

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "SMC" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.7485/Del/2019  
[Assessment Year : 2016-17]**

|  |                        |                          |
|--|------------------------|--------------------------|
| Manohar Education Society,<br>Prop. Cambridge School,<br>Garhi Bolni Road, Rewari, Haryana.<br><b>PAN-AAATM6003F</b> | vs                     | ITO(E),<br>Ward, Rohtak. |
| <b>APPELLANT</b>   |                        | <b>RESPONDENT</b>        |
| <b>Appellant by</b>  | None                   |                          |
| <b>Respondent by</b>   | Ms. Maimun Alam, Sr.DR |                          |
| <b>Date of Hearing</b>   | 02.02.2023             |                          |
| <b>Date of Pronouncement</b>   | 09.03.2023             |                          |

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee for the assessment year 2016-17 is directed against the order of Ld. CIT(A), Rohtak dated 20.06.2019. The assessee has raised following grounds of appeal:-

1. *"That the order passed by the Learned CIT(A) u/s 250(6) is bad in law and contrary to the facts and submission on record.*
2. *That the Learned CIT(A) has erred in law as well as on fact the rejection of use of Audi Car. Further the applying of Section 13(3) is also quite arbitrary and unjustified as none of the employee are in relation of the Trustee, Members or board of the society whose used the car. The said car is purely used for education and charitable purposes.*
3. *That the Learned CIT(A) has erred in holding that log book is not maintained ignoring that log book only necessary where is same is on hire purposes. Further the copies of resolution for the purposes of purchase and its use were furnished which are on record.*
4. *That the additions of Rs. 1318132/- treating taxable u/s 164(2) of the Act sustained by the Learned CIT(A) ignoring that the vehicle*

*maintenance and fuel expenses are duly considered by the AO and also replacement of this very car by old Audi Car.*

5. *That the appellant assessee crave the right to amend, delete and add any ground of appeal before and at the time of hearing the appeal.”*

2. At the time of hearing, no one attended the proceedings on behalf of the assessee. Despite various opportunities of hearing provided to the assessee, no one attended the proceedings on behalf of the assessee. On the date fixed for hearing i.e. 02.02.2023, no one attended the proceedings on behalf of the assessee. The notices sent through speed post were returned back unserved by the Postal Authority. The assessee has not provided any current address to the Registry. Therefore, the appeal is taken up for hearing in the absence of the assessee and is being disposed off on the basis of material available on record.

3. **Ground Nos. 1 & 5** raised by the assessee are general in nature, need no separate adjudication hence, dismissed.

4. Facts giving rise to the present appeal are that in this case, the assessee filed return of income declaring income of NIL on 15.10.2016 and same was processed u/s 143(1) of the Income Tax Act, 1961 (“the Act”). Thereafter, the case was selected for scrutiny assessment for the reason large claim of exemption u/s 10(23C) of the Act. The Assessing Officer (“AO”) while framing the assessment, made addition of Rs.38,01,582/- u/s 13 of the Act by holding that purchase of Audi car was not for education purpose but was for personal use of trustees.

5. Aggrieved against this, the assessee carried the matter in appeal before Ld.CIT(A) who confirmed the addition and dismissed the appeal of the assessee.

6. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

7. Apropos to **Ground Nos. 2 to 4**, Ld. Sr. DR strongly relied upon the orders of authorities below and submitted that there is no infirmity into the orders passed by the authorities below. He submitted that the assessee society applied its funds on purchase of luxury car i.e. Audi Car for the benefit of trustess only. He submitted that the authorities below have given categorized finding in this regard.

8. I have heard Ld. Sr. DR and perused the material available on record. Vide letter dated 25.01.2023, the assessee has made following submissions:-

*“Honorable Sir,*

*In continuation of submissions dated 10.10.2022, 29.11.2022 and 27.12.2022, the issues are again explained as under:-*

*Luxury Car:*

*The old 5 seated car was exchanged by 8 seated Audi Car. The said car is not used by trustee. No violation of section 2(15) r.w.s 13(3) was made in any way. Further in hearing before the appellate authority it was explained it is not a luxury car. It was used by Principal, Administrator and teacher for long journey to Chandigarh Educational Board and Delhi CBSE Office means for educational purposes.*

*That in tile order under appeal nothing is mentioned about personal use moreover the depreciation, salary and other maintenance expenses are fully allowed none of expenses are disallowed out of said expenses.*

*Hence it is prayed to delete the said additions.*

*Log Book:*

*The AO and Appellate Authority version that no log book is maintained. Log book is only maintained when the vehicle is for hire purposes. In the appellate case the car is not put on hire at any time. Sir, even the order is quite silent about the same.*

*Section 10(23c)(iiiad)*

*The expenses incurred are purely for educational purposes. This very issue was already been decided in favour of appellant assessee in following case.*

*A. Delhi Bench - E vide appeal no. 4136/DEL/2011 a/year 2007-08, copy enclosed.*

*B. Secondly the department appeal was also rejected by the Honorable Delhi Bench- [ vide appeal no. 4170/DEL/2011 dated 22-11-2011, copy enclosed.*

*C. The assessment order u/s 143(3) were made for the a/year 2011-12 and then a/year 2019-20 by the Ld. AO of exemption ward, copies were furnished on 10-10-2022 of date of hearing 19-10-2022.*

*Regarding assessment order u/s 143(3) dated 22-12-2018 passed by Learned ITO Exemption ward Rohtak, the submissions regarding purchase of car, log book and explanation of section 10(23c)(iiiad) were duly furnished in details with depreciation chart expenses details i.e. salary of driver and maintenance expenses, but in the end the Ld. ITO Exemption ward passed the order at assessed income of Rs. 1318130/- by treating the use of car not for education purposes as under:-*

*"The reply of the assessee society is not tenable in as much as the purchase of Luxury Car and its use for educational purposes only, is not justified in view of the fact that the assessee society has not maintained Log Book and thus, failed to substantiate its claim that the vehicle was used for educational purpose only. As such, this amount cannot be treated as t Application of Income' for charitable purpose. In the absence of Log Book, it is not ascertainable as to the distance covered by Car and the purpose for which Audi car was used having regard to the attainment of aims and objectives of the assessee society.*

*Therefore, it goes to suggest that the property (Audi Car) had not been used for charitable purposes so as to include it within the purview of section 2(15) of the I.T Act rather is deemed to have been used or applied for the benefit of the person referred to in sub section 3 of section 13 of the Act."*

*Sir, in appeal before the Ld. CIT (A), Rohtak all the facts and submissions were explained but passed the order in favour of revenue.*

*Further Sir, now all the documents, appeal orders, assessment orders with bank statements are on record as discussed above in grounds of appeal. So it is prayed to give the society justice by deleting all the additions."*

9. It is not in dispute that the assessee society was maintaining an Audi car of lower model but replaced it with higher model. Both the cars are luxury cars. Ld.CIT(A) has categorically noted the factum of sale of old Audi car in his impugned order. However, the AO disallowed the expenses treating the same as not for charitable purposes. In my considered view, the expenditure would be allowable if it relates to running of school. The AO has not brought any material to rebut the claim of the assessee that the vehicle was being used for principal and staff of school. Merely because the vehicle happens to be luxury car should not be reason to make disallowance when in earlier years, claim of assessee was accepted. I therefore, direct the AO to delete the disallowance. The grounds raised in this appeal are allowed.

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

Order pronounced in the open Court on 09<sup>th</sup> March. 2023.

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI