

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

(Through Video Conferencing)

ITA No.1142/DEL/2011
Assessment Year: 2007-08

IILM Foundation, Rai School Complex, 3, Lodhi Institutional Area, Lodhi Road, New Delhi.	v.	Asst. Director of Income Tax (Exemption), Trust Circle-II, Laxmi Nagar, New Delhi.
TAN/PAN: AAATR8309M		
(Appellant)		(Respondent)

ITAs No. 2675/DEL/2013, 2871/DEL/2014, 2872/DEL/2014 &
1131/DEL/2016
Assessment Years: 2008-09, 2009-10, 2010-11 & 2011-12

Asst. Director of Income Tax (Exemption), Trust Circle-II, Laxmi Nagar, New Delhi.	v.	IILM Foundation, Rai School Complex, 3, Lodhi Institutional Area, Lodhi Road, New Delhi.
TAN/PAN: AAATR8309M		
(Appellant)		(Respondent)

Appellant by:	Shri Rohit Jain, Adv., Ms. Tejasvi Jain, CA & Ms. Somya Jain, CA		
Respondent by:	Ms. Sunita Singh, CIT-D.R.		
Date of hearing:	02	12	2020
Date of pronouncement:	24	12	2020

ORDER

PER AMIT SHUKLA, JUDICIAL MEMBER:

The appeals for the assessment year 2007-08 is a recalled matter in pursuance of consolidated order dated 28.02.2019 passed by the Tribunal in MA Nos. 729 to

732/Del/2017. The appeal for the assessment year 2007-08 has been filed by the Assessee whereas the appeals for the assessment years 2008-09 to 2011-12 have been filed by the Revenue against impugned order for the quantum of assessment passed u/s. 143(3) by the CIT (A)-40.

2. The brief facts and background of the case as culled out from the impugned orders as well as submissions made by the parties are that, the assessee is a charitable trust settled vide Trust Deed dated 01.04.2001 for the predominant charitable object of imparting education. The assessee-trust was initially declared/ setup in the name of 'Ram Krishan Kulwant Rai Charitable Trust' and subsequently, the name of the trust was changed to 'IILM Foundation' vide amendment Deed dated 26th July, 2007. The assessee was duly registered under section 12A of the Income Tax Act, 1961 ("the Act") vide registration granted on 01.02.2001 read with modification dated 02.06.2008. In furtherance of its predominant object of imparting education, during the year under consideration, the assessee was running the following educational institutions:

- Banyan Tree World School at Gurgaon.
- IILM Under Graduate Business School at Lodhi Road.
- IILM Early College at Lodhi Road.

3. We will now take up the appeal for the assessment year 2007-08, wherein the assessee has challenged the impugned order of CIT(A)-XII, New Delhi vide order dated 31.12.2010 on the following grounds of appeal:

“1. That on the facts and circumstances of the case, the order, dated 31.12.2010, having been passed by the Commissioner of Income Tax (Appeals) without affording adequate opportunity of being heard to the appellant, is violative of the principles of natural justice and is, therefore, illegal and bad in law.

2. That the Commissioner of Income Tax (Appeals) erred on facts and law in upholding the action of the assessing officer in denying the benefit of exemption u/s. 11 and 12 of the Income Tax Act, 1961 (‘the Act’) on the ground that the appellant had made payment to specified persons within the meaning of Sec. 13(3) in violation of Sec. 13(1)(c) of the Act.

2.1 That the Commissioner of Income Tax (Appeals) erred on facts and law in upholding the finding of the assessing officer that payment of salary of Rs. 16,20,000/- to Mrs. Malvika Rai Tantamounts to payment to specified persons within the meaning of Sec. 13(3) in violation of Sec. 13(1)(c) of the Act, despite the fact that the payment made to her was towards the services rendered.

2.2 That the Commissioner of Income Tax (Appeals) erred on facts and in law in observing that the appellant had failed to justify that the salary payment to Mrs. Malvika Rai was commensurate with her educational qualifications without considering the submissions made by the appellant and the services rendered by her.

3. That the Commissioner of Income Tax (Appeals) erred on facts and in law in upholding the action of the assessing officer in treating the scholarship given to Ms. Aarti Rai, as being in violation of provisions of Sec. 13(1)(c) of the Act.

3.1 That the Commissioner of Income Tax (Appeals) erred on facts and in law in alleging that the appellant had not mentioned the name of persons who had been extended similar scholarship facilities.

3.2 That the Commissioner of Income Tax (Appeals) erred on facts and in law in holding that the scholarship amount incurred by Ms. Aarti Rai in UK, was in violation of section 11 (1)(a) of the Act on the ground that exemption is allowed only for charitable purposes in India.

4. The Commissioner of Income Tax (Appeals) erred on facts and in law in upholding the finding of the assessing officer that the appellant exists for the sole purpose of profit making and not for the purpose of charity.

4.1 *The Commissioner of Income Tax (Appeals) erred on facts and in law in not appreciating that the appellant had applied 92.83% of its income for charitable purposes, including acquisition of fixed assets for charitable purposes.*

4.2 *That the Commissioner of Income Tax(Appeals) erred on facts and in law in upholding the action of the assessing officer in assessing the income of the appellant as a business entity, after holding the activities of the appellant to be non-charitable under section 2(15) of the Act.*

5. *That the Commissioner of Income Tax(Appeals) erred on facts and in law in not adjudicating the alternative ground raised by the appellant that, assuming without admitting, there were violation(s) of section 13, still exemption under section 11/12 of the Act should not have been denied with respect to the entire income.*

6. *While computing income of the appellant as a business entity after denying exemption under sections 11/12 of the Act, the Commissioner of Income Tax (Appeals) erred on facts and in law in:*

(a) affirming the action of the assessing officer in making addition of Rs.34,41,987 out of refundable security deposit of the students.

(b) observing that although appellant's obligation to refund the above security deposits existed, but since the appellant did not refund the same, suo moto, the appellant was running on commercial principles.

7. *While computing income of the appellant as a business entity after denying exemption under sections 11/12 of the Act, the Commissioner of Income Tax (Appeals) erred on facts and in law in:*

(a) affirming the action of the assessing officer in making ad-hoc addition of 50% of repairs and car maintenance expenses amounting to Rs.7,09,468, on the ground that no log book was maintained by the appellant.

(b) failing to appreciate that simply because no log book was maintained by the appellant, could not lead to the conclusion that the cars were not used for charitable purposes.

8. *While computing income of the appellant as a business entity after denying exemption under sections 11/12 of the Act, the Commissioner of Income Tax (Appeals) erred on facts and in law in:*

(a) affirming the action of the assessing officer in disallowing scholarship expenses of Rs. 1335J905/r4iaid to Ms. Aarti Rai.

(b) affirming the action of the assessing officer in disallowing salary of

paid to Mrs. Malvika Rai.

9. While computing income of the appellant as a business entity after denying exemption under sections 11/12 of the Act, the Commissioner of Income Tax (Appeals) erred on facts and in law in confirming disallowance of donation paid of Rs.37,900/-.

10. That the Commissioner of Income Tax (Appeals) erred on facts and in law in confirming imposition of interest under section 234B and 234C of the Act.”

4. Before us, the learned counsel for the appellant, Mr. Rohit Jain submitted that the assessing officer in his order has alleged that appellant has violated the provision of Section 13(1)(c) on account of payment of remuneration to Mrs. Malvika Rai without affording any opportunity of being heard to the appellant on various issues. Even the Ld. CIT (A) has not taken into consideration various documents filed during the course of appellate proceedings. Therefore, assessee has filed an application for admission of additional evidences before the Tribunal vide letter dated 2nd March 2017. Apart from the allegation of remuneration paid to Mrs. Malvika Rai in violation of Section 13(1)(c), the AO has also made an adverse inference on account of payment of remuneration and scholarship to Ms. Aarti Rai which again was made without giving any proper opportunity of being heard. Apart from that, Assessing Officer while making the addition on account of refundable security deposit proceeded to draw adverse inference on the basis of details available on record which again was without offering any opportunity of hearing. Thus, he submitted the additional evidences filed by the assessee is critical for substituting the salary payment to

Mrs. Malvika Rai, being the Chairperson of IILM Under-Graduate Business School (in short 'IILM UBS') and the same should be admitted in terms of Rule 29 of ITAT Rules, 1963.

5. The assessing officer on perusal of the bank book maintained by the Banyan Tree School which falls under IILM Foundation, noted that following payments have been made to Smt. Malvika Rai and Smt. Aarti Rai, who falls within the category of a specified person within the meaning of Section 13(3):-

Bank Book Page No.	Date	Narration as per bank book
834	29.05.2006	Salary – TDS Aarti Rai 30,000/- Dr.
835	29.06.2006	Salary – TDS Malvika Rai 1,01,250/- Dr. Salary – TDS Aarti Rai 30,000/- Dr.
836	29.07.2006	Salary – TDS Malvika Rai 48,750/- Dr.
839	29.09.2006	Salary – TDS Malvika Rai 37,750/- Dr.
841	28.11.2006	Salary – TDS Malvika Rai 37,750/- Dr.
833	26.04.2006	Salary – TDS Aarti Rai 29,750/- Dr.

6. From the above details, Assessing Officer inferred that these payments are in violation of Section 13(1)(c) read with section 13(3) and on these account the assessee is liable to lose its exemption. He further noted the name of these two persons does not appear as employee of the Banyan Tree School. Accordingly, he disallowed the following payments made to both the persons.

Mrs. Malvika Rai	Rs.225,500/-
Mrs. Aarti Rai	<u>Rs. 89,750/-</u>
Total	Rs.315,250/-

7. The assessee explanation was that the trust has granted

scholarship of Rs.13.36 lakhs during the relevant previous year which was on account of payment of fees for doing higher education from London School of Economics and study charges of Smt. Aarti Rai in London. The Assessing Officer held that the details and supportive documents of such expenditure has not been filed. He also observed that the appellant trust has failed to prove any evidence that it has granted similar scholarship to other students of weaker section or offered any other students belonging to EWS. He also noted that the profitability percentage of the gross income for the Assessment Year 2006-07 and 2007-08 was 4.46% and 48.43% respectively. Thus, there is no charitable intention in action and operation of surplus funds. On this background he concluded as under.

- i. The assessee is not a charitable institution on account of infringement of provisions of sec. 13(1)(b) of the IT Act, 1961.
- ii. The assessee violated provisions of sec. 13(1)(v) r.w.s. 13(3) of the IT Act, 1961.
- iii. The assessee diverted fund within the meaning of sec. 13(2)(g) r.w.s.13(3) of the IT Act,
- iv. The institutions were operated by the assessee with a clear profit motive, and as business organization instead of a charitable one.
- v. The founders and controlling members have appropriated certain part of surplus fund for furtherance of their own need. On the aforementioned grounds the activities of the assessee are held to be not charitable within the meaning of sec. 2(15) of the IT Act 1961 from the nature of actual activities, accounts and transactions and as such the assessee not

entitled for exemption u/s. 11 and 12 of the IT Act, 1961. Accordingly, the undersigned proceed to assess his income as a business entity having a status of an AOP.”

8. Apart from that, Assessing Officer has noted that there is a miscellaneous income on account of student security which he noted for various years in the following manner:-

Students Security	Opening Balance	Closing Balance	Refund	Misc. Income
2000-03	6,05,226/-	Nil	Nil	6,05,226/-
2001-04	8,67,734/-	8,65,734/-	10,000/-	1,10,000/-
2002-05	790000	716075	20000	110000
2003-06	2810000	1607175	210000	1030000
2004-07	3700000	3449625	-	270000
2005-08	3390000	3180000	-	240000
1999-2002	439564	419564	-	20000
Total			240000	2275226/-

9. The AO observed that the appellant has shown only Rs.1,18,537/- as miscellaneous income, whereas income and amount narrated in the HDFC bank expenses without the name of the relevant student comes to Rs.22,75,226/-. He also noted that perhaps the students who have graduated during this period have not claimed any refund. Therefore, he has worked out understatement of income of Rs.34,41,987/- in the following manner.

“As per table	Rs. 22,75,226/-
Students Security 1999-2002 (closing balance)	Rs.4,19,564/-
Students Security 2001-04 (closing balance)	<u>Rs.8,65,734/-</u>

Total *Rs.35,60,524/-*

Less Misc. Income as per schedule A/c *Rs.1,18,537/-*

Understatement of Income **Rs.34,41,987/-**

10. Further, Assessing Officer has also made *ad hoc* disallowance of Rs.7,09,468/- being maintenance and fuel expenses on car amounting to Rs.14,18,936/- on the ground that log books were not maintained by the appellant. Lastly, he has also disallowed donation of Rs.37,900/- for payment of certain expenditure of some other institutions. Accordingly, the Assessing Officer after denying the benefit of exemption u/s 11 and 12 assessed the income on a total of Rs.5,96,90,550/- treating the assessee as AOP, and computing the income as business entity.

11. Before us, the learned counsel for the assessee submitted that the CIT (A) has proceeded on wrong facts without considering the submissions made by the assessee. He highlighted the following facts relating to remuneration paid to Mrs. Malvika Rai on the services rendered from the documents placed in the paper book at pages 86 and 87.

- Mrs. Malvika Rai had experience of more than 2 decades inasmuch as after completing her graduation from Jesus & Marry College, Delhi University, she was actively involved in the field of education. Mrs. Malvika Rai is amongst the few Indian women, who pioneered the cause of education in the country.
- Mrs. Malvika Rai also launched a primary school and

vocational training center, namely, “Roshni”, for the socially & economically backward section of the society in Lodhi Institutional area, New Delhi.

- Mrs. Malvika Rai was awarded the Indira Gandhi Priyadarshini award for the year 1996 as acknowledgment of her services to the nation and the society.
- Mrs. Malvika Rai was Chairperson of the `IILM Under-Graduate Business School (in short `IILM UBS’), run by the appellant at Lodhi Road, offering various management programs in collaboration with the University of Bradford, U.K.
- Mrs. Malvika Rai was also chairperson of the academic council of IILM-UBS.
- Mrs. Malvika Rai was regularly gets involved in interaction with various academicians, educationists, Vice Chancellors and faculties of several Universities and Management Institutes of USA , UK and other countries, with a view to upgrade the level of providing education in the various educations institutions of which she is a part.
- Mrs. Malvika Rai was on the Editorial Board of the quarterly management magazine of the appellant, namely ‘The EDGE’.
- Mrs. Malvika Rai was a member of the Advisory Board of the School of Management, University of Bradford, U.K.
- Mrs. Malvika Rai was Vice President of FICCI Ladies Organization.

12. Before the CIT(A), the appellant, not only explained the profile alongwith justification for paying salary to Mrs. Malvika Rai, but also produced salary sheets of the appellant

for various months for verification by the CIT(A). The appellant, also submitted details of salary paid to various other senior faculties, etc., of the appellant, on sample basis as follows:

Mr. B. Bhattacharya	Director	90,000	June, 2007
		1,20,000	December, 2008
		1,20,000	February, 2009
Mrs. Sapna Popli	Assistant Director	1,01,166	October, 2007
		1,35,331	January, 2007
		1,31,786	February, 2009
1,01,166	October, 2007	85,670	October, 2007

13. Learned counsel further submitted that Mrs. Malvika Rai being Chairperson of IILMF was responsible for all the institutions run by the appellant and was in relation to diverse nature of services performed by her which was at par with salary paid to other faculty members, and therefore, it cannot be held salary was excessive/ unreasonable to tax the provision of Section 13(1)(c) read with section 13(3). Learned CIT (A) has decided this issue against the appellant after observing and holding as under:

“9.2 The submission given by the appellant and the objections of the assessing officer has been perused. It is seen that Mrs. Malvika Rai is related to the trustee and is being given a hefty salary of Rs.16,20,000 p.m. despite the fact that she is just a graduate and the appellant had not furnished any details as to how the educational qualification of Mrs. Malvika Rai is commensurate with the salary which she is drawing. Thus the assessing officer was correct in invoking the provision of section 13 and denying the benefit of exemption under section 11 and

12. This ground is decided against the appellant.”

14. Learned counsel rebutted the aforesaid observation and the conclusion of the learned CIT (A) in the following reasons.

(a) First and foremost, the CIT(A) erroneously considered remuneration of Ms. Malvika Rai as “Rs.16,20,000 p.m.”, whereas actual remuneration paid was Rs.16,20,000 for the entire year and not Rs.16,20,000 p.m. This fundamental mistake, it is submitted, vitiates the entire conclusion of the CIT(A) on the aforesaid issue;

(b) Secondly, the CIT(A) proceeded on a flawed premise that the appellant did not justify how “the educational qualification of Mrs. Malvika Rai is commensurate with the salary which she is drawing” whereas the legal requirement is to examine the remuneration based on the services being rendered. The only requirement in law is that the salary paid should not be excessive or unreasonable having regard to services rendered. The services rendered have to be benchmarked not only with reference to the educational qualification of the person(s) specified in section 13 of the Act but also the requisite experience;

(c) Thirdly, none of the comparative material/ instances placed on record and vital for adjudication of the issue have been considered by the CIT(A);

(d) Fourthly, nothing has been brought on record to controvert any of the factual submissions of the appellant;

(e) Fifthly, none of the authorities (the assessing officer in subsequent years and also the CIT(A) in the year under consideration) have brought any evidence on record to show

that the salary paid was excessive having regard to the legitimate needs of the appellant trust in carrying out educational activities;

(f) Sixthly, the CIT(A), it appears, was influenced by the fact that Mrs. Malvika Rai was only a graduate, which cannot be the basis to hold that services rendered were not commensurate with the salary paid. It has not been appreciated that Mrs. Rai had experience of over two decades in the educational field. The CIT(A) has conveniently ignored all other factors, more particularly her diverse experience in the field of education, which adds to her educational qualification.

15. Apart from that. appellant has also placed on record following additional evidences under Rule 29 of ITAT Rules, 1963.

- *Copies of extracts from the brochure of IILM -UBS (refer page Nos. 1-4 @ 2);*
- *Compilation of various editions of quarterly journal of the applicant Institute, namely 'The Edge' (page Nos. 5-193);*
- *Documentary evidences of various events of the applicant being organized under the guidance of Mrs. Malvika Rai (page Nos.194-229 @ 208, 210, 212, 213, 215, 216, 217, 218, 219)*

16. On a perusal of the aforesaid additional evidence placed on record, it was submitted that being Chairperson of 'IILM' as a whole, Mrs. Malvika Rai has been actively engaged in the working of the Institutes and managing the day to day affairs of the schools and colleges run by the appellant. She was a part of the events organized by the schools and has

represented IILM before distinguished guests on numerous occasions. To further substantiate the activities undertaken by Mrs. Malvika Rai, the assessee has given the following gist of activities for various events organized by the assessee in the under the guidance of Mrs. Malvika Rai, as submitted before the CIT(A) for assessment year 2008-09:

S.No.	Particulars of Event	Page Nos of Add. Evidence Application
1	Convocation ceremony wherein Mrs. Malvika Rai is seen meeting with Prof Chris Taylor Vice-Chancellor, University of Bradford	210-211
2	Function at Banyan Tree World School (formerly known as IILM Word School) wherein Mrs. Malvika Rai is seen meeting with Mr. Patrich Rittee from International Baccalaureate Organisation	212-213
3	Alumni Association get-together meeting.	214-215
4	Orientation programme at IILM Undergraduate School	216
5	3 days festival 'Mosaic' for IILM students. Mosaic, a platform for exchange of talent ranging from creativity of words to expression in writing attended by Finest Business Schools from India	217
7	Convocation ceremony wherein Mrs. Malvika Rai is seen with Kumari Selja, Union Minister of State, Ministry of Urban Employment and Prof. Badal Mukherji, Ex Director, Delhi School of Economics	218
9	Graduation ceremony of students of IILM UBS	219-222
11	Lecture to students by Dr E. Sreedharan being guided by Mrs Malvika Rai.	223
12	Spiritual lecture to students by Sant Shri Murari Bapuji, being guided by Mrs Malvika Rai	224
13	Mrs Malvika Rai with His Holiness the Dalai Lama for Guest Lecture to IILM students	228

17. Taking note of the aforesaid factual position, in the appellant's own case for subsequent assessment years 2008-09 to 2011-12, the CIT(A) held that there is no violation of section 13(1)(c) of the Act, after taking into consideration the entire material/ evidences placed on record. Our attention

was particularly invited to the following events relating to A.Y. 2008-09. In A.Y. 2008-09, when the errors in the order of the CIT(A) for assessment year 2007-08 were highlighted, the CIT(A) forwarded the additional evidence(s) and the submissions to the assessing officer for his comments; In remand report dated 08.08.2011 filed in A.Y. 2008-09, copy of which has been placed at pgs. 332-333/ PB for A.Y. 08-09. The assessing officer mainly relied upon the CIT (A) order for A.Y 2007-08 that remuneration is not commensurate with educational qualification and further stated that the additional evidence pertains to magazine “Edge” published by IILM institute of Higher Education, without realizing that the said educational institute is also part of the appellant.

18. Importantly, the assessing officer in none of the subsequent years has placed on record any material/ evidence to controvert any of the submissions of the appellant. In fact, in the subsequent years, the assessing officer made ad-hoc disallowance as tabulated hereunder:

A.Y.	Remuneration Paid	Disallowed by AO	Remarks
2007-08	16,20,000	2,25,000	Subject matter of present appeal
2008-09	16,63,200	16,63,200	Deleted by CIT(A)
2009-10	16,20,000	4,86,000	Deleted by CIT(A)
2010-11	19,08,646	5,72,594	Deleted by CIT(A)
2011-12	16,20,000	NIL	No disallowance by AO.

19. In view of the aforesaid profile/ roles and responsibilities and contributions/ services of Mrs. Malvika Rai, it has been submitted that the aforesaid salary paid to her was very much justified and not at all unreasonable/ excessive and

cannot, in any manner, be considered as giving of any undue benefit by the appellant. It was further submitted that under section 13(1)(c) read with section 13(2)(c) there is no bar on payment of salary, etc., to the persons mentioned in section 13(3) of the Act for the services rendered by such persons. The law only provides that if payment is made to persons mentioned in section 13(3) of the Act in respect of services rendered by such persons, the same should not be unreasonable.

20. Emphatic reliance in this regard was placed on the decision of Hon'ble Delhi High Court in the case of **Pariwar Seva Sansthan: 254 ITR 268 (Del)**. In that case, the Revenue filed appeal against the decision of the Tribunal holding that since payments made to parties specified under section 13(3) was reasonable and not excessive, there was no violation of section 13(1)(c) of the Act. Affirming the decision of the Tribunal as not given rise to any question of law, the Hon'ble Court held as under:

"Heard. This is an appeal under section 260A of the Income-tax Act, 1961 ('the Act'). The appeal relates to the assessment years 1995-96 and 1996-97. The following question has been posed:

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was correct in allowing the benefit under section 11 of the Income-tax Act, 1961 without appreciating that the assessee had violated the provisions of section 13(1)(c) and 13(1)(d) of the Act ?"

23. We find that the Commissioner (Appeals) decided in

favour of the assessee on all aspects in the revenue's appeal for the assessment year 1995-96. The Tribunal affirmed conclusion of the Commissioner (Appeals) with the following observations:

"We have considered the rival submissions and the materials on the file. We are of the view that on the facts and in the circumstances of the case and for the detailed reasons given in the impugned appellate order, the ld. CIT(A) was justified in holding that the assessee was entitled to exemption under section 11 of the Act for the assessment year 1995-96. As noted above, the assessee is a registered society under section 12A(a) of the Act. It is providing services in the field of family planning, family welfare, birth control, etc. It was in existence since 1981 and it was allowed exemption under section 11 of the Act in earlier years. The reasons given for refusing exemption under section 11 by the Assessing Officer for the assessment year in question have been given hereinbefore. These reasons were payment of salary, rent, etc., to Mrs. Sudha Tewari, Chief Executive Officer and Project Coordinator, rent of the house to Mr. G.K. Tewari, husband of Mrs. Sudha Tewari, loan to Tyagi Foundation and expenditure incurred on conferences and clinics. The ld. CIT(A) has discussed all the items in his impugned appellate order at length and held that salary, rent, etc., paid to Mrs. Sudha Tewari was reasonable and for valuable services rendered by her as Chief Executive Officer and Project Coordinator and that the rent of the house paid to Mr. G.K. Tewari was also reasonable considering the location of the house in Green Park, New Delhi. No material has been brought before us to rebut the factual findings of the ld. CIT(A). On consideration of

the materials on the file, the past record of the society, the year to year services rendered by Mrs. Sudha Tewari from its inception, we are satisfied that the salary, rent, etc., paid to her was reasonable and was not excessive and the ld. CIT(A) was justified in rejecting these as not valid grounds for rejecting the claim of exemption under section 11 of the Act.

....."

3. For the assessment year 1996-97, the assessee primarily challenged the question as to the reasonableness of salary. That plea was accepted in view of the conclusions for 1995-96. The extracted portion of the order passed by the Tribunal goes to show that the conclusions are essentially factual giving rise to no question of law. Accordingly, we do not entertain this appeal. Dismissed."

21. Learned counsel further submitted that as per the judicial precedents the onus is on the Revenue to prove that payment to the person specified in section 13(3) is unreasonable by placing on record the matter to show the market value of the services rendered and how the payment is excessive and unreasonable.

22. Coming to the following payments made to Mrs. Aarti Rai in respect of services rendered by the institution; Salary of Rs.2,57,000, out of which addition of Rs.89,750 made by AO; and Scholarship of Rs.13.36 lacs for pursuing higher education, the relevant facts as culled out from the order of the CIT(A) regarding payments to Mrs. Aarti Rai are as under.

- Aarti did her schooling in the year 2000 from the

prestigious St. Columbus School, New Delhi and was awarded the degree in B.Sc Business and Management Studies by Bradford University School of Management in 2003.

- Ms. Arti Rai was first appointed in July, 2003 in IILM-UBS. Ms. Aarti Rai conceptualized and worked in IILM World School, Gurgaon (now known as “Banyan Tree School”) of the appellant from January, 2006 to August, 2006,
- The appellant has system of providing scholarships to the students/employees based on the following pattern:
 - Scholarships to Students
 - Scholarships are given to the merit holder students and also to other students who after passing out from the college intends to pursue higher studies from abroad. Such scholarships are provided subject to the condition that these students would serve the institution, for a minimum period of 5 years after completion of their studies abroad, at reduced salary which would be decided by the Director of the Institute.
 - Scholarships to Employees/Faculties for Higher Studies
 - Scholarships are given to the employees of the appellant who intends to pursue higher studies from abroad. Such scholarships are provided subject to the condition that these employees would serve the institution, after completion of their studies abroad, under either of the following two alternatives:
 - Alternative-I: To serve the institution for a minimum period of 5 years at 50% salary as compared to the market norms
 - Alternative-II: To serve the institution at an Honorarium of

Rs.10,000 per month for atleast 3 years.

- In the present case, Ms. Aarti Rai was given scholarship for pursuing higher education in management course from London School of Econmocs, under Alternative-II (supra).
- Total fees of the programme was Rs.10.95 lakhs and hostel expenses were Rs.2,40,863, which were paid by the appellant as part of the scholarship programme. Ms. Aarti Rai incurred expenses of around Rs.1 to 1.25 lakh out of her own resources.
- Pursuant to the aforesaid, after completing her management programme of around 9 months, she rendered services to the appellant since 1st July, 2007. She worked with Banyan Tree School of the appellant.

23. Ld. Counsel submitted that the CIT(A) while upholding the order of the AO has held that appellant has failed to mention the name of the person who has extended similar scholarship; and also that scholarship amount was incurred by Mrs. Aarti Rai in UK and same was in violation of section 13(1)(c) of the Act. He submitted that it was specifically pointed out to the CIT (A) in the written submission that similar sponsorship has also provided to other faculties Ms. Meenu Bhatia and Ms. Sangeeta Yadav for the purpose of upgrading the skills which goes to support scholarship was also given to other faculty members. He further submitted that scholarship was granted in India and the expenditure was incurred in India and not outside India. Simply because the scholarship was utilised by Ms. Aarti Rai for education outside India, it does not mean that expenditure was incurred

outside India. Regarding allegation of the Assessing Officer that payment to Mrs. Aarti Rai was not mentioned, is factually incorrect in as much as the scholarship expenditure was clearly declared as line item in the income expenditure account which is evident from page 50 of the paper book. Thus, there was no violation of section 13(1)(c) on account of payment of remuneration as scholarship to Mrs. Aarti Rai.

24. Regarding Assessing Officer's observation that during the year under consideration the net profit as per income expenditure account was Rs.4,75,83,039 and gross income of Rs.9,82,41,290/-, meaning thereby that net profit was 48.43% of the gross income, Ld. Counsel clarified that the Assessing Officer has failed to take note of the fact that the appellant has applied 92.83% of its income for charitable purposes during the year under consideration. In support, he invited our attention to the table reproduced in the order of the CIT (A) for the Assessment Year 2008-09 which is as under.

A.Y.	Total income	Application towards revenue purposes	Application towards capital purposes	Total application of income	% of total amount actually spent
2006-07	86,043,803	39,240,739	58,856,879	98,097,618	114.01%
2007-08	92,798,002	41,556,750	44,586,357	86,143,107	92.83%
2008-09	153,883,440	91,946,213	35,307,637	127,253,851	82.69%

25. Thus, he submitted that both the authorities have failed to consider the acquisition of fixed assets and another capital expenditure which were shown in the statement of utilisation filed along with return of income as application of income for

charitable purposes. He submitted that it is a well settled law that capital expenditure tantamount to application of income for charitable purposes as held in the following decision.

- *SRMMCTM Tiruppani Trust vs. CIT: 230 ITR 637 (SC) [pg. 240-243 of case law PB] 18*
- *St. Lawrence Educational Society (Regd). vs. CIT: 197 Taxman 504 (Del) [pg. 244-247 of case law PB]*
- *Pinegrove International Charitable Trust vs. UOI: 327 ITR 73 (P&H)*

The Delhi Bench of the Tribunal in the case of **United Education Society vs. JCIT: 178 ITD 716 (Del Trib)** categorically been held that capital expenditure incurred during the year has to be considered as application of income for that year. Relevant finding of the Tribunal at para 46 of the said decision are reproduced under:

“46. Ground No.21 is regarding not considering capital expenditure incurred during the year as application of income towards charitable purposes while computing income of the assessee society. As per section 11 income of a eligible institution to the extent of which such income is applied to charitable purposes in India is not be included in the total income. The application of the income towards charitable purposes include application towards acquisition of assets i.e. capital expenditure. As we have already held hereinabove that income of the society is to be computed in accordance with the provision of section 11 and 12 of the Act, we direct the AO to consider capital expenditure incurred during the year as application of income towards charitable purposes while computing income under section 11 of the Act. Ground no.21 is accordingly allowed.”
(emphasis supplied)

26. Accordingly, he submitted that in the earlier assessment year, i.e., 2006-07, there has been over application of income and in this year almost 92.8% of the income was applied to charitable activities, which is more than 85%. In so far as the allegation of the Assessing Officer that there is no evidence of charitable intent carried out by the assessee as Trust has not given any evidence to show that poor/ EWS category of students were given education. In this regard, he submitted that 'education' per se is treated as charitable under section 2(15) and there is no law that the education was must imparted to the poor only what is required is education should be given to a section of people as distinguished from specified individuals.

27. The CIT(A) has confirmed the finding of the Assessing officer after observing as under.

*"11.4 The submissions given by the appellant has been perused. It is to be seen that net profit rate has to be calculated according to common business parlance where application towards procurement of fixed assets are not to be considered. **In the case of CIT vs. Queen Educational Society [2009] 177 Taxman 326 (Uttarakhand)**, it was held that the society was not entitled to exemption under section 10(23)(iiiad) as there was surplus in its account books after meeting all expenses incurred towards imparting education and it had invested said surplus in fixed assets like furniture and buildings with a view to expand institution and to earn more income.*

28. He submitted that the judgment of Hon'ble Uttarakhand High Court in the case of CIT versus Queen Educational

Society [2009] 177 Taxman 326 (Uttarakhand), is no longer a good law and has been reversed by the Hon'ble Supreme Court in the case of Queen's Educational Society v. CIT: 372 ITR 699 wherein the Hon'ble Supreme Court held as under.

(a) held that where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit [refer para 11 on page 258];

(b) elaborately dealt with the decision of the Uttarakhand HC and specifically reversed the said decision [refer para 19 & 20 on page 260];

(c) concurred with the decisions of the Delhi HC in the case of Lawrence Educational Society (Regd.) V. CIT 353 ITR 320 (Del) which followed the decision of the Hon'ble apex Court in the case of Surat Art Silk Cloth Mfrs. Association: 121 ITR 1 (SC) [refer para 24 on page 265].

29. Without prejudice to submissions made above, he alternatively submitted that even assuming there was a violation of section 13 then entire exemption under section 11 and 12 cannot be forfeited and the exemption should have been denied only to this extent of expenditure/ income amount of alleged violation under section 13. He also referred to CBDT circular no. 387 dated 6.7.1984, which is reproduced hereunder:-

“28.6 It may be noted that new sub-section (1A) inserted in section 161 of the Income-tax Act, which provides for taxation of the entire income received by trusts at the maximum marginal rate is applicable only in the case of private trusts having profits and gains of business.

*So far as the public charitable and religious trusts are concerned, their business profits are not exempt from tax, except in the cases falling under clause (a) or clause (b) of section 11(4A) of the Income-tax Act. As the maximum marginal rate of tax under the new proviso to section 164(2) applies to the whole or a part of the relevant income of a charitable or religious trust which forfeits exemption by virtue of the provisions of the Income-tax Act in regard to investment pattern or use of the trust property for the benefit of the settlor, etc., contained in section 13(1)(c) and (d) of that Act, the said rate will not apply to the business profits of such trusts which are otherwise chargeable to tax. **In other words, where such a trust contravenes the provisions of section 13(1)(c) or (d) of the Act, the maximum marginal rate of income-tax will apply only to that part of the income which has forfeited exemption under the said provisions.***

30. Similarly, he pointed out that the ITAT Delhi Bench in the case of Span Foundation versus ITO, 2008-TIOL-108 held that in case of alleged violation u/s.13, benefit under section 11 would not be available only to this extent of application of income of property for the benefit of person referred to in section 13(3). He brought to our notice that the said decision has been confirmed by the Hon'ble Delhi High Court now reported in **178 Taxmann 436**. He further relied upon the decision of Hon'ble Karnataka High Court in the case of **CIT vs. FR. Mullers Charitable Institutions: 363 ITR 230 (Karn.)**. He further pointed out that SLP filed by the Revenue against the aforesaid judgment has been dismissed by the Hon'ble Supreme Court in SLP No.2223 of 2015. Thus, complete denial of exemption under section 11/ 12 cannot be made.

31. Regarding addition of Rs.34,41,987/- made by the AO out of security deposit refundable to the students. He submitted that the appellant received refundable security deposit from the students taking admission in various institutes/ schools run by the appellant. As and when the student leaves the institute/ school and clears all the dues and also completes all the formalities, the entire security deposit, after adjusting any pending dues, is refunded to the student. As on 31st March, 2007, the appellant had refundable security deposit of Rs.1,17,62,966, which was shown as liability in the books of account and the audited financial statements. In the assessment order, the assessing officer made addition of Rs.34,41,987, out of the security deposit, which was computed as under:

Particulars	Amt. (Rs.)	Reason by AO
Amount under the heading "Misc. Income" in Table on pg.14 of AO	22,75,226	This is misc. income but only misc. income of Rs.1,18,537 show in P&L A/c.
Student Security 1999-2002	4,19,564	Source and nature unexplained
Student Security 2001-2004	8,65,734	
Total	35,60,524	
Less: Misc. income shown	1,18,537	
Understatement of income	34,41,987	

32. He submitted that, firstly, the assessing officer failed to appreciate that Rs.22,75,226 represented repayment/ adjustment out of the student security amount of various years and therefore, the same could not have been treated as income [refer extracts of ledger account attached as Annexure

C to the Assessment order]. Secondly, the assessing officer further failed to appreciate that deposits for the batches 2001-04 and 1999-2002 represented refundable security deposit from various students and grossly erred in holding that the appellant failed to explain the source of such deposits. Since the entire amount is refundable by the appellant, in view of the legal obligation upon the appellant, even security deposit relating to students who have left the school cannot be recognized as income of the appellant as such students could claim the security deposit at any time after leaving the school. The CIT(A) held that although the appellant's obligation to refund the above security deposits exist, but since the appellant did not refund the same, suo-motu, the appellant was running on commercial principles. The aforesaid observations of the CIT (A) are contradictory and without judicious appreciation of the facts of the case inasmuch it has not been appreciated that appellant was under an obligation to refund the security deposit as and when necessary claim is made by the students and completing the formalities. The CIT (A) further failed to appreciate that no instance has been brought on record to suggest that claim made by the students, if any, regarding refund of security deposit has actually not been honored. Reliance is placed on the following decisions wherein refundable security deposit, even if held for long period of more than 25 years, has been held to be not liable for taxation:

- PCIT v. Gulmohar Green Golf & Country Club Ltd.: 392

ITR 601 (Guj.)

- CIT v. Mantra Tantra Yantra Vigyan: 300 ITR 140 (Raj)
- Dalmia Cement (Bharat) Ltd. vs CIT: 357 ITR 419 (Del)
- Bharat Hotels Ltd. v. DCIT: 53 ITD 450 (Del)
- Kabsons Gas Equipment Ltd. v. DCIT: 25 taxmann.com 172 / 53 SOT 196 (Hyd.)
- Landbase India Ltd . vs. DCIT: ITA 4536/Del/2009 (Del Trib.)

33. Regarding ad hoc disallowance of Rs.7,09,468/- being 50% of the maintenance and fuel expenses on cars, he submitted that this expenses incurred in respect of three cars which has been utilised by the officials appellant for discharging official duties, no evidence has been brought on record by the AO and the aforesaid cars were not utilised by the assessee for personal purposes, therefore, ad hoc disallowance has been deleted.

34. On the other hand, CIT-DR strongly relied upon the order of the AO and CIT (A). She further submitted that in so far as scholarship payment of Mrs. Aarti Rai is concerned, the same was, firstly, payment outside India as this scholarship has been paid for her education in UK in London School of Economics; secondly, such a huge payment has been made from the account of the Trust which is purely a benefit given to the relative who is a specified person in terms of Section 13. Thus, such an expenditure or application of income cannot be held to be for charitable purposes. Regarding

payment/ remuneration made to Mrs. Malvika Rai, he submitted that same has been made from the account of Banyan Tree School where she is not an employee, this goes to show that the fund from the Banyan Tree School has been utilized for making the payment without rendering any services to that school because admittedly she is not an employee of the school nor on the payrolls of the school. Regarding other issues, she has referred to the various observations made by the Assessing Officer and CIT (A) and has strongly relied upon and submitted that all these discrepancies shows that Trust was misused for personal benefit and therefore Assessing Officer and CIT(A) were justified in denying exemptions to the Assessee trust.

35. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as material referred to before us. The main issues involved are; **firstly**, remuneration paid to Mrs. Malavika Rai in violation of section 13(1)(C) read with section 13(3); **secondly**, scholarship payment to Mrs. Aarti Rai in violation to section 13(1)(C) read with section 13(3); **thirdly**, computation of income consequent to denial of exemption under section 11/ 12 of the Act; **fourthly**, ad hoc disallowance on car and fuel expenses. As stated above, the assessee is a Trust incorporated with the pre-dominant object of imparting education since imparting of education is a charitable activity within the meaning and scope of section 2(15). Looking to its activities, it was duly granted registration under section 12A,

way back on 25.06.2002. It is an admitted fact that the registration granted u/s 12A still subsists, and therefore, the income and expenditure of the assessee has to be computed strictly and in accordance with section 11 to 13. The assessee was running various educational institutions: i) Banyan Tree World School at Gurgaon, ii) IILM Under Graduate Business School at Lodhi Road, and iii) IILM Early College at Lodhi Road.

36. In so far as the issue, whether the remuneration paid from Mrs. Malvika Rai for sums amounting to Rs.16,20,000/- is hit by the provision of section 13(1)(c)/ 13(3) or not, the charge of the authorities below are that, *firstly*; she is just a graduate and appellant trust has not furnished any detail as to how the educational qualification of Mrs. Malvika Rai's is commensurate with the salary which she is drawing and; *secondly*, certain amount has been paid from the account of Banyan Tree School where she was not an employee. In such matters what is required to be seen is, whether the remuneration is based on services being rendered rather than evaluating on educational qualification, i.e., person attaining higher degree. The only requirement of the law is that salary paid should not be excessive or unreasonable having regard to the services rendered and educational qualification cannot be the parameter for benchmarking of the services rendered by the persons specified in Section 13. Requisite experience and skills is one of the key factors coupled with the amount of being services rendered. Nowhere the AO or Ld. CIT(A) have

brought any material on record or any comparative analyses to evaluate that the services rendered by her is not in commensurate with the market value or is an excess as compared to any comparable third-party case. As brought on record, in subsequent assessment years, i.e., from 2008-09 onwards and on the basis of same the additional evidences which were filed in the subsequent year and also analysed by the Assessing Officer and CIT (A) the remuneration paid to Malvika Rai for same set of services has been by and large accepted. Further from perusal of subsequent year's record, it is seen that Smt. Malvika Rai is a Chairperson of ILM group as a whole and her activity engaged in the working of managing the day to day affairs of the school and colleges run by the appellant trust. She was part of various events organised by schools and has represented IILM before various forums. The gist of events and activities carried out has been highlighted in the additional evidence of paper book as incorporated above. Thus, entire activities and services have been duly considered based on same very evidence in the subsequent years from 2008-09 to 2011-12, wherein Ld. CIT(A) has given a categorical finding that there is no violation of section 13(1)(c) after taking into consideration the same material evidence placed before us. Interestingly in 2009-10 and 2010-11 the Assessing Officer has disallowed only part of the remuneration and even in this year the Assessing Officer has only disallowed Rs.2,25,000/- out of the total remuneration paid of Rs.16,20,000/-. In A.Y. 2011-12, in fact, no disallowance has been made by the Assessing

Officer himself. Such an adhocism without any material on record cannot justify alleged benefit. The Assessing Officer has to bring something on record or carry out any comparative analysis to show that services rendered by her are not in commensurate with the payments made. We agree with the contention of the learned counsel which is well supported by the various judgments that while making such allegations, the onus is on the Revenue to prove that payment made to the person specified in section 13(3) is excessive or unreasonable by placing material on record and the services rendered or not in commensurate with the payments made. Thus, we hold that in so far as the payment of remuneration of Rs.16,20,000/- per annum made to Mrs. Malvika Rai is not excessive and does not violate the provision of section 13(1)(c) and accordingly the entire payment made to her is treated as application of income.

37. Now coming to the payment of scholarship and salary to Mrs. Aarti Rai of Rs.89,750/- out of total salary of Rs.2,57,000/-; and scholarship of Rs.13.36 lakhs for higher education, we find that, in so far as payment of salary is concern, there is no reason for making any part disallowance for the reason that, firstly; because she has been actively involved in set up of Banyan Tree School and has been rendering services; and secondly no adverse material has been brought on record that her services and other contribution is not in commensurate with the payment of salary.

38. However, insofar as payment of scholarship is concern of Rs.13.36 lakhs, it is an undisputed fact that she is related to the trustee and is covered under the definition of specified person given in section 13. The scholarship has been paid for pursuing a course in London School of Economics, U.K. and there, appears to be no uniform policy wherein any other faculty members or persons working for the trust has been sent abroad on such a high scholarship except for some minor incentive given to two faculty members as pointed out by the learned counsel. Another important fact is that the scholarship payment has been utilised for studying abroad and the payment has been made for fees and other expenses incurred in UK. This tantamount to application of Trust fund for the payments made outside India, because if it is reckoned that the appellant Trust has given the scholarship in India but the same has been utilized and applied outside India. Even though she might have rendered services after completing her management program from London school of Economics, that does not justify a payment of huge amount of scholarship for getting the education especially to a category of specified person. For rendering of services for any institution or school affiliated to the appellant Trust a person is compensated by the salary/remuneration and not by incurring any expenditure for sponsorship of higher education from foreign University. Thus, to the extent of Rs.13.36 lakhs towards the scholarship payment for Ms. Aarti Rai, the same cannot be treated as application of income, and therefore, Assessing Officer and Ld. CIT (A) are

justified in disallowing the payment as non application of income.

39. However, we agree with the other contention of the learned counsel that, only to the extent of expenditure incurred on scholarship of Rs.13.36 lakhs for which there is a violation under section 13, same should alone be disallowed and entire exemption under section 11 cannot be denied. Section 13 spells out certain circumstances in which the exemption provided under section 11/ 12 is not applicable. Further, Section 164(2) and 164(3) which reads as under:-

“(2) In the case of relevant income which is derived from property held under trust wholly for charitable or religious purposes, or which is of the nature referred to in sub-clause (iia) of clause (24) of section 2, or which is of the nature referred to in sub-section (4A) of section 11, tax shall be charged on so much of the relevant income as is not exempt under section 11 or section 12, as if the relevant income not so exempt were the income of an association of persons :

Provided that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (c) or clause (d) of sub-section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.

(3) In a case where the relevant income is derived from property held under trust in part only for charitable or religious purposes or is of the nature referred to in sub-clause (iia) of clause (24) of section 2 or is of the nature referred to in sub-section (4A) of

section 11, and either the relevant income applicable to purposes other than charitable or religious purposes (or any part thereof) is not specifically receivable on behalf or for the benefit of any one person or the individual shares of the beneficiaries in the income so applicable are indeterminate or unknown, the tax chargeable on the relevant income shall be the aggregate of—

(a) the tax which would be chargeable on that part of the relevant income which is applicable to charitable or religious purposes (as reduced by the income, if any, which is exempt under section 11) as if such part (or such part as so reduced) were the total income of an association of persons; and

(b) the tax on that part of the relevant income which is applicable to purposes other than charitable or religious purposes, and which is either not specifically receivable on behalf or for the benefit of any one person or in respect of which the shares of the beneficiaries are indeterminate or unknown, at the maximum marginal rate”

40. The aforesaid sections provide that income of trust will be taxable at ‘maximum marginal rate of tax’ on following event:

- i. If any fund of the organization has been invested or deposited, for any part of the year, as per section 13(1)(d) read with section 11(5) of the Act;
- ii. If any part of income has been applied directly or indirectly for the benefit of any of the excluded persons under section 13(1)(c) r.w.s. 13(3) of the Act.

However, the section categorically provides that tax shall be charged on the ‘relevant income’ or ‘part of relevant income’

which has forfeited exemption at the maximum marginal rate.

41. Thus, on a conjoint reading of section 13(1) and section 164 of the Act, it can be seen that taxability of the income of an organization forfeiting exemption under section 13(1)(c) or 13(1)(d), shall be charged at maximum marginal rates of tax only on that part of income which has forfeited exemption. Thus, where the trust contravenes the provisions of section 13(1)(c) or (d) of the Act, the maximum marginal rate will apply only to that part of the income which has forfeited exemption.

42. Further, the language of section 13(1)(c) and (d) also supports this view which provides to exclude from the total income, 'any income thereof' which as a whole or in part has forfeited exemption. The word "such" used in the section 13(1)(c)(ii) is important and refers to only that part of income which goes to the benefit of specified persons. Further, similar treatment should be given in respect of cases covered under clause (d) of section 13(2) providing for disallowance in respect of services of the trust given to specified persons.

43. As relied upon by the learned counsel, the coordinate bench decision in the case of Span Foundation versus ITO (supra) has also upheld the same proposition that in case of any alleged violation under section 13, the benefit of section 11 would not be available to the extent of application of income for the benefit of person referred to in section 13(3)

the entire exemption cannot be forfeited. This decision of the coordinate bench has also been affirmed by the Hon'ble Delhi High Court. Further, Hon'ble Karnataka High Court in the case of CIT vs. FR. Mullers Charitable Institutions: 363 ITR 230 (Karn.) held that for violation of section 13(1)(d) entire exemption under section 11 cannot be withdrawn. Similar view has been taken by the Hon'ble Madras High Court in the case of CIT versus Working Women's forum, 365 ITR 353 and in catena of other decision which has been placed on record by the learned counsel which is not being incorporated here. Thus, we hold that in the event of any violation of provision of section 13, the entire exemption under section 11 cannot be denied and would be restricted only to this extent of income misused by the Trust. Accordingly, we hold that the Assessing Officer was not justified in completely denying exemption under section 11. If we look to the computation of income and even if the entire alleged allegation of Assessing Officer of contravention of section 13 is taken into consideration then also it is quite meager which is evident from the following:-

- Total income eligible for exemption: - Rs. 9,27,98,002/-
- Total application for charitable purposes:
- Rs. 8,61,43,107/-
- Alleged expenditure hit by Sec 13 [Rs.2,25,000 + Rs.13,36,000] - **Rs.15,61,000/-**

This works out to barely 1.6% and 1.8% of total income and expenditure respectively.

44. Thus, in view of our finding given above the exemption of section 11 in the case of the appellant Trust shall be denied to the extent of Rs.13.36 lakhs only.

45. Coming to the computation of income and taxing of surplus by the Assessing Officer assuming that net profit of 44.4% of the gross income is wholly erroneous and incorrect, because both Assessing Officer and Ld. CIT (A) has failed to consider acquisition of fixed assets and other capital expenditure shown in the utilisation of income as application of income for charitable purposes. During the year, as per the income expenditure account, the total amount actually spent comes to 92.83% which is far less than a statutory limit of 85%. It is no longer *res integra* that capital expenditure is tantamount to application of income for charitable purposes as held by the Hon'ble Supreme Court and various other High Courts as relied upon by the Ld. Counsel above. Thus, the taxing of the surplus by the Assessing Officer is not justified on facts and in law.

46. In so far as the observation of the Assessing Officer that the assessee cannot be held to be carrying out charitable activity simply because the appellant Trust is not given any concession to the poor/ EWS category students, we do not subscribe to such view. There is no concept under the scheme of the Act that education must be given to the poor. Only th education *per se* has been treated as charitable in section 2(15); and if Appellant trust is imparting education for which it has been granted registration under section 12A,

then Assessing Officer cannot deny benefit of section 11 and treat the Appellant trust as a business entity on this ground alone. Accordingly, such an observation and finding of the Assessing Officer and CIT (A) is reversed.

47. Coming to the addition of Rs.34,41,987 on account of security deposit refundable to the students, it has already been pointed out by the learned counsel that as on 31st March 2007 the refundable deposit was Rs.1,17,62,966/- whereas, the Assessing officer has erroneously taken Rs.22,75,226. As pointed out by the learned counsel and is also evident from the record that Rs.22,75,226/- represented repayment/ adjustment out of student security amount on various years and the same could not have been treated as income since the entire amount is refundable by the appellant as per its mandate and very nature of security. It cannot be treated as income because there was an obligation of the part of the trust to refund as and when necessary claim is made by the student. Thus, such an addition is unwarranted.

48. Lastly, regarding ad hoc disallowance of Rs.7,09,468/- being ad hoc disallowance of 50% of maintenance and fuel expenses, it is seen from the records, that same pertains to the expenses in respect of three cars owned by the appellant Trust. It has been clearly stated that the cars have been utilised purely for the use of the Appellant Trust and for various high positioned faculty members, then adhoc disallowance cannot be made for personal use or it can be

inferred or presumed to be not utilised for the activities of the Trust. Once the car is used for officials, like, Dean, Professors and other faculty members, then usage of car for such officials of the Trust cannot be held to be for personal benefit or for non-official purposes. Accordingly, such an adhoc disallowances is directed to be deleted.

49. In so far as donation of Rs.37,900/- we find that no details have been provided and the purpose for making such donation. Therefore, no interference is called for in the finding of the Assessing Officer and CIT(A) as nowhere it has been explained about the nature of donation and its purpose. Thus, this issue is decided against.

50. Consequently, appeal for the Assessment Year 2007-08 is partly allowed.

A.Y. 2008-09

51. Coming to the the appeal for the Assessment Year 2008-09 which has been filed by the Revenue, following issues are involved.

Gr. No.	Issue Involved	Remarks
1	Amendment of objects to include Buddhism – Section 13(1)(b)	AO accepted in regular assessments for A.Y.'s 2005-06 and 2006-07. Issue raised for first time in A.Y. 2007-08 and decided in favour of assessee by CIT(A); no further ground raised by Revenue before ITAT.
2	Remuneration to Mrs. Malvika Rai [Section	Decided in favour by CIT(A) in AY's 2008-09 to 2010-11.

	13(1)(c)]	
3	Ad-hoc disallowance on maintenance and fuel expenses – Computation of income pursuant to denial of exemption	AO denied complete exemption and recomputed the income by treating the assessee as a business entity

52. In so far as amendments in the objects made through supplementary Trust Deed dated 19.04.2004, wherein certain clauses in clause of the Trust was inserted for enabling the assessee to teach Buddhism and Buddhist way of living, the Assessing Officer has held that the new clause inserted is in violation of Section 13(1)(b). It has been submitted by the ld. counsel that this issue is decided in favour of the assessee in Assessment Year 2007-08 against which Revenue did not prefer any appeal on this issue in ITA No.1142/Del/2011 for the Assessment Year 2007-08 wherein other issues were challenged. It has been pointed out by the ld. counsel that by way of supplementary deed following proviso to clauses were inserted as under:

- *Provided that no person attending the school shall be required to take part in worship/ professing or ascertaining to Buddhism or any particular religion without his/ her consent;*
- *Provided further that no person/ student shall be denied admission on the school/ institute on the ground of religion, race, caste, language or any of them.*

53. This was stated to be explained before the Assessing Officer vide letter dated 10.11.2010 that by insertion of such

clause had not resulted into benefit of any religious community which can be said to be barred u/s.13(1)(b). Most important fact was that the supplementary deed was filed before DIT (E) and the ld. DIT(E) after reviewing the case of the appellant trust has granted fresh registration u/s.12A and 80G as per details given hereunder;-

Date	Particulars
01.02.2001	Trust Settled - Trust Deed
25.06.2002	Registration u/s 12A granted
19.04.2004	Supplementary Trust Deed
09.01.2008	Application for renewal of registration u/s 80G along with Supplementary Trust Deed
02.06.2008	DIT(Exemption) granted fresh certificate under section 12A of the Act pursuant to change in name.
02.06.2008	DIT(Exemption) also granted certificate under section 80G for the period from 01.04.2007 to 31.03.2010

54. Once the amended supplementary deed dated 29.04.2004 has been brought on records and placed before the DIT(E) and ld. DIT after considering the same has granted fresh registration, then ld. Assessing Officer cannot questioning the charitable character of the assessee. Accordingly, the order of the ld. CIT (A) on this core is upheld and the Revenue's appeal is dismissed on this core.

55. Regarding salary payment to Mrs. Malvika Rai rendering services for running of educational institution of the appellant trust, we have already given our detail finding in the appeal for the Assessment Year 2007-08 above, and thus, our finding will *mutatis mutandis* in this year also.

56. Similarly, the other grounds that in case the

remuneration paid to Smt. Malvika Rai is treated as a benefit to the specified person then only to this extent exemption should be denied will become infructuous, because, we have already held that the payment/remuneration made to Smt. Malvika Rai is not in violation of Section 13(1)(c).

57. So far as *ad hoc* disallowance of 50% of the maintenance and fuel expenses of Rs.562194, it is similar to the ground raised in the assessment year 2007-08 and the same is thus, directed to be deleted.

A.Y. 2009-10 & 2010-11

58. The appeals for the assessment years 2009-10 and 2010-11 have been filed by the Revenue against separate impugned orders of even date 24.02.2014, passed by CIT(A) wherein CIT(A) has upheld the assessee's claim under section 11. The grounds for both the years are reproduced hereunder:-

"Assessment Year 2009-10 & Assessment Year 2010-11

- 1. On the facts and in the circumstances of the case/and in law, the Ld. CIT(A) has erred in allowing violation of provisions of section 2(15) and 13(1)(c) w.r.t. 13(3) of the Income tax Act 1961 and thereby availing the benefits of exemptions u/s. 11 & 12 without considering the facts as stated by the AO and giving reasons for the same.*
- 2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of salary paid to Ms. Malvika Rai, which is excessive in nature and not commensurate to her education, experience and duties and has been paid to the related party as she is chairperson of the trust.*
- 3. On the facts and in the circumstances of the case and in law, the*

Ld. CIT(A) has erred in allowing the exemption u/s 13(3) of the Income tax Act, 1961 for usage of vehicles and other assets by trustees or specified persons u/s. 13(3) without assessee providing any evidence in the form of log books as stated in the assessment order.”

59. Grounds no. 1 and 2 is similar to the appeal for the assessment years 2007-08 and 2008-09, and therefore, in view of our findings given above, the same are dismissed.

60. Similarly, grounds of appeal no. 3 is similar to ground no. 3 of assessee's appeal for the assessment year 2007-08 and ground no.3 in Revenue's appeal for the assessment year 2008-09. Therefore in view of our findings given above the ground no. 3 is treated as dismissed.

61. In the result, the appeal for the Assessment Years 2009-10 and 2010-11 are dismissed.

62. In the appeal for the Assessment Year 2011-12, the following grounds have been raised:-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law ignoring the fact that assessee has committed violation within the meaning of provisions of section 13(1)(c) of the I.T. Act, 1961 by providing benefits to persons specified u/s 13(3) of the I.T. Act in the shape of providing cars for personal use and payment of unreasonable and excessive salary to Ms. Malvika Rai, Chairperson.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in law in ignoring the fact that luxury

sedan cars were provided to the trustees and controlling persons of the trust. Assessee failed to justify that maintenance and fuel expenses of cars were exclusively incurred for the aims and objects of the assessee.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in law in ignoring the fact that due to the fact that assessee was denied benefits of exemptions u/s.11 & 12 of the I.T. Act for infringement of section 13(1)(c) of the Act, therefore, AO has rightly disallowed a sum of Rs.10,08,25,000/- being 50% of donation.”

63. The Assessing officer has denied the exemption under section 11 to the assessee on the ground that assessee runs an institution for elite class of the society her sole purpose is to make profit and no charitable intention which could be seen its operation and application of fund and in addition to that alleged violation of section 13(3) and was computed the income of Smt. Malvika Rai at Rs.17,82,060 as against the Nil income disclosed to the assessee which included estimated disallowance of 50% of the expense of maintenance and fuel expenses and 50% of donation from tax exemption. CIT (A) held that once the assessee is carrying out educational activities which is charitable in nature and also granted restriction under section 12A, therefore, the assessee cannot be treated as involved in any trading, commerce or business. As regards adhoc disallowance of 50% of expenses and remuneration paid to Smt. Malvika Rai, he has followed the appellate order for assessment year 2009-10 and 2010-11.

64. Lastly on the issue of 50% of donation relying upon the judgement of Hon'ble Supreme Court in Queen Educational Society vs. CIT (supra) he held that there is no violation of section 11 or 12. Since already the issue of Smt. Malvika Rai and ad hoc disallowance fuel expenses have been dealt by us in the earlier appeals, therefore, these grounds raised by the revenue are dismissed.

65. In so far as disallowance of 50% of donation is concern, we agree with the finding of the CIT (A) that there is no violation of section 11 or 12. Accordingly, we hold the CIT (A) has rightly allowed the exemption under section 11 of the Act.

66. In the result, the appeal of the assessee is partly allowed and appeals of the Revenue are dismissed.

Order pronounced in the open Court on 24th December, 2020

Sd/-

**[G.S. PANNU]
VICE PRESIDENT**

DATED: 24th December, 2020
Pkk

Sd/-

**[AMIT SHUKLA]
JUDICIAL MEMBER**