

**आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर**

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

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

**ITA No.700/Ind/2017  
Assessment Year: 2010-11**

Sahodaya Educational Society, Badoli Houj, Depalpur, Indore (Appellant)	<b><u>बनाम/</u></b> Vs.	CIT-II Indore (Revenue)
PAN: AABAS5735Q		
Appellant by	Shri Pramod Gupta & Pulak Gupta, CAs	
Revenue by	Smt. Vineeta Dube, Sr. DR	
<b>Date of Hearing:</b>	<b>20.08.2019</b>	
<b>Date of Pronouncement:</b>	<b>.08.2019</b>	

**आदेश / O R D E R**

**PER MANISH BORAD, A.M:**

This appeal at the instance of Assessee pertaining to A.Y. 2010-11 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-II, Indore, (in short 'CIT(A)'), dated 02.06.2017 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 01.03.2013 by ITO-2(1), Indore.

2. The Assessee has raised following grounds of appeal:

1. *The assessment order passed by the LD CIT Appeals is bad in law, wrong on facts, ill conceived, against the law of natural justice.*
2. *The Ld. CIT (A) erred to confirm addition for Rs. 524274/- as taxable income of the society (AOP) without considering any merits as laid by assessee society in respect to such expenses which were shown under the head Income and Expenditure Account of the assessee.*
3. *The Ld. CIT (A) erred to confirm additional income of Rs. 524274/- without considering the fact that the assessee AOP income is exempt u/s 10(23C) (iiiad)/II of The I.T. Act.*
4. *That the Ld. CIT (A) erred to confirm addition of Rs. 524274/- without giving any basis.*
5. *That Ld. CIT (A) erred to confirm addition of Rs. 226000/- as rent paid on building without considering any merits as laid by assessee society in respect to such expenses.*
6. *That Ld. CIT (A) erred to confirm addition of both the amounts on wrong inferences, presumption, surmises, and ignoring the fact that the appellant school is using the building constructed by the landlord and rent paid towards the building while the lease deed was related to the land. Thus, the addition is unwarranted.*
7. *That the appellant reserves its right to add, ground on or before hearing of appeal.”*

3. Briefly stated facts as culled out from the records are that the assessee is an Education Society enjoying exemption u/s 10(23C)(vi) of the Act vide order of Office of the Chief Commissioner of Income Tax, Indore, dated 28.08.2012. The return of income for A.Y. 2010-11 filed on 08.10.2010 declaring 'NIL' income. Case selected for scrutiny assessment as per CASS, followed by serving of notices u/s 143(2) & 142(1) of the Act. While examining the financial statement and audit report, Learned Assessing Officer (in short Ld. AO) observed that unreasonable rent has been paid to the

lease providers who are on the board of the society. It was submitted by the assessee that the land on annual lease of Rs.5000/- was taken for 30 years which was to be used for constructing the building. Thereafter, the building was also constructed by Director's from their own funds and reasonable amount of rent has been paid for the building. But Ld. AO was not convinced as he was of the view that the assessee has violated the provisions of section 13(1)(c)(ii) of the Act as it has paid unreasonable amount of lease. Exemption u/s 10(23)(c)(vi) of the Act was denied, excess lease rent of Rs.2,26,000/- was disallowed and income determined at Rs.7,50,274/-.

4. Against the finding of Ld. AO assessee preferred an appeal before the ld. CIT(A) but failed to succeed.

5. Now the assessee is in appeal before the Tribunal.

6. Ld. Counsel for the assessee submitted that no excessive rent has been paid. The rent is approximately at Rs.800/- per room for the 24 rooms used for running educational activities. He also referred to various lease deeds in support of the rent paid. He also submitted that no objection has been raised by the revenue authorities on educational activities carried out by the assessee.

7. Per contra Ld. Departmental Representative (DR) vehemently argued supporting the order of the both lower authorities.

8. We have heard rival contentions and perused the record placed before us. Though the assessee has raised 7 grounds of appeal, ground no.1 to 4 are against the finding of Ld. CIT(A) confirming the action of the Ld. AO denying the benefit of exemption u/s 10(23c)(vi) of the Act and adding the surplus of income during the year to tax. Ground No.5 challenges the addition for disallowance of rent paid of Rs.2,26,000/-.

9. As for as ground No.1 to 4 are concerned we find that the Ld. AO has not raised any doubt on the regular activities of the educational institutions. The objects of the society have been duly adhered. The assessee enjoys the exemption on the basis of certificates issued by CCIT, Indore dated 28.08.2012. Perusal of the financial statement shows that the only source of earning of the society is education fees and admission fees from the school students. Nature of investment is mainly in the fixed asset which comprises the assets used in the school.

10. In these given facts where the basic purpose of running the school has been successfully achieved and assessee has not violated the condition as provided in provisions of section 10(23C)(vi) of the Act, we do not find any justification in the finding of the Ld. AO denying the exemption u/s 10(23C)(vi) of the Act in toto. We, therefore, set aside the finding of Ld. CIT(A) and delete the addition of Rs.5,24,274/- being surplus of gross receipt over

expenditure. Accordingly, ground Nos.1 to 4 of the assessee's appeal are allowed.

11. Apropos to ground No.5 relating to disallowance of rent paid at Rs.2,26000/-, we observe that the assessee entered into a lease agreement on 10.01.2007 for taking land on lease for 30 years @ 5000/- per year. Thereafter, on 01.05.2009 another lease deed was entered for taking land and building. Copies of map of school building, duly sanctioned by Gram Panchayat, Badolihouj Depalpur and No Objection Certificate (NOC) from Gram Panchayat Badolihouj, Depalpur allowing permission for building of school on 10000 sq. feet area, is also placed in the paper book. The series of documents fairly makes the case of the assessee that firstly, land was taken on lease, thereafter due to non-availability of funds building was constructed with the funds given by the Directors and after getting necessary permission. The amount of rent if apportioned on 24 rooms in the building the same will be approx Rs.800 per room which primarily does not seem to be excessive or unreasonable.

12. However, since some of the details relating to NOC and the additional lease deeds were not placed for perusal before the Ld. AO and also since the Ld. AO has not brought on record any other comparative instances to prove that the assessee society had paid excessive rent to its directors we being fair to both the parties deem it proper to set aside this issue to the file of Ld. AO for afresh adjudication, in the light of our observation made hereinabove and

the documents placed before us in paper book. Needless to mention that proper opportunity of being heard to be provided to the assessee. Accordingly ground No.5 is allowed for statistical purposes.

13. Ground Nos. 6 & 7 are general in nature, which needs no adjudication.

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

*Order was pronounced in the open court on 13.09.2019.*

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 13/09/2019

*Patel, P.S./नि.स.*

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

By order  
**Assistant Registrar**