

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.2094/Del/2017
Assessment Year: 2012-13

GEMS Education Society C-310, Unitech Business Zone, Nirvana Country, South City-II, Gurgaon - 122018 PAN No.AAAAG7454M (APPELLANT)	Vs	ITO (Exemption) Faridabad (RESPONDENT)
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Appellant by	None
Respondent by	Sh. Anuj Garg, Sr. dR

Date of hearing:	27/03/2023
Date of Pronouncement:	27/03/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-2, Gurgaon dated 16.01.2017 pertaining to A.Y.2012-13.

2. The grievance of the assessee read as under :-

“1. That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the disallowance of Rs. 44,12,000/- failing to appreciate that Assessee / Appellant had paid the aforesaid amount to Global Education Management Systems Private Limited for rendering various services like recruitment services, drafting of curriculum, procurement services, accounting services etc., whilst learned

Commissioner of Income Tax (Appeals) mechanically applied the provisions of Section 13 (3) of the Income Tax Act, 1961 and without giving due consideration of vis-a-vis documents provided by the assessee that Global Education Management Systems Private Limited had incurred significant time and resources but the learned Commissioner of Income Tax (Appeals) disregarded the same and allowed the basis of AO that payments had been made to divert the income is wholly unsustainable in law and deserves to be deleted.

1.1 That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the disallowance failing to appreciate that while making the aforesaid disallowance learned AO has not considered the quantum of services availed by the assessee. There is no nexus between the assessee and the related party as the learned AO had tried establishing. The services rendered by the related party i.e. Global Education Management Systems Private Limited were of valuable nature and needed by the assessee for the smooth functioning of day to day affairs.

2. That the learned Commissioner of Income Tax (Appeals) had erred in law and on facts in sustaining a disallowance of salary paid to Mrs. Sudha Rajamohan without appreciating the fact that the amount to her was reasonable considering the services rendered by her.

2.1 That in doing so, the learned Commissioner of Income Tax (Appeals) had failed to appreciate the fact that requisite documents/evidences were filed and explanation were tendered before the learned ACIT explaining the amount paid by the assessee towards the services rendered by Mrs. Sudha Rajamohan, but the learned ACIT based his decision purely on suspicion, surmises and conjectures and as such, the disallowance so made should be deleted.

3. That the learned Commissioner of Income Tax (Appeals) had erred in law and on facts in sustaining a disallowance of Rs. 12,31,416/- paid to Mrs. Sudha Rajmohan on account of salary against the services rendered to the assessee.

3.1 That in doing so, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that requisite documents/evidences were filed and explanation

were tendered before the learned CIT explaining that Mrs. Sudha Rajmohan was employed in the capacity of the principal of assessee. She was entrusted with key responsibilities by the assessee against which she was paid salary, but the learned CIT based his decision purely on suspicion, surmises and conjectures and as such assumed that she is related with the management so the payments were made to the benefit of person specified under section 13(3) of the Act.

3.2 *The learned CIT (Appeal) misconstrued the provisions of Section 13, which carves out an exhaustive list of persons to whom such provisions apply. However, Mrs. Sudha Rajmohan do not fall under any category mentioned in the list thus amount paid to her as salary against the services rendered cannot be treated as income of institution used or applied for the benefit of the person covered under section 13(3) of the Act.*

3.3 *The learned CIT (Appeal) also failed to consider that the amount of salary paid to Mrs. Sudha Rajmohan was very nominal and reasonable in comparison to the salary being paid at other schools to a person of same experience and expertise.*

4. *That the learned Commissioner of Income Tax (Appeals) had grossly erred in recording adverse findings which are perverse and have been recorded without considering the factual substratum of the case and hence such findings are vitiated and deserves to be deleted."*

3. This appeal was first listed for hearing on 05.01.2021 on that date none represented the assessee and the appeal was adjourned. On 10.03.2021 the next date of hearing the Counsel for the assessee took adjournment. Same thing happened on 20.07.2021 thereafter no one attended the proceedings or even if somebody appeared took adjournment. We are left with no choice but to proceed exparte.

4. Since nothing is coming from the side of the assessee we decline to interfere with the findings of the CIT(A) appeal filed by the assessee is accordingly dismissed.

5. Decision announced in the open court on 27.03.2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .03.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi