

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCHE, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.482/Ind/2017  
Assessment Year: 2014-15**

ITO,(Exemption), Aayakar Bhawan, Bharatpuri,Ujjain	<b>बनाम/ Vs.</b>	M/s. Science Forum for Rural Development & Research (Takshshila Jr. College) Gram-Mindia, Navakheda, Ujjain (M.P.)
(Revenue)		(Respondent)
P.A. No.AAQFS8142R		

Revenue by	Shri K.C. Selvamani, Sr. DR
Respondent by	Shri S.S. Deshpande, & Bhavesh Nerkar, CAs
<b>Date of Hearing:</b>	<b>20.03.2019</b>
<b>Date of Pronouncement:</b>	<b>29.03.2019</b>

**आदेश / O R D E R**

**PER KUL BHARAT, J.M:**

This is an appeal filed by the Revenue against the order of Commissioner of Income Tax(Appeals), Ujjain

dated 18/04/2017 pertaining to assessment year 2014-15.

The revenue has raised following grounds of appeal:

*“On the facts and in the circumstances of the case:-*

*Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was justified in deleting the addition of Rs. 73,62,526/-, being the capital expenditure on acquisition of buses transferred to a person covered by section 13(1)(c) namely TIMT without considering the various discrepancies pointed out by the Assessing Officer in the assessment order?*

*2. Whether on the facts and the circumstances of the case, the Ld.CIT(A) was justified in deleting the addition of Rs. 76,789/- on account of interest payment made on loan for purchase of buses without considering the various discrepancies pointed out by the assessing Officer in the assessment order?*

*3. Whether on the facts and in the circumstance of the case, the Ld.CIT(A) was justified in deleting the aforesaid addition of Rs. 3,70,488/- on account of excess salary to the Secretary of the society covered U/S 13(3) of the I.T.Act without considering the various discrepancies pointed out by the assessing Officer in the assessment order?*

*4. Whether on the facts and in the circumstance of the case. the Ld.CIT(A) was justified the claim of society U/S 10(23C)(vi) of the LT Act without considering that the case covered under the purview of 13(J)(c) and 13(l)d) as pointed out by the Assessing Officer in the assessment order and therefore Society is existing "for purpose of profit" within the meaning of said term u/ 10(23C)(vi)?”*

2. Briefly stated facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 43(3) of the Income Tax Act, 1961 (hereinafter called as ‘the Act’) was framed vide order dated 29.12.2016. The assessing officer observed that during the year under

consideration the assessee society had transferred its movable assets to another entity namely 'Takshshila Institute of Management and Technology'. The assessing officer taking the WDV of buses at Rs.73,62,526/- as income of the assessee since the assessee had claimed capital expenditure. Further the assessing officer made addition of interest in respect of, the 'interest expenses' on the loan taken for purchase of buses. The assessing officer also made addition out of excess claim of depreciation and the salary expenses.

3. Aggrieved by this the assessee preferred an appeal before the Ld. CIT(A) who after considering the submissions partly allowed the appeal. Thereby, ld. CIT(A) deleted the addition of Rs.73,62,526/- made on account of transfer of buses and interest thereon of Rs.76,789/-. Further the Ld. CIT(A) confirmed the addition of Rs.15,817/- claimed as excess depreciation however the Ld. CIT(A) deleted the addition made out of salary expenses by the assessing officer.

4. Against this the Revenue is in appeal before this Tribunal.

5. Ground No.1 is against the deletion of addition of Rs.73,62,526/- made on account of transfer of buses. Ld. Departmental Representative (DR) supported the order of

the assessing officer and submitted that the Ld. CIT(A) was not justified in deleting the addition. He submitted that admittedly, the assessee had transferred the buses to other society. He further submitted that the assessee did not place on record any lease deed etc. as claimed by the assessee however the assessee has been struck off from the balance sheet of the assessee society.

6. On the contrary, Ld. counsel for the assessee submitted that it was not a transfer it was merely journal entry as buses were not being used by the assessee society, therefore, same was given to the sister concern who is carrying out charitable activities. Under these facts the assessing officer was not justified in making the addition moreover, these buses were subsequent brought back to the assessee society.

7. We have heard the rival submissions and perused the material available on record and gone through the orders of the authorities below. The Ld. CIT(A) has given a finding of fact by observing as under:

*“Through this ground of appeal the appellant has challenged the addition of Rs.73,62,526/- on account of transfer of buses. The AO made the addition on the ground that the appellant has sold the buses to TIMT. The society passed the resolution to segregate the teaching works and administration works. Therefore, the running and maintenance of buses, sale and*

*purchase of books and dress material are given to TIMT. The buses were given on lease basis to TIMT. The registration and insurance of the vehicles are still in the name of the appellant society. They had not sold to the TIMT. The buses have already been mortgaged/hypothecated to the Bank/financial institute and the same cannot be transferred without repayment of loan. It was general entry made but no transfer of buses has taken place. Therefore, the addition made by the AO amounting to Rs.73,62,526/- is deleted. Therefore, the appeal on this ground is allowed.*

8. It is contention of the assessee that it was a temporary arrangement, in fact the buses were not transferred to the other society and subsequently, these buses were brought back to the assessee society. These facts require verification by the assessing officer, therefore, we set aside the order of the Ld. CIT(A) and restore this issue to the assessing officer to verify whether these buses have subsequently come to the assessee and it was merely journal entry. This ground of the revenue's appeal is allowed for statistical purposes.

9. Now coming into Ground no.2, this ground is against deleting addition of Rs.76,789/-. This ground is connected with ground no.1 since the disallowance is on account of interest payment made on loan for purchase of buses, therefore, this issue is also restore to the file of the assessing officer to decide it afresh.

10. Ground No.3 is against deleting addition of Rs.3,70,488/-. Ld. DR supported the order of the assessing officer.

11. Per contra Ld. counsel for the assessee supported the order of the Ld. CIT(A).

12. We have heard the rival submissions and perused the material available on records and gone through the orders of the authorities below. The assessing officer disallowed the salary on the basis that the principal of the school was being paid at the rate of Rs.55,226/-pm. The assessing officer has not brought out as to why the principal salary should be compared with salary of other teaching staff. The assessing officer ought to have compared the salary of principal of other school that exercise is not done. Therefore, the finding of the assessing officer cannot be affirmed, we do not see any reason to interfere in the finding of the Ld. CIT(A). This ground of Revenue's appeal is dismissed.

13. Ground No.4 is against allowing the claim of assessee society exemption u/s 10(23C) of the Act.

14. Ld. DR supported the order of the assessing officer.

15. We have heard the rival submissions and perused the material available on records and one through the orders of

the authorities below. Ld. counsel for the assessee supported the order of the Ld. CIT(A). The Ld. CIT(A) has given a finding of fact by observing as under:

*“Through this ground of appeal the appellant has challenged the rejection of claim of the society u/s 10(23C)/11 of the I.T. Act. The appellant society is running this school since 1995 and before this assessment the appellant society has undergone 5 to 6 scrutiny assessments and during previous assessment proceedings no such issue was raised in any of the assessment. The issue was discussed in details at the time of grant of exemption u/s. 10(23) also and no such discrepancy was noticed earlier or till date. The assessing officer has considered the plain reading of the section 13(1)© and 13(1)(d) and did not considered that the member (secretary) is not taking an undue benefit whereas he is putting more efforts in terms of time as well for educational benefits. Therefore, the appellant is entitle for exemption u/s 10(23C). Therefore the appeal on this ground is allowed.”*

16. We have given our thoughtful consideration for the Ld. CIT(A), we find that the assessing officer has not pointed out that the assessee society is not functioning in accordance with the object and is engaged in profit making. In the absence of such finding we do not see any reason to interfere in the finding of the ld. CIT(A) same is hereby affirmed. This ground of revenue’s appeal is dismissed.

17. In the result, the appeal of the Revenue in ITANo.482/Ind/2017 is partly allowed for statistical purposes.

*Order was pronounced in the open court on 29.03.2019.*

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

Indore; दिनांक Dated : 29/03/2019

*Patel, P.S/.नि.स.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order  
**Assistant Registrar, Indore**