

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D' NEW DELHI**

**BEFORE
SHRI G.D.AGRAWAL, HON'BLE VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.6770-72/Del/2013
A. Y.: 2001-02, 2002-03, 2003-04**

Riverdale High School Society Summer Valley School 18-Teg Bahadur Road Dehradun PAN : AAAAR3499M	Vs.	ACIT Circle-2 Dehradun
Appellant		Respondent

**Revenue by : Shri Pradeep Singh Gautam, Sr.DR
Assessee by : Shri Sanjiv Sapra, FCA, Ms. Pallari, FCA
Date of hearing : 21.08.2018
Date of pronouncement : 30.10.2018**

ORDER

PER BENCH:

All these three appeals are preferred by the assessee. ITA No. 6770/Del/2013 is assessee's appeal against order dated 23.10.2013 passed by the Ld. CIT (Appeals) {CIT (A) } -II, Dehradun for assessment year 2001-02, ITA No. 6771/Del/2013 is assessee's appeal against order dated 23.10.2013 passed by the Ld. CIT (A)-II, Dehradun for assessment year 2002-03, ITA No. 6772/Del/2013 is assessee's appeal against order dated 23.01.2013 passed by the Ld. CIT (A)-II, Dehradun for

assessment year 2003-04. Since all the three appeals involved identical issues the same were heard together and they are being disposed of by this common order for the sake of convenience.

2.0 The brief facts of the case are that the assessee society is running a school and is registered u/s 12A of the Income Tax Act, 1961 (hereinafter called to as 'the Act') vide order dated 30.08.1995. The main aim of the society is to impart education to students. For assessment year 2001-02 the return of income was filed declaring income at Nil after claiming exemption u/s 11 of the Act. The case was selected for scrutiny and during the course of scrutiny proceedings the AO observed that the society had paid rent of Rs. 9,89,912/- during the year under consideration. The AO further noted that as per the lease agreement dated 27.06.1994, the rent of the property situated at 18, Teg Bahadur Road, Dehradun was to be Rs. 2500/- per month payable to Sh. Ashok Vasu, Mrs. Pawan Wasu and Mrs. Prem Oberai and Mrs. Neeru Goel. The AO further noted that as per the lease dated 27.06.1994 the lease was to be in operation for 10 years starting from 01.04.1994. The AO also noted that as per Clause 6 of the lease deed, after the expiry of the lease, all the additions and alternations, including the renovation were to form part of the

leased property and were revert back to the lessor on expiry of the lease unless the said lease was renewed. The AO also noted that as per Clause 10 of the lease deed, the lessor and lessee may, by mutual consent, extend the period of the lease as mutually agreed on such enhancement as agreed. The AO further noted that the payment of rent of Rs. 9,89,912/- as against the payment of Rs. 60,000/- made in the immediately preceding year indicated that the enhancement had been made before the expiry of the lease period and further it was also noted that same was made by way of Board resolution. The Assessing Officer called for further details from the assessee and also noted that the lessors Smt. Prem Oberoi, Sh. Ashok Wasu, Smt. Pawan Wasu were the members of the Governing Body of the society whereas Smt. Neeru Goel was wife of Sh. S.K.Goel who was again a member of Governing Body. The AO was of the opinion that the assessee was unable to give any justification for enhancement of rent from Rs. 60,000/- to Rs. 9,89,912/- and he disallowed the differential amount of Rs. 9,29,912/- being excessive payment made to the interested persons in terms of section 13(2)(c) of the Act. The AO also made the addition of Rs. 1,00,000/- out of salary paid to Director (Administration). Thereafter, the surplus

of Rs. 3,96,440/- was taxed by denying exemption u/s 11 of the Act.

2.1 Similarly, in assessment year 2002-03, the AO made a disallowance of Rs. 4,20,000/- towards payment of rent of property at 18, Teg Bahadur Road, Dehradun and further disallowance of Rs. 5,47,184/- towards rent paid for the second property situated at 322/2 Balbir Road, Dehradun on the ground that the lease deed dated 31.03.2000 for the second property was executed only for a period of 11 months starting from 01.04.2000 and since no new lease deed agreement had been furnished in respect of year under consideration the rent paid for this property was not allowable. The exemption u/s 11 was also denied by invoking provisions of section 13 of the Act.

2.2 In assessment year 2003-04, the Assessing Officer disallowed rent of Rs. 4,20,000/- in respect of property situated at 18-Teg Bahadur Road, Dehradun and an amount of Rs. 4,36,535/- for lease rent paid for the property at 322/2 Balbir Road, Dehradun and also denied the benefit of exemption u/s 11 of the Act by invoking provisions of section 13 of the Act.

2.3 The assessee's appeals in all the three years were dismissed by the Ld. CIT (A)-II, Dehradun and now against these three first appellate orders, the assessee is in appeal before the ITAT.

3.0 At the outset, the Ld. Authorised Representative submitted that while making the addition/s with respect to rent the AO never afforded any opportunity to the assessee to explain the factual position in this regard and thus the principle of natural justice had been violated by the Assessing Officer. It was also submitted that provisions of Section 13(2)(c) of the Act were incorrectly invoked as the said provisions were not applicable to the facts of the assessee's case as the same did not deal with rent but rather with salary and other allowances. He also submitted that the assessee had taken on lease two properties viz. one at 18-Teg Bahadur Road, Dehradun and the other at 322/2 Balbir Road, Dehradun but the Ld. AO had mixed up the clauses of the two lease deeds. He drew our attention to the two lease deeds placed in the paper book had also submitted that the enhanced rent was in terms of Board resolution as well as lease deeds duly executed in this regard. The Ld. Authorised Representative also placed copy of chart depicting year-wise rent paid as well as depicting the per square feet rate in this regard and submitted

that the square feet rate was at par with the market rate per square feet of that particular area. It was also submitted that all the three appeals could be restored to the file of the AO with the direction to provide an opportunity to the assessee to explain the same before the AO.

4.0 In response, the Ld. Sr. Departmental Representative vehemently supported the order of the Ld. CIT (A) and also placed reliance on the findings of the AO. The Ld. Sr. Departmental Representative, however, had no objection to the issue being restored to the file of the AO.

5.0 We have heard the rival submissions and have also perused the material available on record. A perusal of the impugned orders shows that all the documents relevant to the issue of rent were not before the AO and even the Ld. CIT (A), has dismissed the appeals without actually considering the detailed submissions made by the assessee in this regard and which are part of the record. As both the parties before us have agreed, we deem it fit to restore the issue to the file of the Assessing Officer for all the three years in appeal before us to be determined afresh after giving the assessee due opportunity to present its case. We also direct the assessee to furnish all the documentary evidences

and explanations on which it seeks to place reliance whenever it is called upon by AO to do so failing with the AO shall be at liberty to proceed as per law.

6.0 In the final result, all the three appeals of the assessee stand allowed for statistical purposes.

Order pronounced in the open court on 30th October, 2018.

Sd/-
(G.D.AGRAWAL)
VICE PRESIDENT

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 30th October, 2018
Copy forwarded to: -

- 1) Appellant
- 2) Respondent
- 3) CIT(A)
- 4) CIT
- 5) DR

True Copy

By Order

ASSTT. REGISTRAR

Date of dictation	29.10.2018
Date on which the typed draft is placed before the dictating Member	29.10.2018
Date on which the typed draft is placed before the Other Member	29.10.2018
Date on which the approved draft comes to the Sr. PS/PS	30.10.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	30.10.2018
Date on which the fair order comes back to the Sr. PS/PS	30.10.2018
Date on which the final order is uploaded on the website of ITAT	30.10.2018
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	