/- on 24.02.2011 and again Rs. 5,00,000/- on 28.03.2011 to M/s Maan Projects & Construction Pvt. Ltd. This fact clearly establish that the PLD Unit building is still incomplete as on 31.03.2011 and hence; the incomplete valuation report dated 20.04.2013 is absolutely incorrect, ingenuine and is unacceptable. In the absence of the relevant documentary evidence, regarding completion and occupation of the said building, it is not proved that the assessee has used this asset for its business purposes. Accordingly; depreciation claimed at Rs.38,23,006/- on the PLD Building is disallowed and added to the assessee's total income. "

61. The relevant finding of the CIT(A) is reproduced as under:-

*"I have gone through assessee's submission and AO's findings. The AO disallowed the depreciation mainly on two counts. No electricity bill was produced. No completion certificate was produced. Two payments of Rs. 5.00 Lac were made to Man Projects & Construction Pvt. Ltd. on 24.02.2011 & 28.03.2011.*

*I have held (AY 2010-11- Appeal No. 70/2013-14) as under:-*

*"The assessee submitted that the new building was adjacent to the existing building and both the buildings have common connection and the electricity bills are common for both the premises. The assessee submitted that after completion of new building, the electricity load was got increased. The assessee further submitted that in Kota, there is no system of obtaining a completion certificate.*

*I have gone through the construction account of the building and it was seen that in the current financial year, last payment was made on 21.12.2009.*

*It was also seen that assessee applied for increase in electric load from 350 KW to 500 KW on 27.07.2009 and demand note was issued (by Jaipur Vidhyut Vitran Nigam Ltd.) on 21.08.200, which was deposited on 28.08.2009.*

*Considering the above, I am of the opinion that the building was completed and put to use during the second half of current financial year. The AO is therefore directed to delete addition of Rs. 19,65,348/-. This ground of appeal is allowed. "*

*The only difference during the year was two payments made to M/s Man*

*Projects & Construction Pvt. Ltd. The assessee submitted that payments to M/s Man Projects 8s Construction Pvt. Ltd. was not related to "PLD Unit". The assessee submitted copy of depreciation schedule to show that there was no addition under the head of "PLD Unit". Secondly, the AO did not confront this issue with the assessee. Therefore, no adverse inference, on the basis of payments to M/s Man Projects 8s Construction Pvt. Ltd., can be drawn.*

*I have already held in A.Y. 2010-11 that the building was completed in the second half of Financial Year 2009-10. Considering the above, the AO is directed to delete addition of Rs. 38,23,006/- This ground of appeal is allowed."*

62. We have already examined this issue at length and our findings and directions contained in ITA No. 698/Jp/14 & 738/Jp/14 shall apply *mutatis mutandis* to this year as well. In the result, revenue's ground of appeal is dismissed.

**ITA No. 435/Jp/16 & 298/Jp/16**

63. We now come to cross appeals for AY 2012-13 wherein the respective grounds of appeal are as under:

**Assessee's grounds of appeal (ITA No. 435/Jp/16)**

"(1) *That the Id. CIT(A) grossly erred in not deleting the addition made by the Id. AO on account of caution money Rs. 400,000/-. The Id. AO made the addition of caution money Rs. 1257450.00 out of that Id. CIT(A) sustained the addition of Rs. 400,000/- as such the Id. AO erred in making the addition & Id. CIT(A) grossly erred in sustaining Rs. 400,000/-*

- (2) *That the Id. AO grossly erred on law & facts in making the addition by disallowing the salary paid to Smt. Mahima Bansal by invoking sec. 40A(2)(b) of I.T. Act, 1961 and the Id. CIT grossly erred in sustaining the part of addition of Rs. 800,000/-.*
- (3) *That the Id. AO as well as Id. CIT(A) grossly erred in disallowing the Advertisement expenses Rs. 56000/-*
- (4) *That the Id. AO as well as Id. CIT(A) grossly erred in making the disallowance of Rs. 100,000/- the expenses incurred on Public welfare i.e. contribution to police welfare fund."*

**Revenue's grounds of appeal (ITA No. 298/JP/16)**

*"On the facts and in the circumstances of the case, the Id. CIT(A) has erred in:-*

- (i) *deleting addition of Rs. 8,57,450/- out of total addition of Rs. 12,57,450/- made by disallowing refund of caution money;*
- (ii) *deleting addition of Rs. 35,20,000/- out of total addition of Rs. 43,20,000/- made by invoking provisions of section 40A(2)(b) on account of excess salary payment;*
- (iii) *deleting addition of Rs. 1,03,00,000/- made by disallowing deduction claimed by the assessee company u/s 80G of the Act;*
- (iv) *deleting addition of Rs. 1,06,277/- made by disallowing excess depreciation claimed on Xerox machine;"*

64. Regarding common ground of appeal no.1 in both the cross appeals relating to refund of caution money, the relevant finding of the CIT(A) is reproduced as under:-

*"I have gone through assessee's submission and AO's findings. The assessee claimed that it has not claimed any expenditure against re-*

*payment of caution money. The AO added a sum of Rs. 12,57,450/- as per the practice in earlier years.*

*My predecessor in his order in Appeal No. 638 for A.Y 2011-12 analysed the issue at length and had held that-*

*"I have gone through assessee's submission and AO's findings.*

*The assessee claimed that it has not claimed any expenditure against repayment of caution money. The AO added a sum of Rs. 16,50,450/- on the basis of example of Rs. 10,000/- paid in cash without obtaining any signature.*

*In my opinion, caution money is received during the course of business and if the same is not refunded, the same can be treated as income as and when the liability to pay such amount is written off in the books of accounts. During the year, assessee had shown to have paid Rs. 1,10,03,000/-. If any of the repayment was not actually made, the same would form the income of assessee.*

*Considering the above, I am of the opinion that some addition was justified. However, making addition of Rs. 16,50,450/- on the basis of defects of Rs. 10,000/- was not justified. Considering the facts of the case, in my opinion, an addition of Rs. 5,00,000/- would meet the end of justice. The AO is directed to delete balance addition of Rs. 11,50,450/-.*

*Respectfully following the same basis, I consider that on the available facts, an addition of Rs. 4,00,000/- will serve the ends of justice and is confirmed. The remaining part of the addition, i.e., 8,57,450/- is accordingly deleted. This ground of appeal is therefore partly allowed."*

65. We have already examined this issue at length and our findings and directions contained in ITA No. 698/Jp/14 & 738/Jp/14 shall apply *mutatis mutandis* to this year as well. In the result, assessee's ground of appeal is allowed and revenue's ground of appeal is dismissed.

66. Regarding common ground No. 2 of the assessee's as well as revenue's appeal relating to disallowance of salary payment to Mahima Bansal under section 40A(2)(b), we have already examined this issue at length in ITA No. 698/Jp/14 & 738/Jp/14 and as discussed therein, the order of the Id CIT(A) is confirmed. Accordingly, both the revenue's and assessee's appeal is dismissed.

67. Regarding ground No. 3 of the assessee's appeal, the relevant finding of the CIT(A) is reproduced as under:-

*"I have gone through the assessee's submission and AO's findings. My predecessor in the earlier Year had on part expenses of similar nature in the same head of expenditure had held that- Last year, I have allowed similar payments on the ground that the same were made for the purposes of advertisement. However, no evidence was submitted to show that the payments in current year were for the purposes of advertisement. Therefore, it cannot be held that these payments were for the purposes of business.*

*Alternatively, these payments can be claimed as donation. Donations etc. can be claimed under the provisions of Act after fulfilling certain conditions, e.g. donations can be claimed u/s 80G etc. As assessee has*

*failed to fulfill any of the condition for claiming deduction, the disallowance by AO was justified.*

*It is observed that the nature of the expenses made to certain institutions as highlighted by the Assessing Officer in his order are similar to previous year's disallowed expenses. Since no evidence was submitted to show that the payments in current year were for the purposes of advertisement, therefore, it cannot be held that these payments were for the purposes of business. I find no reason to interfere with the addition of Rs. 56,000/- made by the A.O in this head. This ground of appeal is therefore dismissed."*

68. The Id CIT(A) has given a finding that no evidence has been submitted to substantiate the expenditure as claimed to have been incurred towards advertisement. Further, the assessee has failed to establish the necessary nexus of incurrence of such expenditure for business purposes. In light of the same, the above findings of the Id CIT(A) remain uncontroverted before us and the same are hereby confirmed. In the result, ground of appeal is dismissed.

69. Regarding ground No. 4 of the assessee's appeal, the relevant facts and submissions of the assessee are as under:-

"That Bansal Classes is running a coaching institution which is having 20,000 to 30,000 students, all they are spread over in New Kota, they are residing in hostels, houses etc and they used to attend classes in 3-4 intervals, hence looking to the safety of students & teachers, we used to take assistance of Police department, and the security provided by police

department give trust to parents of students in the entire country to send their children at Kota and it increases its business.

That on calling upon by the Police department to contribute in welfare fund the management took decision to contribute and it was purely on business investment, hence claimed as expenses, it is wholly & exclusively for business purpose and covered U/s 37(1).

However, the Ld. A.O. disallowed without any concrete reason, whereas this expenses are must and necessary for the company. The expenses are genuine for the need of business, therefore, we request you to kindly allowed".

70. The relevant findings of the Id CIT(A) are as under:

*"I have gone through the assessee's submission and AO's findings.*

*The expenses were not wholly and exclusively for the purpose of business. The expenditure was in the nature of donation. Donations etc. can be claimed under the provision of act after fulfilling certain conditions, e.g. donations can be claimed U/s 80G etc. As assessee has failed to fulfill any of the conditions for claiming deduction, the disallowance by AO was justified. Therefore, the addition of Rs. 1,00,000/- is confirmed. The ground of appeal, therefore, dismissed".*

71. In our view, the contention of the assessee that the contribution towards police welfare fund has a necessary nexus with the safety of the students in and around Kota and hence, with the business of the assessee cannot be rejected. It is an expenditure which has been laid down to develop and strengthen the coordination and working relationship with the

local police department. Given the budgetary constraints which, at times, are faced by police department, where an assessee contributes certain amount for welfare of the police personnel to help improve their extreme work conditions where they are deployed in close proximity to assessee's area of operations, the necessary nexus is certainly established with the business of the assessee. In our view, such an expenditure will be eligible for allowance under section 37(1) as incurred for the purposes of its business. In the result, assessee's ground of appeal is allowed.

72. Now, we come to revenue's appeal. Regarding ground no. 3 of the revenue's appeal, the relevant finding of the CIT(A) is reproduced as under:-

*"In my opinion, in this Year also, the fact of donation was not doubted. Sec. 80G does not prohibit donations to exempted entities controlled by related persons. Sec. 80G does not require that the donation should have nexus with the business purposes of donee. Considering that the facts involved in this year are exactly similar to the previous year, I am inclined to follow the order of my predecessor in the earlier year as mentioned above.*

*Accordingly, it is held that assessee has fulfilled all the conditions necessary for claiming deduction u/s 80G. The AO is therefore directed to delete addition of Rs. 1,03,00,000/-. This ground of appeal is allowed."*

73. We have already examined this issue at length and our findings and directions contained in ITA No. 698/Jp/14 & 738/Jp/14 shall apply *mutatis mutandis* to this year as well. In the result, revenue's ground of appeal is

allowed for statistical purposes.

74. Regarding ground no. 4 of the revenue's appeal, the relevant finding of the CIT(A) is reproduced as under:-

*"I have gone through the assessment order as well as submissions of the assessee. On similar facts, the Hon'ble ITAT in the case of Shri Ram Kishan Verma (ITA No. 589/JP/2011, A.Y. 2006 - 07) has allowed depreciation @ 60% on printers and deleted the addition. The same was followed by my predecessor CIT(A) in the earlier year's order referred at other places in this order.*

*Following the decision of Hon'ble ITAT, the AO is directed to delete addition of Rs. 1, 06,277/-. The ground of appeal is allowed."*

75. We have heard the rival contentions and perused the material available on record. Nothing has been brought on record to suggest that Xerox machine cannot function independent of the computer system unlike a printer whose functionality is interconnected with a computer system. In light of the same, we upheld the action of the AO in treating Xerox machine as eligible for depreciation @ 15% as a standalone machine. In the result, the appeal of revenue is allowed.

**ITA No. 296/JP/17 & 345/JP/17**

76. We now come to cross appeals for AY 2013-14 wherein the respective grounds of appeal are as under:

**Assessee's grounds of appeal (ITA No. 296/JP/17)**

"1. That the Ld. AO grossly erred on Law & facts in making the addition to wards payment of caution money and the Id. CIT(A) also erred in sustaining the disallowance of Rs. 50,000/- out of Rs. 1,78,650/- the /- addition made by A.O.

2. That the Ld. AO grossly erred on Law & facts in disallowing the salary by invoking sec. 40A(2) (b) and the Ld. CIT(A) also erred in sustaining the addition of Rs. 600,000/-.

3. That the Ld. AO grossing erred on Law & Facts in disallowing the students promotion expenses Rs. 1492788/-. The Id. C(T(A) also erred in sustaining the addition of Rs. 500,000/- out of said amount of Rs. 14,92,788/-.

4. That the Ld. AO grossly erred on Law & Facts in disallowing the travelling expenses Rs. 3,02,888/- and the Ld. CIT(A) also erred in sustaining Rs. 1,51,444/-."

**Revenue's grounds of appeal (ITA No. 345/JP/17)**

On the facts and in the circumstances of the case, the Id. CIT(A) has erred in :-

(i) Deleting addition of Rs. 1,28,650/- out of total addition of Rs. 1,78,650/- made by disallowing refund of caution money;

(ii) Deleting addition of Rs. 15,96,000/- out of total addition of Rs. 21,96,000/- made by invoking provisions of Section 40A(2)(b) on account of excess salary payment;

*(iii) Deleting addition of Rs. 1,50,25,500/- made by disallowing deduction claimed by the assessee company u/s 80G of the Act;*

*(iv) Deleting addition of Rs. 9,92,788/- out of total addition of Rs. 14,92,788/- made by disallowing student promotion expenses;*

*(v) Deleting addition of Rs. 1,51,444/- out of total addition of Rs. 3,02,288/- made by disallowing travelling expenses.”*

77. Firstly, regarding common ground of appeal relating to refund of caution money, the relevant finding of the CIT(A) is reproduced as under:-

*"I have gone through assessee's submission and AO's findings.*

*I have dealt with this issue in assessee's own case for A.Y 2012-13 Vide order I appeal no 658/14-15 dated 19/01/2016 where I have held that caution money is received during the course of business and if the same is not refunded, the same can be treated as income as and when the liability to pay such amount is written off in the books of accounts.*

*In line with the stand taken while deciding appeals on this issue in earlier years, addition is restricted to Rs. 50,000/-. The balance disallowance of Rs. 1,28,650/- is directed to be deleted. This ground of appeal is partly allowed.”*

78. We have already examined this issue at length and our findings and directions contained in ITA No. 698/Jp/14 & 738/Jp/14 shall apply *mutatis mutandis* to this year as well. In the result, assessee's ground of appeal is allowed and revenue's ground of appeal is dismissed.

79. Regarding common ground of appeal relating to disallowance of salary payment to Mahima Bansal u/s 40A(2)(b), we have already examined this issue at length in ITA No. 698/JP/14 & 738/JP/14 and as discussed therein, the order of the Id CIT(A) is confirmed. Accordingly, both the revenue's and assessee's appeals are dismissed.

80. Regarding common ground of appeal no. 3 of assessee's appeal and ground no. 4 of the revenue's appeal relevant facts are as under:

"On examination of Profit & Loss A/c of the company, it is seen that assessee has claimed Student Promotion Expenses of Rs.99,51,921/- whereas assessee claimed this expenditure last year i.e. F.Y. 2011-12 of Rs.45,45,545/-. Vide order sheet entry dated 24.02.2016, assessee asked to submit the justification of these huge expenses in comparison to last year. The assessee vide his reply dated 08.03.2016 has submitted as under :

The source of an income in a coaching institute is student and any promotion that is been done to promote source is well justified expenses as it is directly relatable to the income therefore it is most sacrosanct expenses that is fully allowable therefore the student promotion expenses that has various subheads as enclosed ledger is paid majorly towards rankers and best performing student through performing Farewell function or giving scholarships to top rankers or all India Rankers prizes etc and to all students at large in form of medical tie-ups and student walfares it in classrooms. Therefore all these expenses are directly relatable.

Secondly there are down fall in revenues of the company and various new centres have been increased during the year to promote business therefore in current year both the expense and is its percentage has increased but this is one the most necessary expenditure and is paid by cheques so should be allowed fully.

The above reply filed by the assessee has been considered but not found tenable because receipt of the company has been decreased whereas assessee incurred huge expenses in comparison to last year. Also on perusal of ledger of sub heads furnished by the assessee it is revealed that many expenses were incurred on dinner party, tea party, lunch party etc., many payments made on cash basis. The assessee has also made payments through handmade vouchers/ incomplete vouchers etc. Proper bills & vouchers in support of its claim have not been produced for verification. Therefore in absence proper bills/vouchers these expenses are not subject on verification hence 15% of these expenses i.e. Rs.14,92,788/- are disallowed and added to the total income of the assessee.

81. The relevant findings of the Id CIT(A) are as under:

*"The above expenses appear to be in the nature of advertising and sales promotion in loose connotation. The coaching Institutes being run commercially do have to go after eligible student population to maximise their feasibility. The A.O's argument that the turnover has reduced though these expenses have gone up can be seen the other way round that if these expenses were also not incurred or aggressive marketing not done the revenues could have fallen further.*

*However, it is also justifiable on the part of the A.O that there are several shortcomings in the maintenance of supporting evidences attached to these expenses. Under the circumstances and considering the totality of facts involved, a reasonable disallowance out of these expenses is justified. A disallowance of Rs. 5,00,000/- out of the total claim would serve the ends of justice in my opinion. This amount of disallowance is confirmed. The balance disallowance of Rs. 9,92,788/- is directed to be deleted. This ground of appeal is partly allowed."*

82. We have heard the rival contentions and pursued the material available on record. An adhoc disallowance of 15% of student welfare expenses has been disallowed by the AO. The Id CIT(A) has again followed the principle of adhocism and confirmed the disallowance of Rs 5 lacs out of the amount so disallowed by the AO. Both the AO and Id CIT(A) has not highlighted specific expenditure which fail the test of business expediency as laid down by the Courts from time to time. Further, no specific instances of expenditure have been highlighted which could not be verified for want of proper supporting documentation. Merely generalization and holding that payments have been made in cash doesn't necessarily lead to disallowance of eligible expenditure. There is no basis for adhocism in the eyes of law. In the result, disallowance made by the AO is hereby deleted. The assessee's ground of appeal is allowed and revenue's ground of appeal is dismissed.

83. Regarding common ground no. 4 of assessee's appeal and ground no. 5 of the revenue's appeal, the relevant facts are as under:-

“On examination of Profit & Loss A/c of the company it is seen that assessee has claimed Travelling Expenses of Rs.30,28,885/-. Vide order sheet entry dated 05.02.2016, assessee asked to submit the justification of these expenses. The assessee vide his reply dated 08.03.2016 has submitted as under:

During the year as the revenue from Kota Centre are on fall so Management is aggressively involved in setup of new centres as to reduce the dependency on Kota Centre therefore these expenses are incurred.

Therefore further relating the Commercial Expediency, expenditure may not be incurred under any legal obligation but yet it is allowable as business expenditure if it is incurred on ground of commercial expediency. Refer Addidas India Marketing (p) Limited v AO 10 Taxmann.com 18. Again, Expenses incurred which was based on commercial consideration and business expediency, no interference is warranted. Refer, Udaipur Distillery Co. Ltd. 224 CTR 32 (SC). Similarly, The issue was of deduction of certain expenditure “issue management expenses” and the assessee succeeded only on the ground of consistency. Without going into the merits, the Supreme Court remitted back the matter to the High Court holding that the High Court should have examined the nature of the said expenditure. Refer Oswal Agro Mills Ltd. 313 ITR 24.

The above reply filed by the assessee has been considered but not found tenable because many payments made on cash basis. The assessee has also made payments through hand made vouchers/

incomplete vouchers etc. Proper bills & vouchers in support of its claim have not been produced for verification. The case law submitted by the assessee is not applicable in this case because the facts of this and submitted by the assessee are different. Therefore in absence proper bills/vouchers these expenses are not subject on verification hence 10% of these expenses i.e. Rs.3,02,888/- are disallowed and added to the total income of the assessee.

84. The relevant findings of the Id CIT(A) are as under:

*"Looking to the facts involved, the disallowance made to some extent is justifiable. The same is being restricted to 5% as being reasonable disallowance on account of the discrepancies involved. Disallowance of Rs. 1,51,444/-(5%) is confirmed. The balance disallowance of Rs. 1,51,444/- is directed to be deleted. This ground of appeal is partly allowed."*

85. As we have held above in the context of student welfare expenses, there is no basis for adhocism in the eyes of law. In the instant case, disallowance of 10% of the travel expenses have been made by the AO which has been reduced to 5% by the Id CIT(A). Our findings and directions as contained in context of student welfare expenses shall equally apply in the present case. In the result, disallowance made by the AO is hereby deleted. The assessee's ground of appeal is allowed and revenue's ground of appeal is dismissed.

86. Now, we come to revenue's appeal other than common grounds of appeal which relates to ground no. 3 of revenue's appeal, the relevant finding of the CIT(A) is reproduced as under:-

*" In my opinion, in this year also, the fact of donation was not doubted. Sec. 80G does not prohibit donations to exempted entities controlled by related persons. Sec. 80G does not require that the donation should have nexus with the business purposes of done. Considering that the facts involved in this year are exactly similar to the previous year, I am inclined to follow the order of my predecessor in the earlier year as mentioned above. Accordingly, it is held that assessee has fulfilled at the conditions necessary for claiming deduction u/s 80G. The AO is therefore directed to delete addition of Rs. 1,50,25,500/-. This ground of appeal is allowed."*

87. We have already examined this issue at length and our findings and directions contained in ITA No. 698/Jp/14 & 738/Jp/14 shall apply *mutatis mutandis* to this year as well. In the result, revenue's ground of appeal is allowed for statistical purposes.

In the result, all the appeals of the revenue and the assessee for the respective years are disposed off with above directions.

Order pronounced in the open Court on 31/10/2017.

Sd/-  
(कुल भारत )  
(Kul Bharat)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 31/10/2017

\*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Bansal Classes Private Limited, Kota
2. प्रत्यर्थी / The Respondent- JCIT, Range-1, Kota
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {698-JP-14, 738-JP-14, 699-JP-14, 739-JP-14, 435-JP-16, 298-JP-16, 345-JP-2017, 296-JP-17}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar