

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-2', NEW DELHI**

Before Sh. Bhavnesh Saini, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 8392/Del/2019 : Asstt. Year : 2016-17

The Lakshya Bhartee Foundation, B-98, Pushpanjali Enclave, Outer Ring Road, Pitampura, New Delhi-110034	Vs	Income Tax Officer(E), Ward-2(3), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AACFT7894B		

Assessee by : Sh. K. Sampth, Adv.

Revenue by : Sh. Farat Khan, Addl. CIT DR

Date of Hearing: 11.03.2021

Date of Pronouncement: 15.03.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-40, New Delhi dated 22.08.2019.

2. The assessee society is registered u/s 12AA of the Income Tax Act, 1961 vide Registration No. DIT(E)/200203/T-789/02/432 dated 27.06.2003 and registered u/s 80G vide order dated 01.12.2005 of DIT(E), Delhi.

3. The assessee has given advance of Rs.17,34,400/- to a specified person as per Section 13(3) of the Act who provided the hostel services exclusively to the student of the society. The AO has considered the advance given as diversion of the income

of the society to the specified person in violation of the provisions of Section 13(1)(c) of the Act.

4. The Id. CIT (A) confirmed the action of the Assessing Officer.

5. Heard the arguments of both the parties and perused the material available on record.

6. We find that the recipient LBIHM Pvt. Ltd. who was a specified person u/s 13(3) is providing the students of the assessee society, accommodation and provision of food and there was no undue benefit obtained by the recipient by way of the transaction. The MoU between the recipient and the assessee has been entered in the year 2008 and continuing till today. As per the MoU, the recipient will provide lodging and boarding facilities exclusively to the student on no profit no loss basis. The recipient would take on rent and provide boarding facilities and for such purpose, the assessee would pay interest free refundable security advance which would be refunded in case surplus is generated from its operation.

7. We find that revenue has not disputed the stated position for the last 7 assessment years. The advance provided as security deposit is in turn for the accommodation obtained by the assessee society from LBIHM Pvt. Ltd. The revenue could not prove that the amount paid is a device to pass on any benefit to the recipient. Just because the recipient is a specified party as per Section 13(3) it doesn't automatically call for disallowance. No disallowance is called for unless the amount paid is proven to be beyond the market rate /system and only

to pass on the benefit and give undue advantage to the recipient. The recipient is provided services to the assessee which has not been disputed and the payment has not been found to be of any extraneous or beneficial to the recipient.

8. Hence, we direct that the disallowance made by the AO be obliterated.

9. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 15/03/2021.

Sd/-

(Bhavnes Saini)
Judicial Member

Dated: 15/03/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR