

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.6177/Del./2014
Assessment Year 2010-2011

Vidya Education Investments Pvt. Ltd., 5C, Friends Colony (West), Main Mathura Road, New Delhi – 110 065. PAN AABCV9413E	VS	The Income Tax Officer, Ward-17(3), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Prakash Yadav, Advocate & Shri Mukesh Bansal, C.A.
For Revenue :	Shri Amit Jain, Sr. D.R.

Date of Hearing :	28.05.2018
Date of Pronouncement :	22.06.2018

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of the Ld. CIT(A)-19, New Delhi, Dated 30.09.2013, for the A.Y. 2010-2011.

2. We have heard the learned Representatives of both the parties and perused the material on record.

3. Learned Counsel for the Assessee did not press ground Nos.2(c) and (d) of the appeal. The same are dismissed as not pressed.

4. Ground No.1 is as under :

“The CIT(A) grossly erred in enhancing the ALV of the let out property and in there with the income by Rs.1,67,74,073/- and further in omitting to give relief as sought for in respect of Service Tax.”

5. During the year under consideration, assessee-company has derived rental income from the school building constructed at Village Shiltane, Lonvala from M/s. Cathedral Vidya School in which one of the Director is also trustee. During the course of assessment, it was observed that assessee-company has received rental income of Rs.1.80 crores, whereas, they have offered Rs.1,63,19,130/- as rental income for the year. In reply to the specific query raised by the A.O, assessee

has submitted that the balance amount of Rs.16,80,870/- pertains to service tax which was included in rental income. However, as per the copy of Agreement filed by the assessee company, nothing was mentioned about the service tax and its liability. Moreover, assessee company is not registered with the Service Tax Department and without registration, question of charging of Service Tax and its liability does not arise. Accordingly, Net Rental Income is further increased by Rs.11,76,609/- (being Rs.16,80,870/- less 30%). The A.O. accordingly, made the addition of Rs.11,76,609/-.

6. This addition was challenged before the Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order in which it was briefly explained that assessee-company was incorporated on 26.10.2004. Main objects among others were - To start, establish, run, takeover, manage and maintain schools with the object to provide pre-primary, primary, middle, secondary, senior secondary and higher education (technical/non-technical). The assessee-company

purchased 39 acres of land in Village Shilatne, Lonavala District, Pune, Maharashtra to set-up a school in the year ended 31.03.2005. It was the intention of the assessee to set-up more educational facilities. The assessee-company executed a Deed of Conveyance in favour of Cathedral School Welfare Trust in respect of sale of 26% undivided share , right, title and interest in 10.14 acres of the above referred land. The land together with buildings, facilities and amenities were constructed and developed by the owners of the land i.e., assessee and Cathedral School Welfare Foundation. The said property with facilities was leased vide lease dated 14.06.2000 to Cathedral Vidya Trust ("CVT"), a public charitable trust which is engaged in providing education and running the schools. Other assets of the value of Rs.3.19 crores were also in use by CVT. The lease charges were Rs.45 lakhs as per quarter, w.e.f. 15.04.2009 to 31.12.2010. For the year ended 31.03.2010, total rent received was Rs.1.80 crores. No provision was made in the accounts for proportionate rent payable to Cathedral School Welfare Trust, joint owner of the school, land and building. The total lease money received

less service tax was declared in the return of income under the Head "Property Income". The liability to pay service tax rested on the assessee for the lease income received from CVT because the lease agreement was silent on the issue pertaining to service tax. The assessee was registered under the Service Tax Act on 19.11.2010 and amount of service tax of Rs.16,80,870/- was deposited in the Appropriate Authority on 17.02.2011.

6.1. The assessee filed application for admission of additional evidence under Rule 46A which are copies of the challans of Rs.16,80,870/- pertaining to the service tax and copy of the service tax returns for F.Y. 2009-2010 along with TDS challan, in respect of audit fee paid. The assessee requested for admission of the additional evidence, on which, report from the A.O. was called for. Ld. CIT(A) ultimately admitted these additional evidence under Rule 46A.

7. The Ld. CIT(A) noted the facts in the case of assessee that assessee purchased 39 acres of land in Lonavala in 2005. Shri Vineet Nayyar owns 99% of the assessee-company and

balance 1% is held by his daughter Ms. Namrata Nayyar. 26% of the above land was sold to Cathedral School Welfare Trust. The assessee and co-owner leased the land and building constructed by them to CVT. Shri Vineet Nayyar is Settler of CVT along with his wife. The assessee filed copy of the lease deed between the assessee company and CVT which shows that the lease deed is actually between assessee and CVT which is signed by Shri Vineet Nayyar on behalf of the assessee company and for the lessee, lease rent fixed is Rs.15 lakhs per month to be paid to assessee-company..

7.1. The assessee reiterated the same facts before the Ld. CIT(A). The Ld. CIT(A), noted that as per the balance sheet the value of the school land is Rs.1.11 crores and building is valued at Rs.42.36 crores as on 31.03.2010. The annual lease rent is shown at Rs.1.8 crore only which is very low considering the value of the land and building leased-out to CVT. A show cause notice was issued to the assessee to substantiate the annual letting value shown. The assessee submitted that rent was

mutually agreed between the assessee company and the lessee CVT at Rs.15 lakhs per month for 83,624 Sq. Ft. of built-up area @ approximately Rs.17.95 Sq. Ft. The rent is fair rent keeping in view that school is newly set-up.

7.2. The Ld. CIT(A) did not accept the explanation of assessee and asked the assessee to explain why ALV be not computed at 8% of the investment and income enhanced accordingly. The assessee explained that amount spent on construction of the property is a remote consideration for determining the letting value of the property, where the property is let out, and is supported by lease agreement. There is no comparative case for rental income in the vicinity of the school, as the same is located on rural land. The land use was changed for the school. The assessee has filed an opinion of M/s. Atharva Land Developers operating in -Lonavala in support that rent paid is reasonable. The Ld. CIT(A) did not accept the contention of assessee and noted that the assessee-company with co-owner as well as CVT are controlled by same persons. The rent is very

low as compared to investment in land and construction of the school. The assessee failed to substantiate ALV shown. The opinion of M/s. Atharva Land Developer is not qualified to give report and no basis shown for value of land. No comparable instances have been found. The Ld. CIT(A) accordingly, applied 8% on the total investment and computed annual letting value at Rs.3,47,74,073/-. The assessee has shown annual letting value at Rs.1.80 crores. Therefore, income was enhanced by Rs.1,67,74,073/-. Ld. CIT(A), in support of his findings relied upon decision in the case of Smt. Radha Devi Dalmia vs. CIT (1980) 125 ITR 134 (All.), Sakarlal Balabha vs. ITO (1975) 100 ITR 97 (Guj.) and EMTICI Engineering Ltd. vs. ACIT (1997) 58 TTJ 27 (Ahd.) Bench.

8. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that A.O. while passing the assessment order accepted the annual letting value declared by assessee, but, disallowed the service tax. Section 23(1) provides manner of computing the

annual value of house property. He has submitted that there are two methods to be kept in mind for judging annual letting value i.e., the standard rent if property is subject to Rent Control Act or the Municipal Ratable Value for the purpose of house tax would be the annual letting value where there is no standard rent. Therefore, the method applied by the Ld. CIT(A) by applying 8% of the investment is highly improper and not applicable to the Income Tax Act. Merely because the family member of Shri Vineet Nayyar controlled both the institutions by himself is no ground to reject the fair rental value shown by assessee. The Charitable Trust can pay to the Trustee rent which is reasonable for such services. The property was let out to educational institution which may not be used for commercial purpose or residential purpose. Therefore, the rent was reasonable, which was also lesser in earlier year and accepted. The Ld. CIT(A) has not given any comparable case while fixing the annual letting value of the property. The Learned Counsel for the Assessee relied upon decision of the Full Bench of the Delhi High Court in the case of CIT vs. Moni

Kumar Subba (2011) 333 ITR 38 (Del.) in which, in para-20 the conclusion of the High Court is reproduced as under :

- “(i) Annual letting value would be the sum at which the property may be reasonable let out by a willing lessor to a willing lessee uninfluenced by any extraneous circumstances.*
- (ii) An inflated or deflated rent based on extraneous consideration may take it out of the bounds of reasonableness.*
- (iii) Actual rent received, in normal circumstances, would be a reliable evidence unless the rent is inflated/deflated by reason of extraneous consideration.*
- (iv) Such annual letting value, however, cannot exceed the standard rent as per the rent control legislation applicable to the property.*
- (v) If standard rent has not been fixed by the rent controller, then it is the duty of the AO to determine the standard rent as per the provisions of rent control enactment.*
- (vi) The standard rent is the upper limit, if the fair rent is less than the standard rent, then it is the fair rent which shall be taken as annual letting value and not the standard rent.”*

8.1. He has also relied upon the Judgment of the Bombay High Court in the case of CIT vs. Tip Top Typography (2014) 368 ITR 330 (Bom.), in which it was held as under :

“Municipal rateable value though not binding on AO is an approved method for determining fair rental value and it is only when AO is convinced that case before him is suspicious, determination by parties is doubtful that he can resort to enquire about the prevailing rate in the locality, AO can reject municipal rateable value.

Merely because rent has not been fixed under that Act does not mean that any other determination and contrary thereto can be made by A.O.”

8.2. He has also relied upon the order of ITAT, Mumbai Bench-C in the case of CVT (lessee) vs. ITO (Exemption)-1(1), Mumbai in ITA.No.4958/Mum./2015 for A.Y. 2011-2012 dated 24.10.2017, in which the A.O. denied exemption under section 11 of the I.T. Act because rent was paid to the assessee-company which is excluded under section 13(3) of the I.T. Act. The A.O. denied the exemption to the lessee because the lessee

was Trust making payment of lease rent to company in which trustee of the Assessee are Directors are majority shareholder, which violates Section 13 of the I.T. Act. It was also noted that assessee failed to substantiate the reasonableness of the payment of rent. Assessee, however, explained that assessee-lessee paid reasonable rent and there is no basis for the A.O. to arrive at different findings and relied upon assessment orders/ appellate order in the case of assessee-lessee for preceding assessment years. The Tribunal in paras 5 to 10 in the case of CVT held as under :

“5. We have considered the rival submissions of ld. AR of the parties and have gone through the orders of authorities below. We have also perused the material and the two decision mainly relied by ld AR for the assessee before us. The assessee-Trust was registered on 21.02.2008. The settler of Trust is Vineet Nayyar. The other trustee in the trust is Reva Nayyar. The address of both the trustee in the trust-deed are of 5A, Friends Colony (W), Mathura Road, Delhi-65. The initial corpus fund of Rs. 1100/- was contributed by settler. The name of the Trust was given as "The Cathedral Vidya Trust". The registered office of the

Trust is mentioned as 6, Purushottamdas Thakurdas Marg, Fort Mumbai-400001. Further, the membership of the Trust was restricted to minimum one and not more than three. There is further provision in the trust-deed that the trustee shall be entitled to appoint the additional trustee as and when they deem fit as per Clause-6 of Trust-Deed. It is mentioned in the trust-deed that trustee shall immediately form a Private Limited Company under the provisions of [Companies Act](#) and will appoint the Trust-company as sole trustee of the Trust. The assessee Trust got registration under [section 12A](#) of the Act on 31.03.2009. The assessee has placed on record a copy of lease agreement with Vidya Education Investment Pvt. Ltd. having its registered office at 5C, Old Friends Colony (W), Mathura Road, New Delhi-65 dated 14.06.2008. The lease deed was executed initially for nine years commenced from 01.06.2008. The lease-deed is signed by Vineet Nayyar on behalf of lesser as well as lessee. During the AY, the assessee has paid rent of Rs. 2.75 Crore to lesser i.e. M/s Vidya Education Investment Pvt. Ltd. on account of Annual rent which is one of the subject matter of impugned assessment.

6. *During the assessment proceeding, the AO issued show cause notice under [section 142\(1\)](#) seeking explanation from assessee with regard to (i) that assessee*

is running a Lavish International School, charging heavy fees from the students on commercial lines. The assessee is charging fee of Rs.4,65,000/- p.a. from Class-IV to Class-VIII, Rs. 4,65,000/- for IGCSE students and Rs. 5,65,000/- from I.B* (*no details of abbreviations is available in record).*

(ii) No charitable benefit is available to poor and needy students as a fee waiver, or scholarship etc. The activities of institution are not charitable and commercial in nature.

(iii) the assessee- Trust has made the payment of Rs. 2.75 Crore to M/s Vidya Education Pvt. Ltd. which is an excluded person under [section 13\(3\)](#) of the Act. The assessee was asked to justify the reasonableness of the said payment in term of provision of [section 13\(2\)](#) failing which it can be presumed that this just a tool for diversion of fund in the hand of excluded person and therefore, exemption under [section 11](#) shall be denied and income shall be assessed disallowing the payment of Rs. 2.75 Crore. The assessee filed its reply vide reply dated 13.03.2014. In the reply, the assessee contended that the assessee-trust is duly registered under [section 12A](#). As per the trust- deed, the object of trust is to promote educational activities by setting up and running school and allied charitable objects. The assessee has been promoting educational activities since inception, no other activities has been carried by the assessee till date. During the AY 2010-11, the AO has also

observed that the object of trust is to promote educational activities by setting up and running school and granted exemption under [section 11](#). For fees structure, the assessee contended that the school was established and started from 03.08.2008 and imparting education from Std. IV to Std. XI and Diploma courses. The assessee is imparting world class education with strong Indian Tradition and values with advance school of modern technology. In order to get the Teachers and Faculties for imparting good education, the assessee is require to pay high amount of remuneration to Teachers of that calibre. There were 300 students and 65 teaching staff and administrative support staff. The school is not added by the Government support and entire expenditure is incurred from the fees that are charged from the students. The fee structure as compared to the other International School, the fee of the assessee is on lower side. The assessee specifically contended that no profit motive embedded in the charging of fees. For payment of lease rent at the rate of Rs.25,00,000/- per month, the assessee contended that trust is paying lease rent to Vidya Education Investment Pvt. Ltd. for the plot of land measuring 16.93 acre. The lease deed was executed on 01.06.2008 for a period of nine years. Initially the rent was fixed at Rs.5,00,000/- per month which was gradually increased from time to time and

at present the assessee making payment of rent of Rs.25,00,000/- per month. The assessee also filed a report of Valuer dated 10.01.2014. The assessee contended that as per the Valuation Report the lease rent of the leased land is around Rs.32.31 Lakhs per month. The assessee also contended that for preceding AY 2008-09, assessee-trust has not paid the lease rent which was waived by the lesser company because of financial difficulties faced by the assessee. The total cost of the land and school is Rs.43,46,75,917/- which is funded by Vidya Education Investment Pvt. Ltd. (VEIPL). The VEIPL has also provided furniture and fixture, computer, books, office equipment etc. required for school and further incurred a cost of Rs. 300 lakhs. Thus, in sum and substances the assessee claimed that the payment of lease rent is reasonable. The contention raised by assessee in its reply was not accepted by AO. The AO concluded that the assessee is charging huge fee for educational activity which cannot be considered and treated as charitable. There is no co- relation of fee charged and the expenses incurred. The excessive fee is charged to generate huge surplus to fund the liability of rent of Rs.2.75 Crore to a Private limited company owned and managed by excluded person. The assessee urged the similar contention before ld. Commissioner (Appeals). The ld CIT(A)confirmed the order of assessing officer holding that during the course

of submission it was disclosed by the representative of the assessee that they are giving free education to One student, however the details of the student was not furnished. For charging of the high amount of fee the ld Commissioner (Appeals) concluded that no authentic data is provided. For payment of lease rent to the excluded person the ld. CIT(A) concluded that neither the decision of Supreme Court in case of Queen's Educational Society (319 ITR 160) relied on behalf of assessee nor the order of CIT(A) for AY 2010-11 is helpful to the assessee. The decision in Queen's Educational Society relates to [section 10\(23C\)](#), however the case of the assessee is hit by [section 13](#) of the Act. Further, the issue in AY 2010-11 may be relevant for the conditions of [section 13\(2\) \(c\)](#), however the provision of [section 13\(2\)\(g\)](#) are applicable in the year under consideration. Moreover, the principles of resjudicata are not applicable in the income tax proceedings.

7. *In our view, the only question for our consideration is whether the payment of rent/ lease rent paid to the related party is reasonable or excessive. The exemption under [section 11](#) can only be denied when the income of the trust is diverted during the previous year in favour of any person referred in [section 13\(3\)](#). [Section 13\(2\) \(g\)](#) specifically provides that when the income of the trust is diverted during*

the previous year in favour of any concern as provided under [section 13\(3\)\(e\)](#) the assessee would not be entitled for exemption if the rent paid is unreasonable one.

8. The perusal of the lease deed reveals that initially the rent was payable at the rate of Rs. 5,00,000/- p.m. The lease deed was executed on 01.06.2008. The assessee has debited the rent of Rs.2,75,00,000/- in its P/L account. Thus, the assessee claimed the payment of rent at the rate of Rs.25,00,000/- per month to the Company owned and managed by the Trustees. Though, the assessee within four years from the execution of lease deed increased the rent from Rs. 5.00 lacks to Rs.25.00 lacks per month. There is no dispute about the status of trustee in assessee trust and the Directors in the lesser company. The assessee has placed on record the copy of valuation report about the rental value of the leased asset dated 10.01.2014 and certified that this document was filed before lower authorities. In the valuation report the monthly rental value is assessed as Rs. 32,31,367/-. The area of leased land is in this report is referred only 10 acre, however in the reply before assessing officer the area of land was claimed as 16.93 acre (page 8 para II of AO order). The assessing officer has not given any finding on this document. Similarly, the assessing officer has not brought any

evidence on record about any valuation of comparable property. Similarly, the ld. Commissioner (Appeals) has not made any comment on the valuation report furnished by the assessee. In our view this documentary evidence furnished by assessee is not controverted by assessing officer by bringing any incriminating evidence on record. Thus in our view in absence of any incriminating evidence the payment of rent to the related party during the year under consideration is reasonable one.

9. *The ld AR for the assessee during the course of his submission filed a copy of the order of ld CIT(A)-9 New Delhi dated 18.02.2016, showing that the rent paid by the assessee was duly shown by Vidya Education Investment Pvt Ltd.(VEIPL) and was assessed by the revenue. The perusal of this order reveals that VEIPL has shown to have let out the land with superstructure to the assessee. VEIPL has offered the rent received from the assessee to tax. In our opinion in absence of any material the rent paid by the assessee to the related party during the year is reasonable one. With these observations the grounds of appeal raised by the assessee is allowed.*

10. *In the result, appeal filed by assessee is allowed.”*

8.3. Learned Counsel for the Assessee, therefore, submitted that since the rent have been accepted in the case of lessee and the Tribunal deleted the addition, therefore, enhancement made by the Ld. CIT(A) is wholly unjustified.

9. On the other hand, Ld. D.R. relied upon the orders of the authorities below and submitted that no material is produced in support of annual letting value claimed by the assessee. He has submitted that the decision relied upon by the assessee are distinguishable on facts.

10. We have considered the rival submissions and perused the material on record. The operative words in Section 23(1)(a) are *“the sum, for which, the property might reasonably be expected to let from year to year”*. These words provide a specific direction to the Revenue for determining the fair rent. The A.O. having regard to the aforesaid provisions is expected to make an enquiry as to what would be the reasonable rent that the property under reference might fetch. If the A.O. finds that actual rent received is less than the fair rent/market rent

because of certain reasons, the A.O. can take necessary exercise in that behalf. Hon'ble Delhi High Court in the case of CIT vs. Moni Kumar Subba (supra), in para-20 has given its conclusion, reproduced above, in which, it was observed that willingness of the lessor and lessee shall have to be considered and extraneous considerations should be avoided. Such annual letting value, however, cannot exceed the standard rent as per Rent Control Legislation applicable to the property. If the standard rent has not been fixed by the Rent Controller, then, it is the duty of the A.O. to determine the standard rent as per provisions of Rent Control enactment. The standard rent is upper limit, if the fair rent is less than the standard rent, then, it is the fair rent which shall be taken as annual letting value and not the standard rent. In the present case, the assessee explained all the facts before A.O. with regard to rent received and that the property was let out earlier and in the case of lessee CVT, it is pleaded before ITAT, Mumbai Bench that the rent has been gradually increased from time to time. This fact has not been disputed by the Revenue Department. Therefore, the A.O.

accepted the claim of assessee of receiving fair and reasonable rent of Rs.1.80 crores in assessment year under appeal. The Ld. CIT(A) was however, influenced by the fact that the assessee-company and the lessee is controlled by Shri Vineet Nayyar and his family members and investment in building. Therefore, he has considered that assessee has received a low rent. However, it is an extraneous consideration, which has no bearing on the issue of determination of annual letting value of the property. The Ld. CIT(A) did not undertake any necessary exercise to compute annual letting value of the assessee as per above guidelines. No comparable case have been brought by him on record. Ld. CIT(A) simply rejected the claim of the assessee for applying 8% of the total investment to compute annual letting value. He has not determined the standard rent in the case of assessee as per Rent Control Legislation and has also not considered even municipal value determined by the municipality. The Ld. CIT(A) also failed to note that the lessee was a charitable institution providing education to the students. Therefore, it could not be compared with commercial

or residential occupancy of demised property which is not involved in charitable institution. For commercial and residential user of the property, the rent may be high as compared to property given on rent to the educational and charitable institutions. Thus, there were no basis for Ld. CIT(A) to enhance the annual letting value of the property in question. We may also note that identical issue was considered in the case of lessee i.e., CVT by ITAT, Mumbai Bench and the entire addition made by the A.O. have been deleted by the Tribunal. Though this case pertains to subsequent A.Y. 2011-2012, but the fact remains that the Tribunal accepted the claim of lessee of fair rent paid by them to assessee. The demised property was let-out through agreement which follow in year under appeal. So, facts are identical. The claim of assessee has been supported by opinion/report of M/s. Atharva Land Developers who have determined fair rent against which Ld. CIT(A) has not brought any report of expert. So, it could not be disputed. In the case of assessee and lessee, the rent paid in earlier year have not been disputed by the Revenue Authorities. Considering the totality of

the facts and circumstances and in the light of decisions relied upon by the Learned Counsel for the Assessee, we are of the view that the lessee has paid fair reasonable rent to the assessee. Therefore, there were no basis to enhance the fair rent paid by lessee to the assessee-company. We, accordingly, set aside the orders of the Ld. CIT(A) and delete enhancement in rent made by him of Rs.1,67,74,073/-. We may also note that Ld. CIT(A) while enhancing rental income, did not decide the issue of service tax paid by assessee. Ld. CIT(A) admitted the additional evidences which are service tax paid by the assessee through challan and service tax returns filed for assessment year under appeal. It would support the explanation of assessee that assessee paid service tax for assessment year under appeal, out of rent received from the lessee because there were no mention of the service tax in the rent agreement. Since the service tax is a liability upon the assessee-company which have been discharged as per Service Tax Act, therefore, it is an allowable deduction in favour of assessee, because in the service tax, assessee has no right to claim it as a rent. The

authorities below were, therefore, not justified in making addition of Rs.16,80,870/-. The orders of the authorities below to that extent are also set aside and this addition is also deleted.

11. In the result, Ground No.1 of appeal of assessee is allowed.

12. On ground No.2(a), assessee challenged the disallowance of interest on borrowed funds to the tune of Rs.1,10,23,009/-.

13. During the course of assessment proceedings, it was observed that assessee has claimed interest on borrowed funds of Rs.2,20,46,017/- and claimed deduction from rental income. As per balance sheet filed by the assessee, it was observed that the land and building has been partially purchased from the own funds of the assessee-company like share capital, interest, free unsecured loans from Directors and partially from loans taken from Banks and other financial institutions. The interest bearing loan were also used to purchase other assets of the company other than land and building, on which, rental income

was declared. In the absence of any specific bifurcation of funds used for land and building and other assets and used for business activities, 50% of the interest claimed by the assessee were disallowed. The A.O. accordingly, made addition of Rs.1,10,23,009/-.

14. The assessee submitted before Ld. CIT(A) that cost of the borrowings, Rs.13,28,499/- during the period of construction of school, assets up-to 31.07.2008 were capitalized. The borrowing cost after 1st August, 2008, was charged to the P & L A/c i.e., Rs.95,17,940/- as ended on 31.03.2009 and Rs.2,20,46,017/- ended on 31.03.2010. The assessee in the return of income claimed interest paid and claimed deduction under the Head "House Property". The assessee further submitted that deduction is allowable as the borrowings have nexus with the construction of the property. Since the interest is charged on borrowed capital utilized for acquiring and constructing of the property, therefore, it is an allowable deduction under section 24(b) of the I.T. Act. The

proportion of the value of the land and building as against the other assets is 93.15% and not 50% as computed by the A.O. All the borrowings were used for construction of assets of the school. The share capital, loans and reserve and surplus of the assessee ending 31.03.2010 are Rs.17,31,22,801/-. The balance sheet of the assessee shows total investment on assets as on 31.03.2010 at Rs.43,46,75,917/- whereas, the borrowings as on 31.03.2010 were Rs.25.13 crores only. This clearly shows that assessee has substantially utilized its own funds amounting approximately to Rs.18 crore and the funds of the co-owner amounts to Rs.5.61 crore to finance the purchase/acquisition of the school assets. All the assets created by the borrowed funds and own funds were in respect of school which was leased to CVT. The borrowed funds were not utilized for other assets. The Ld. CIT(A), however, did not accept the contention of the assessee and noted that assessee has shown secured loan of Rs.25.13 crore and others. The total funds available to the assessee are Rs.53.38 crore are about 47%, therefore, 50% disallowance was found justified. It was also

noted that it was for the assessee to show that the borrowed funds were actually used towards assets yielding rental income. This ground was dismissed.

15. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that assessee raised funds from following institutions for construction of school building.

- (1) Kotak Mahindra Bank OD Limit Rs. 6 crores.
- (2) IDFC Secured Loan of Rs.8 crores ending 31.03.2009
And Rs.6.5 crores ending 31.03.2010.
- (3) Secured Loan from IISL Rs.25 crores. On which, assessee paid interest to Rs.2,20,46,017/-.

15.1. Assessee has invested total sum of Rs.48,13,50,076/-, out of which, sum of Rs.43,46,57,917/- relates to school land and building. Total borrowings as on 31.03.2010 were Rs.25,13,58,904/- only, on which, the above interest have been paid. This would prove that whole of the borrowed funds were utilized for construction of school

building, therefore, there were no justification to disallow the interest.

16. On the other hand, Ld. D.R. submitted that no bifurcation is given, therefore, the addition is justified.

17. We have considered the rival submissions and do not find any justification to sustain the addition. The interest paid on borrowed funds used for the acquisition and construction of the property is an allowable deduction under section 24(b) of the I.T. Act. The authorities below have disallowed 50% of the interest because no bifurcation of the funds used for land and building and other assets have been provided by the assessee. The assessee has, however, given complete details before the Ld. CIT(A) to show how much own funds are available to assessee and how much amounts have been borrowed from the Bank and other institutions. The assessee claimed that the borrowings as on 31.03.2010 were only Rs.25,13,58,904/-, on which, above interest have been paid. The assessee has invested a sum of Rs.43,46,57,917/- in the school land and building. This itself

proves that assessee utilized the entire borrowed funds for construction of school building. Learned Counsel for the Assessee also referred to page-10 of the synopsis to show bifurcation of the land and building of the demise property and other assets and submitted that the other net addition on other assets in assessment year under appeal is only Rs.60,35,902/- which is not disputed by the Ld. CIT(A), because, such Schedule-5 of the fixed assets was also filed before authorities below. He has, therefore, rightly contended that the entire borrowed funds have been used for the purpose of acquisition and construction of the school building. Similar deduction of interest claimed in earlier year not disputed by authorities below. Therefore, interest is allowable. We, accordingly, set aside the orders of the authorities below and delete the addition. This ground of appeal of assessee is allowed.

18. On ground No.2(b), assessee challenged the addition of Rs.2,75,750/- on account of professional charges paid to IDFC. The assessee claimed professional charges paid to IDFC

for processing of loan application. The assessee submitted that funds raised were utilized for construction of school property/assets and same is allowable as expenditure under section 37 of the I.T. Act. The A.O. did not accept the contention of assessee because the assessee has accepted that the expenses incurred are related to building, on which, rental income has been declared. Therefore, it was disallowed as business expenditure. The assessee has claimed interest against house property. The Ld. CIT(A) confirmed this addition because assessee has not filed any evidence to show that professional charges claimed were towards loan which was actually utilized for assets yielding rental income. Learned Counsel for the Assessee submitted that the service fees or other charges falls in the definition of interest under section 2(28A) of the I.T. Act. Therefore, it is an allowable deduction under section 24(b) of the I.T. Act. However, it is a fact that assessee has not filed any evidence to show that professional charges claimed were towards loan which was actually utilized for assets yielding rental income. There is no infirmity in the

orders of the authorities below. This ground of appeal of assessee is dismissed.

19. In the result, appeal of assessee is partly allowed.

Order pronounced in the open Court.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 22nd June, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "D" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.