

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**

(Conducted Through Virtual Court)

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.15 and 16/RJT/2015
Assessment Year : 2010-11**

DCIT (Exemption) Cir.2, Ahmedabad.	Vs	Gyanganga Education Society C/o. Krishnakant G. Dholakiya "Shivam", 9-Virani Block 7/8 Milpara Rajkot. PAN : AAATG 4705 E
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(Applicant)		(Responent)
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Assessee by	:	Shri Vimal Desai, AR
Revenue by	:	Shri Aarsi Prasad, CIT-DR

सुनवाई की तारीख/Date of Hearing : 27/04/2022

घोषणा की तारीख /Date of Pronouncement: 29/06/2022

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

These are appeals filed by the Revenue against common order dated 27.10.2014 passed by the Id.CIT(A)-III, Rajkot relating to the Asst.Year 2010-11 & 2011-12. Since common issues are raised in both the appeals, for the sake of convenience, we dispose of them by this common order.

2. Brief facts of the case is that the assessee is a charitable trust registered under section 12A of the Income Tax Act, 1961 ("the Act" for short) and engaged in the activity of imparting education and running schools in the city of Rajkot. The assessee filed its return

of income declaring income at Rs.NIL and claimed exemption under section 11 of the Act. The returns were selected for scrutiny assessment and notice under section 142(1) were issued to the assessee. During the assessment proceedings, it was noticed that the assessee has made rent payment of Rs.41,50,000/- and computer rent of Rs.16,55,500/-. The assessee was asked to explain the details. The assessee explained that there are three school complexes of G.K. Dholakia School which are run by the assessee-trust. For School Complex-1 wherein rent of Rs.2,00,000/- was paid by the assessee; for School Complex-2 Rs.1,25,000/- and School Complex-3, rent of Rs.50,000/- were paid. All these payments were made by the assessee-trust to its trustees or relatives of the trustees. The AO called for details of Municipal valuation of these premises which were Rs.43,562/- for School Complex-1, Rs.9,942/- for School Complex-2 and Rs.19,202/- for School Complex-3. As the assessee has made excessive payment for the above school complexes to its Trustees or relatives of the Trust, which was against the provisions of section 13(3) and section 13(1)(c)(ii) of the Act. Therefore, the benefits of claim under section 11 were being withdrawn by the AO. Similarly, computer rent of Rs.16,55,500/- was paid by the assessee-Trust to Gyanganga Computers, Rajkot wherein the Partners of the Firm are also Trustees in the assessee Trust. The AO held that the assessee-trust was paying rent of Rs.37,000/- per annum, whereas the cost of computer was Rs.18,200/- and also maintenance charges. Thus, the assessee-Trust was paying excess amount to Partnership Firm, Gyanganga Computers. On this count also for violation of section 13(1)(c) of the Act, the AO denied benefit of section 11 and determined income of the assessee at Rs.1,08,77,507/- for the Asst.Year 2010-11 and Rs.1,46,86,270/- for the Asst.Year 2011-12 and demanded tax

thereon. Aggrieved against the same, the assessee filed appeals before the Id.CIT(A).

3. Before the Id.CIT(A), the assessee contended that the AO has erred in comparing municipal valuation for the school building, whereas he was required to compare fair market value of the property. The fair rent can be judged from the similar transaction in similar locality between two unrelated parties. The assessee submitted that rent paid for computers was inclusive of service of qualified supervisors, besides usage of computers and repairs & maintenances. Copy of the agreement was also submitted before the AO. The assessee has paid rent of Rs.2,750/- per month per system which came to Rs.37.30 per student per month; whereas State Government prescribed fees of Rs.50/- per student per month for computer education in the year 2003. A copy of the relevant proof was also submitted before the AO. Thus, the assessee pleaded that in the Asst.Year 2009-10, the assessee-trust paid Rs.37.30 per student per month which was very reasonable, rather concessional. The assessee has also made such comparable instance of other schools managed by other Trusts on identical arrangement of computer teaching, wherein fee of Rs.40/- per student per month was charged. Thus, the assessee pleaded that there was no question of any excessive payment made to Gyanganga Computer, and no violation of section 13(1)(c) of the Act. After considering above arguments and comparative table of rents demonstrated by the assessee, the Id.CIT(A) held as follows:

“8.7 On the other hand, the appellant has explained that the rent paid by the appellant trust is at arm's length in two ways. Firstly, the appellant has furnished certain factual data as comparables to justify reasonableness of building rent in the form of few comparable instances by obtaining the details from CPWD and PWD as under:

Sr. No.	Name of tenant	Address of the property	Rate of rent (per Sq. Ft.)	Remarks
1	Income Tax Department	2nd & 3rd Floor, Amrita Estate, Near Girnar Cinema, Rajkot.	Rs. 12.98	This is an old buildpg constructed in 1964.
2	Joint director of industry, safety and health	Annexy building, near Girnar Cinema, Rajkot.	Rs. 10.03	This is an old building constructed in 1983.
3	Bank of Baroda	Near Panchayat Nagar, Rajkot.	Rs. 75/-	This is situated in nearby area. The monthly rent of Rs.158250/- for 2110 Sq. feet.
4	Muthoot Finance	Near Panchayat Nagar, Rajkot.	Rs. 116/-	This is situated in nearby area. The monthly rent of Rs. 87000/- for 750 Sq. feet.
5.	Saurashtra Gramin Bank Subsidiary of State Bank of India	Panchayat Nagar Chowk, Rajkot.	Rs. 40/-	This is situated in nearby area. The monthly rent of Rs. 40000/- for 1000 Sq. feet.

“8.7.1 As can be seen from the above table, the first two instances are of one of the prime areas of the city where an old building is let out and rest three instances are of the nearby properties. When the appellant cited these instances before the A.O. with a request to cross verify the rents shown in the above table, there is no adverse finding which means that the A.O. has not also disputed them. It is true that the fair rent of the property depends upon various factors like area, situation of the property, quality of the building, amenities provided, age of the property, access to the main road etc. and therefore, direct comparison may not be feasible all the time. However, it is observed that the appellant trust has obtained the building at a rent of Rs.5 to 8 per Sq. Ft. If other amenities are considered, this rate has to be discounted and the same will go down further. As against this, the comparable instances show much higher rates, as high as Rs. 116 per Sq. Ft. This difference is huge and it only indicates that the appellant trust has enjoyed concessional rate of rent in respect of properties utilized on rent from the specified persons.

8.8 Secondly, the appellant has argued that the rate of return can also be an alternative yardstick to measure the reasonability of the consideration. The appellant submitted following data before the A.O. and me hi this regard.

Sr. No.	Description of the property	Name of owner's	Year & Cost incurred	Approx. Value in F.Y. 2009-10	Yearly Rent	Rate of Return
1.	G. K. Dholakiya School - 1	Krishnakantbhai Dholakiya & Kusumben Dholakiya	2005-06 3.45 crore	6 crore	24 Lakhs	4%
2.	G. K. Dholakiya School - 2	Balkrishnabhai Dholakiya & Bhavnaben Dholakiya	2007-08 2.02 crore	2.50 crore	15 Lakhs	6%
3.	G. K. Dholakiya School - 3	Balkrishnabhai Dholakiya & Bhavnaben Dholakiya	2009-10 1.67 crore	1.67 crore	6 Lakhs	3.59%

8.8.1 The rate of return appears to be quite reasonable. Even if return is measured on original cost based on balance sheet of individuals, in no case it exceeds 7.5%. This rate of return is lower than the rate of return on fixed deposits and therefore it cannot be termed as excessive or unreasonable. Here also, it is found that the A.O. has ignored this aspect in the assessment order though the appellant placed the above data before her.”

8.9 The yardstick of comparable cases and reasonable rate of return on investment are well accepted methods in measurement of fair consideration. Under the transfer pricing regime also, these two yardsticks are applied to determine arm's length price. In my view, the A.O. has erroneously ignored these two yardsticks and went on to adopt improper benchmark of municipal valuation. Under both these yardsticks, the appellant has reasonably justified that the building rent paid to specified persons was not only reasonable but also concessional and in that event, it is the appellant trust which has derived benefits and not the specified persons. I therefore hold that the building rent paid by the appellant cannot be said to be unreasonable or excessive.”

3.1 As against computer rent paid to Gyanganga Computer, the ld.CIT(A)'s observations are as follows:

“9.3 On careful consideration of the above, I am inclined to accept that the computer rent paid by the appellant is not excessive. As seen from the annual accounts of M/s. Gyanganga Computers, the major part of its income is by way of computer rent from the appellant trust and other trusts under same management and still its net profit ratio is 2.93% only. This indicates that a reasonable margin is earned on cost which cannot be termed as excessive. Further, it is observed that M/s. Gyanganga

Computers charged Rs.60/- per month to outsiders inc case of one-time payment and Rs.70/- per month in case of installment payment. As against this, the appellant has been charged Rs.37.30 per month per student. Thus, the fees charged to the appellant trust is reasonable and concessional. Therefore, I am of the view that it is not a case of any undue benefits having been passed to the specified person in the form of computer rent.

10. From the foregoing discussion, I am of the view that the consideration passed in the form of building rent and computer rent are not only reasonable but also concessional. Under the circumstances, it is the appellant trust which can be said to have been benefited and not the persons specified u/s. 13(3). The appellant has been successful in establishing the reasonability of consideration in a cogent and convincing manner. On the other hand, it can be said that the A.O. has failed to bring out any material or evidence to substantiate the comparison adopted in determination of fair consideration so as to prove that undue benefit has been given to the specified persons by paying rent for building and computer education which is not at arm's length. The comparables taken and the methodology adopted by the A.O. to show that the appellant trust has passed on undue benefits to the related parties in the form of building rent and fees for computer education are not acceptable as they defy economic rationale. It would be worthwhile to refer to the Gujarat High Court judgment in case of Surat City Gymkhana (254 ITR 733) relied upon by the appellant wherein the Jurisdictional High Court held that where the A.O. avers the applicability of provisions of section 13(l)(c), the onus lies on the A.O. to establish the same. In my view, the A.O. has failed on this test as neither in case of building rent nor in case of computer rent, she has referred to even a single case of fair consideration between two unrelated parties which is a pre-requisite to describe the consideration as excessive and establish the factum of benefit having been passed to the specified persons so as to validly invoke section 13(l)(c). The entire stand of the A.O. is based on improper yardsticks, irrelevant considerations and undue arithmetical exercise based on ad hoc and imaginative figures. It is also observed that though the appellant cited few comparable instances, the A.O. completely ignored and brushed aside them in the operative part of the assessment order.

11. In view of the legal and factual position discussed hereinbefore, I hold that the denial of exemption u/s 11 is not sustainable. I therefore restore the exemption u/s. 11 of the IT Act, 1961 claimed by the appellant. This ground of appeal is allowed.”

4. Thus, the appeals filed by the assessee has been partly allowed by the Id.CIT(A). Aggrieved against the same, the Revenue is in appeal before the Tribunal.

5. The Id.CIT-DR, Mr.Aarsi Prasad appearing for the Revenue contended that the Id.CIT(A) has not considered the fact that calculation of rent per sq.foot is based on entire campus area of

construction as well as open area whereas the rent of commercial properties is based on carpet area. Therefore, they cannot be considered as comparable. The Id.CIT(A) also failed to go through the clauses of rent agreement of commercial property such as period of lease, nature and quality of furnishing, lease carpet area etc. The Id.CIT(A) failed to make comparison of similar school buildings or campus and also rate of return is calculated on fair market value of the school building instead of investment. The CIT(A) also failed to explain nature of expenses claimed by the Gyanganga Computers before stating that the low net profit ratio of the Gyanganga Computers itself showed the reasonableness of computer rent and decided that no excessive rent was being paid to Gyanganga Computers. The Id.CIT(A) also failed to consider the AO's findings on the cost of computer vis-à-vis monthly rent for the use of the computer.

6.1 Per contra, the Id.counsel Mr.Vimal Desai appearing for the assessee relied upon the agreement dated 1.4.2009 stating that there is no rent charged for open area, and also placed a copy of the agreement in Paper Book at page no.26. The Id.AR further contended that rent paid by the assessee is much less than the fair market value in the open area. The rent paid was at concessional rate only and no excessive payment of rent. The Id.AR also submitted that the AO has not made any inquiry as against the rent paid by the Income Tax Department, Joint Director of Industry, Safety & Health, Bank of Baroda, Muthoot Finance and Saurashtra Gramin Bank (subsidiary of State Bank of India). On an identical issue the Id.AR drawn our attention to the judgment of Hon'ble jurisdictional High Court in the case of Shree Kamdar Education Trust Vs. ITO, 74 taxmann.com 253 (Guj). The relevant portion reads as under:

“10. Insofar as the lease rent is concerned, the revenue had not brought on record any evidence to suggest that such lease rent was either excessive or even higher than the normal market rate prevailing in the region at the relevant time. In fact, the assessee produced material to show that a part of the land belonging to the trustees was leased to one Max New York Life Insurance Co. Ltd. at the rate of Rs. 5/- per sq. ft. as against the rate of Rs. 1/- per sq. ft. being paid by the assessee. The CIT (Appeals) discarded such comparison on the ground that the area occupied by the Max New York Life Insurance Co. Ltd. was much smaller, as compared to the area leased to the assessee. The size of the land under occupation may have some bearing on the lease rent which the land may fetch, nevertheless, in the present case, the difference of rate between two cases was nearly five times. Without there being any further material on record, the Commissioner could not have come to the conclusion that the rent paid by the assessee to the trustees for the leased land, was excessive.

13. Section 13(1)(c) of the Act does not prohibit normal transactions between the trust and the persons referred to in sub-section (3) of the Act. What is relevant is the use or application of any part of the income of the trust directly or indirectly for the benefits of any such person referred to in sub-section (3). Mere payment of lease rent or interest on borrowed funds, without there being any element of such payments being excessive or unreasonable compared to the normal rates prevailing, would not fall within the mischief of section 13(1)(c).

14. The Tribunal has, more or less, adopted the reasoning elaborated by the Commissioner. For the reasons recorded above, we do not find that the Tribunal correctly analyzed the situation.”

6.2 Regarding computer rent, the Id.AR submitted that the assessee-trust has given computer training to all the students of entire school. It is not only senior students got computer training. The details of students given computer training are available at page no.42 of the paper book. However, no separate fees for computer training are collected from the students. It is included in the total education fee of the students. The assessee-trust pays computer fees for computer along with service of the tutors. Therefore, it is exactly comparable with fees taken by the Government and other educational institutions. Since payment is inclusive of tutor services, such payment cannot be compared with the cost of computer alone. Thus, the AO is not correct in comparing the cost of computer alone without taking into services of tutors and

maintenance of the computers. Thus, there is no infirmity in the order of the Id.CIT(A) and pleaded that Revenue's appeals be dismissed.

7. We have given our thoughtful consideration to the facts of the case and perused material available on record including Paper Book filed by the assessee.

8. The Id AO with drawn the exemption under section 11 of the Act, as the assessee trust passed on the benefits to the trustees or the relatives of the trustees in the form of excessive payment rent to school buildings and also computer hirings rents, which is violation of sections 13[1][C] and 13[3] of the Act. The Id AO failed to note any payment to the persons specified under section 13[3] of the Act does not ipso facto attracts the provisions of section 13[1][C], but whereas such payment is unreasonable or excessive, it can be said that any benefit is derived by such specified person. In other words, the specified persons can be said to have derived the benefits mainly when something is passed on to them, over and above the reasonable and adequate consideration which is at arm's length. Thus there is no bar in transactions with the entity claiming exemption under section 11 on one side and persons specified under section 13[3] on the other side and only when the consideration is found to be unreasonable or excessive, then the question of withdrawal of exemption under section 11 will arise. Whether the consideration is reasonable or excessive is to be judged from the fair market value of such consideration between two unrelated parties in arm's-length situation.

9. Now the next question is whether the consideration paid by the assessee Trust to the specified persons is reasonable or not. The

assessee Trust paid monthly rent for school complex 1 of Rs.5.22 sqft; for school complex 2 of Rs. 7.61 and school complex 3 of Rs. 5.85. However the 1d AO had compared the rent with municipal valuation to content that the rent paid by the assessee trust was excessive. This findings of the 1d AO is not legal, proper and has no logic for the reason that municipal valuation does not reflect the fair market value and this position is accepted under the Income Tax and as in the calculation of Income from house property, higher of municipal valuation or fair rent is taken into account. Furthermore the rental agreements clearly mention that besides building other amenities like furniture, electrical fittings, parking and open ground was also used by the trust. Thus the assessing officer is not correct in making comparison with the municipal valuation and the assessee has made excessive payment to the trustees.

10. The assessee Trust also shown factual data as comparable to justify reasonable rates of building rent in the form of few comparable instances by obtaining the details from CPWD and PWD wherein Income Tax department itself is paying a rent of Rs.12.98 per sqft for an old building constructed in 1964, Office of Joint Director of Industry, Safety and Health is paying a rent of Rs. 10.03 per sqft for an old building constructed in 1983, whereas Bank of Baroda is paying a rent of Rs. 75 per sqft, Saurashtra Brahmin bank paying rent of Rs. 40 per sqft and a Muthoot Finance is paying a rent of Rs.116 sqft. Whereas the assessee trust has paid monthly rent of Rs. 5.22 to Rs. 7.61 for the three school complexes which are less than the fair market rent paid by various governmental and commercial organizations. Thus the rents paid by the assessee trust to its trustees are very reasonable and not excessive rent. Respectfully following the jurisdictional High Court judgement in the case of Shree Kamdar Education Trust [cited supra] mere payment

of lease rent, without there being any element of such payments being excessive or unreasonable compared to normal rates prevailing, would not fall within the mischief of section 13[1][c] of the Act. Thus the assessing officer is not correct in denying the benefit of section 11 to the assessee trust.

11. Similarly in respect of computer rent paid by the assessee trust to Gyanganga Computers, it is observed from the agreement that although the consideration is decided per computer, it is not mere renting of computers but services of qualified teachers and maintenance of such computers are also included. Thus the assessee Trust converted the monthly rent of computer into fees per student per month which came at Rs. 37.30 [ie. Rs. 1,76,000 – 4718 students]. As against this rate, the assessee with supporting evidences contended that the State government had approved rate of Rs. 50 per student per month for computer education and other similarly placed education institutions charge and Rs. 40 per student per month. Thus the consideration paid by the assessee trust deemed to be reasonable and not excessive as held by the assessing officer.

12. Further the Id CIT[A] has held perusal of the annual accounts of M/s. Gyanganga Computers, the major part of its income is by way of computer rent from the appellant Trust and other Trust under same management and still its net profit ratio is 2.93 % only, this indicates that a reasonable margin is here and on cost which cannot be termed as excessive. Further it is observed M/s. Gyanganga Computers charged Rs.60 per month to outsiders in case of one-time payment and Rs.70 per month in case of instalment payment, whereas the assessee trust was being charged at Rs. 37.3 per month per student which is reasonable and also concessional.

Therefore it is not a case of undue benefits having been passed to the specified person in the form of computer rent. Therefore the denial of exemption under section 11 is not sustainable in law. Thus we uphold the order passed by the 1d CIT [Appeals] and reject the grounds of appeals filed by the revenue.

13. In the result the appeals filed by the Revenue are hereby dismissed.

Order pronounced in the Court on 29th June, 2022 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad, dated 29/06/2022