**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 19/PAT/2021
Assessment Year: 2017-2018**

***Assistant Commissioner of Income Tax,..... Appellant
Central Circle-2, Patna,
6th Floor, C.R. (Annexe) Building,
Bir Chand Patel Marg,
Patna-800001, Bihar***

-Vs.-

***M/s. Takshila Educational Society,.....Respondent
C-404, Basement, Defence Colony,
New Delhi-110024
[PAN:AABAT9904A***

Appearances by:
Smt. Rinku Singh, CIT, D.R., appeared on behalf of the Revenue
Shri A.K. Rastogi, Sr. Advocate, appeared on behalf of the assessee

Date of concluding the hearing : July 07, 2023
Date of pronouncing the order : July 14, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of Revenue against the order of ld. Commissioner of Income

Tax (Appeals), Patna-3 dated 01.01.2021 passed for Assessment Year 2017-18.

2. The Revenue has taken four grounds of appeal alongwith sub-grounds. However, Grounds No. 3 & 4 are general grounds of appeal, which do not call for recording of any specific finding, hence rejected.

3. Ground No. 1 has two sub-grounds, whereas Ground No. 2 has six sub-grounds. Basically grievance of the Revenue revolves around two-folds, but it has pleaded peripheral arguments by way of sub-grounds.

4. The main grievance of the Revenue is as under:-

(a) Ld. CIT(Appeals) has erred in deleting the addition of Rs.99,15,000/-, which was added by the ld. Assessing Officer as capital gain on sale of value of two vehicles and a flat.

(b) Ld. CIT(Appeals) has erred in deleting the addition of Rs.20,13,54,800/-, which was added by the ld. Assessing Officer with the aid of section 13(3) read with section 13(2) of the Income Tax Act on the ground that three immovable properties purchased

at New Delhi, Mumbai and Goa were not put to use in the year under consideration and they were not to be used for the purpose of the Educational Institution.

5. Brief facts of the case are that the assessee is a Society registered with Registrar of Societies, New Delhi and was incorporated on 09.07.1997. It was registered under section 12AA vide order of Director of Income Tax (Exemption), New Delhi dated 1st October, 1997. It was approved under section 10(23C)(iv) by the CBDT, New Delhi vide order dated 31.03.2002 for A.Ys. 1999-2000 to 2001-02. Earlier it was assessed to tax at Delhi. However, on account of search conducted on the premises of the assessee on 08.05.2003, its case was transferred to Patna on the ground that the only functional School at that point of time was situated at Patna and thereafter assessment of income is being done at Patna.

6. In this year, the assessee has filed its return of income on 25.10.2017 declaring 'nil' income. The case of the assessee was selected for scrutiny assessment under Computer Aided Scrutiny Selection (CASS) and notices under section 143(2) and 142(1) were issued and served upon the assessee on 14.-08.2018 and 29.01.2019. The

ld. Assessing Officer has observed that a perusal of income and expenditure account of the assessee would reveal that gross receipt declared by the assessee was Rs.100,84,44,567/-, which *inter alia* includes fees income of Rs.94,65,30,480/- and other income of Rs.6,19,13,087/-, which consisted of Bank interest etc. He further noticed from the list of Fixed Assets that the assessee had sold properties at Pune for a consideration of Rs.96,00,000/- and two vehicles for a consideration of Rs.3.15 lakhs. The ld. Assessing Officer formed an opinion that the assessee has claimed cost of acquisition of these assets towards application of income. Hence, according to him, if deduction of the cost is being allowed towards application of income for the purpose of charitable activities of the Society, then for sale of these assets the assessee is required to pay capital gain tax. It cannot claim double deduction. The finding recorded by the ld. Assessing Officer reads as under:-

> *"Amount of CG to be included in the busket of income u/s 11:*
>
> *It is seen that the assessee has sold its capital assets situated at 9 th floor including balconies and terraces, of Tower no. 001, in sadeshataranali, hadapsar, Pune for a consideration of Rs 96 lakhs and two vehicles amounting to Rs 1.45 lakhs and Rs.1.70 Lakhs totaling Rs.3.15 lakhs - aggregating to sale consideration of Rs 99.15 Lakhs. It is obvious that having been a trust it has claimed the amount incurred for acquiring these assets for application during the year of acquisition making the effective cost of acquisition nil. Accordingly the entire sell consideration is to be treated as capital gain which in the case of the assessee is Rs 99,15,000 /-. Section 11 to 13 are self contained sections and all non-profit organizations are governed by these 3 sections only and the capital gains in cases of*

trusts are governed by sec 11 and 11 A. Provisions of chapter 3 and 4 of the IT act are applicable for profit making concerns which are not registered u/s 12AA. Since the assessee has not included the above capital gain in its computation, the same is added to the income of the assessee as per provision of IT act.

Penalty proceedings u/s 270A is initiated separately for this misreporting of income".

7. Dissatisfied with this finding, the assessee carried the matter in appeal. It has filed written submission, which has duly been noticed by the ld. CIT(Appeals) on pages no. 5 to 11 of the impugned order. The ld. CIT(Appeals) after going through the finding of the ld. Assessing Officer as well as the submission of the assessee deleted the addition by recording the following finding:-

"Ground No. 2 to 6- In these grounds the assessee has disputed the addition of Rs. 99,15,000/- made by the Assessing Officer on account of capital gain arising out of sale flat at Pune and two vehicles.

The brief facts relating to this addition is that the assessee has sold one flat at Pune for a consideration of Rs. 96,00,000/- having cost of Rs. 39,73,069/- which was purchased way back in the year 2008 under an agreement for lease which was registered on 15.07.2011. The assessee has also sold two vehicles for a consideration of Rs. 3.15 lacs. The Assessing Officer has opined that at the time of purchase of these assets the assessee has taken set of the corresponding cost of acquisition as application of income against its receipt and therefore, the cost of acquisition is to be taken at NIL. Further, according to Assessing Officer Section 11 to 13 are self-contained sections and all the non-profit organizations are governed by these sections and the provisions of Chapter-3 and 4 are applicable to profit making concern and not to society registered u/s 12AA of the Income tax Act and accordingly the sale consideration of one flat and two vehicles amounting to Rs. 99.15 lacs has been assessed as capital gain.

It was submitted by the A/R that the institution registered u/s 12AA were authorized to get benefit of depreciation on capital asset as well as application against receipt/income prior to insertion of sub-section (6) of section 11 by Finance (No.2) Act, 2014 w.e.f. 01.04.2015. The legislatures have withdrawn this double benefit accruing to such organizations by the aforesaid insertion and for this purpose he has placed reliance on Explanatory Note issued under Circular No.1 dated 21.01.2015 and accordingly it was argued that the Assessing Officer is not justified in holding that the cost of assets so sold is to be taken as NIL. It was further submitted that the findings of the Assessing Officer that Chapter 3 & 4 are not applicable to Society registered u/s 12AA is fallacious and not tenable in the eyes of law. It has further been submitted that even after insertion of sub-section (6) of section 11 the benefit of depreciation on capital asset or its application towards revenue receipt is permitted. According to the A/R after insertion of sub-section (6) of section 11 , the double benefit of depreciation and application against receipt has been prohibited. It was further submitted that the assessee has claimed depreciation on these assets from year to year and these assets are forming part of block of assets i.e. building and plant and machinery. The Assessing Officer has ignored the provision of Section 2(11), 32 and 50 which were introduced way back in 1986 prescribing the concept of block of asset as against individual asset. According to the A/R, the section 50 of the Income Tax Act set out special provision for computation of capital gains in case of depreciable assets. The section opens with a non obstante clause and states that notwithstanding anything contained in clause (42A) of section 2, where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed under the Income Tax Act, 1961 or under the Indian Income Tax Act, 1922 (11 of 1922), the provisions of section 48 and 49 shall be subject to the modifications set out in section 50. Section 48 and 49 provide for mode of computation of the capital gains. Section 48 deals with the mode of computation and deductions. The income chargeable under the head " Capital gains" shall be computed by deducting the full value of the consideration received or accruing as a result of the transfer of the capital asset. Section 49 deals with the cost with reference to certain modes of acquisition. Where the capital asset became the property of the assessee on distribution of assets of a HUF, or under gift or will or by succession/inheritance or under a transfer to a revocable or an irrevocable trust, etc., the cost of such acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it. Both these provisions are subject to modifications set out in section 50, where capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed. It was further

contended that the block of asset of building and plan and machinery still exist after deducting the sale proceeds of Rs. 99.15 lacs made by the Assessing Officer is contrary to the mandatory provisions of section 50 of the Income Tax Act.

I have considered the submission of the A/R as also the schedule of fixed assets under the head building and plant and machinery submitted before the Assessing Officer and available in the written submission. The undisputed fact is that the assets sold i.e. building and vehicles were falling under the block of asset viz. building and plant and machinery. It is not in dispute that the assessee was claiming depreciation on these assets. The provisions of section 50 inserted by the taxation laws (Amendment and Miscellaneous Provision) Act, 1986 along with amendment/insertion of other related provisions on block of asset and depreciation has completely changed the mode of computation of capital gain on depreciable asset. Section 50 provides complete methodology of computation of capital gain on depreciable asset. The Central Board of Direct Taxes in its circular no. 469 dated 23.09.1986 has explained the changed scenario of taxation of capital gain of depreciable asset by specifically giving instances of computing capital gain on depreciable asset where the block of asset exists even after sale of some asset in that block and where block of asset ceased to exist on sale of the entire block of asset and the additions made during the year in such block of asset. In the present case, the block of asset exists on reduction of sale consideration of flat as well as vehicle and therefore the case of the appellant is squarely covered by one of the examples given in the said circular. The assessee has claimed depreciation after reducing the sale consideration of the flat as well as the vehicles in the respective block of asset i.e. building and plant and machinery. Further, the contention of the Assessing Officer that chapter 3 and 4 of Income Tax Act are applicable only to profit making concern and not to society registered under 12AA of the Income Tax Act is contrary to the legislative intent. In the circumstances, the addition of Rs. 99.15 lacs is herby deleted".

8. The ld. CIT(DR) has reiterated the stand of the Revenue as taken by the ld. Assessing Officer. She contended that though the asset was acquired earlier in time but by way of Finance Act, 2014 w.ef. 1st April, 2015, the legislature has added sub-section (6) of section 11. Prior to this section, the Charitable Institutions

were entitled to the benefit of depreciation on the capital asset as well as application/utilization against receipt of such investment in capital asset. In other words, when a capital asset is being acquired, then its acquisition cost is being set off towards application of income from the charitable activities. Such acquisition of asset was construed as a charitable activity in furtherance of objects of the Society. The assessee was entitled to claim depreciation also on such assets. Thus according to the Revenue, it was a double benefit to Charitable Institution in comparison to other business houses. This benefit has been restricted by insertion of sub-section (6) to section 11 w.e.f. 1st April, 2015. Since these assets have been sold in this year and depreciation was also claimed by the assessee in the past, therefore, on sale of these assets, capital gain arose to the assesese deserves to be taxed.

9. On the other hand, ld. Counsel for the assessee raised two-folds submission. In his first-fold of contention, he submitted that these assets were acquired by the assessee before A.Y. 2015-16. In other words, sub-section (6) has been inserted by Finance Act, 2014 w.e.f. 1st April, 2015. The assets were acquired prior to that, hence set off of acquisition cost towards application of income from charitable activities is concerned that was allowable. This sub-section (6) of section 11 has been made applicable prospectively. Therefore, ld. Assessing Officer cannot look back about the application of income claimed by the assessee for acquisition of these assets while working out 85% of gross receipt towards application of income for charitable objectives. As far as

the claim of depreciation is concerned, the legislature has introduced the concept of block of asset instead of individual asset for the purpose of depreciation and this concept was introduced in the year 1986 i.e. prior to incorporation of the assessee-Society. When assessee has purchased these assets, they were brought in the block of assets and depreciation was claimed as if a single asset was available. On sale of these assets, assessee has reduced the block of assets of the equivalent amount. He took us through the written submissions filed before the ld. CIT(Appeals) in this connection and pointed out that no capital gain tax is leviable upon the assessee.

10. We have duly considered the rival contentions and gone through the record carefully. Section 11 of the Income Tax Act has a direct bearing on the controversy therefore, it is imperative upon us to take note of the relevant Clauses of this Section, which read as under:-

> *"Income from property held for charitable or religious purposes*
>
> *11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income.*
>
> *(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated for application to such purposes in India, to the extent to which the income so accumulated or set apart is not excess of fifteen per cent of the income from such property;*
>
> *(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and where such income is finally set apart for application to such purposes in India, to the*

extent to which the income so set apart is not in excess of fifteen per cent of the income from such property;

x x x x x x x

11(6) In this section where any income is required to be applied or accumulated or set apart for application, then , for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.

11. Before adverting to construe the meaning of relevant clauses of sections 11(1) and 11(6), it is pertinent to observe that scheme of assessment of Charitable Institution is provided under sections 11 to 13, 10(23C) and section 2(15) of the Income Tax Act. The first and fundamental requirement is that assessee should be a Charitable Institution within the meaning of section 2(15) and if it is not a Charitable Institution but carrying out activity of advancement of any other object of general public utility, then in such category of Trust/Institution, the exemption to the extent of 20% of the total receipt of the Trust is to be allowed after A.Y. 2016-17. Thus as observed above, the first and foremost condition is the Institution should be a Charitable Institution. The second condition is that it should register under section 12AA of the Income Tax Act with the competent authority. On fulfilment of these two conditions, an assessee can claim exemption under section 11.

12. A bare perusal of the above provision would reveal that income received or derived from property held by Charitable Trust or Societies utilized by them for charitable purposes is exempt from taxation under certain conditions, namely income should be eceived from the property held under Trust wholly or in part (for the properties held in part, exemption can be claimed only if Trust has been created before commencement of this Act) for charitable or religious purposes in India. The income which has derived from property held by the Charitable Institution that has to be applied or accumulated for charitable purposes in India. The income accumulated or set apart for charitable or religious purposes should not exceed 15% of the total income received during the previous year. In other words, a minimum 85% of the income derived from the Trust property should be applied for charitable purposes in India. These are basic fundamental conditions coming out of the relevant provisions of the Income Tax Act extracted supra, namely Section 11(1), clause (a) and (b). The other aspects are not in dispute in the present case, namely it is an Institution existing for charitable purposes. It is also enjoying registration under section 12AA of the Income Tax Act.

13. The law prior to introduction of sub-section (6) to section 11 was to the effect that income of the Charitable

Institution is to be determined on commercial principles and even if the assessee has claimed acquisition cost towards application of income, then also, it is entitled for the depreciation. The restriction to claim depreciation has been brought by way of insertion of sub-section (6) to section 11. In other words, after A.Y. 2015-16, assessee cannot get duel benefit i.e. one at the time of claiming set off towards the application of income and then depreciation on that asset.

14. It is pertinent to note that in this case, asset was acquired prior to 1st April, 2015 i.e. on 09.04.2008, and, therefore, the assessee was entitled to claim cost of acquisition against application of income. It was also entitled to claim depreciation on such assets. The assessee has demonstrated that these assets were taken to the block of asset. In this connection, written submission filed by the assessee and noticed by the ld. CIT(Appeals) on pages no. 6 & 7 is worth to note, which reads as under:-

> *"It is respectfully submitted that the concept of block of asset instead of individual asset for the purposes of depreciation was introduced way back in the year 1986 by The Taxation laws (Amendment and Miscellaneous Provisions) Act, 1986 by which there has been insertion / amendment in section 2(11), 32, 50 besides others. The intent and purpose of replacing the concept of individual asset with that of block of asset was explained in circular of the CBDT bearing no.469 dated 23/09/1986 reported in 162 ITR 21 (statute at pages 24 to 30 - copy of page 35 to 42). Section 50 of the Income Tax Act prescribes the manner in which the cost of acquisition in case of depreciable asset is required to be computed for the purposes of determining the capital gain. Sub-section (1) of section 50 provides that in a case where any block of*

assets does not cease to exist but the full value of consideration received or accruing as a result of the transfer of the depreciable assets by the assessee during the previous year exceeds the aggregate of the following amounts, namely -

(i) expenditure incurred wholly or exclusively in connection with such transfer or transfers;

(ii) the written down value of the block of assets at the beginning of the previous year: and

(iii) the actual cost of any asset falling within the block of assets acquired during the previous year.

Such excess shall be deemed to be short-term capital gains.

Sub-section (2) of section 50 of the Income-tax Act deals with the cases whe[r]e any block of assets ceases to exist for the reason that all the assets in that block are transferred during the previous year. In such a case, the cost of acquisition of the block of assets shall be the written down value of the block at the beginning of the previous year as increased by the actual cost of any asset falling within that block acquired by the assessee during the previous year. The income from such transfer or transfers shall be deemed to be short-term capital gains.

The present case is covered by Sub-section (1) of section 50 where even after sale, block of asset of building and plant and machinery (for vehicles), does not cease to exists as would be evident from the schedule of fixed asset of building at page 15 and schedule of fixed asset of plant and machinery at page 26. In a case like this, as explained in the circular of the CBDT referred to above (copy at page 35 to 42 at page 40-41) the WDV of the respective block of asset will be reduced by the sale consideration of assets transferred during the year from such block and depreciation will be allowed on the remaining sum in that block of asset, of course, after including the value of any addition during the year. The relevant example as elaborated in the said circular which is applicable to the appellants case is reproduced below:

Particular	***Amount (Rs.)***
Aggregate WDV of the block at the beginning of the previous year	*5,52,500*

The actual cost of the new asset acquired during the previous year	*2,50,000*
Total:	*8,02,500*
Less : Sale proceeds in respect of the assets sold	*2,00,000*
WDV of the block for the assessment year 1988-89	*6,02,000*
Depreciation for the assessment year 1988-89 at 33^{1} /3% of Rs. 6,02,000	*2,00,667*
WDV for the assessment year 1989-90	*4,01,333*

15. A perusal of the order of ld. CIT(Appeals) would reveal that ld. CIT(Appeals) has based its finding on CBDT Circular No. 469 dated 23rd September, 1986. This Circular explained as to how concept of block of assets is to be made and how that concept would work. Copy of this Circular is available on paper book filed by the assessee and with the assistance of ld. representatives we have gone through that Circular. As per the Scheme on individual sale of asset, capital gain would not be computed because the block of asset formed a single component for claiming the depreciation. The CBDT Circular referred by the ld. CIT(Appeals) in its order is available on page no. 35 of the paper book. It contains examples for demonstrating the condition though it is a very exhaustive Circular running into number of pages but for the purpose of the controversy in hand, we take note of the relevant part of the Circular, which reads as under:-

> *"Circular No. 469 dated 23.09.1986 reported in 162 ITR 21 (Statute)-*

New provisions for allowing depreciation in respect of blocks of assets
6.1. ……x x x x x x x

(B) All the assets in the relevant block may be transferred during the year.

Section 50 of the Income-tax Act prescribing the manner in which the cost of acquisition in the case of depreciable assets may be computed for the purposes of determining the capital gains has been substituted by new provisions by the Amending Act to take care of both the above situations. The particulars of these provisions, overriding section 2(42A) of the Income-tax Act, are as under :

(A) The newly substituted section 50(1) provides that in a case where any block of assets does not cease to exist but the full value of the consideration received or accruing as a result of the transfer of the depreciable assets by the assessee during the previous year exceeds the aggregate of the following amounts, namely :—

(i) expenditure incurred wholly or exclusively in connection with such transfer or transfers ;

(ii) the written down value of the block of assets at the beginning of the previous year; and

(iii) the actual cost of any asset falling within the block of assets acquired during the previous year, such excess shall be deemed to be short-term capital gains.

(B) The newly substituted section 50(2) of the Income-tax Act deals with the cases where any block of assets ceases to exist for the reason that all the assets in that block are transferred during the previous year. In such a case, the cost of acquisition of the block of assets shall be the written down value of the block at the beginning of the previous year as increased by the sciual cost of any asset falling within that block acquired by the assessee during the previous year. The income from such transfer or transfers shall be deemed to be short-term capital gains.

(C) Amendments of a consequential nature have been made to clause (1) to the Explanation to section 32A(2), clauses (zv) and (v) of section 35(2), clause (c) of section 35(2B), section 38(2), section 55(1), section 57(//), sub-sections (2) and (3) and the

Explanation to section 59 and the Explanation to section 155(4A) of the income-tax Act.

6.5 The following examples illustrate as to how the amended provisions relating to allowance of depreciation will be applied :

Example I: Suppose a company "X" has financial year as its accounting year and has three items of plant and machinery in respect of which the prescribed percentage of depreciation for the assessment year 1987-88 is the general rate of fifteen per cent.

Further that for the assessment year 1987-88, the written down value of these items of plant and machinery before allowing depreciation for that year was as follows :

Item 1	*Rs.1,50,000/-*
Item 2	*Rs.2,00,000/-*
Item 3	*Rs.3,00,000/-*
Total	*Rs.6,50,000/-*

The depreciation that will be allowable in respect of these items for the assessment year 1987-88 as also the written down value of these items at the beginning of the assessment year 1988-89 will be as follows :

	Depreciation	*WDV at the beginning of the assessment year 1988-89*
Item 1	*Rs.22,500/-*	*Rs.127,500/-*
Item 2	*Rs.30,000/-*	*Rs.1,70,000/-*
Item 3	*Rs.45,000/-*	*Rs.2,55,000/-*
Aggregate WDV at the beginning of the as assessment year 1988-89		*Rs.5,52,500/-*

Since the items of plant and machinery which currently qualify for depreciation at the rate of 15 per cent are proposed to be classified into a block of assets which will be entitled to depreciation at the rate of 33 '/3 per cent for the assessment year 1988-89 and subsequent years, in this example the aggregate written down value of the block of assets at the beginning of the previous year will be Rs. 5,52,500. Presuming that during the financial year 1987-88, the assessee sold item 1 for a consideration of Rs. 2,00,000 and bought a new item (item 4) falling in the same block of assets during the said financial

year for a consideration of Rs. 2,50,000, the depreciation to be allowed in respect of the assessment yearJ988-89 will be as follows :

.

Aggregate WDV of the block at the beginning of the previous year……Rs.5,52,500/-

The actual cost of the new asset acquired during the previous year……Rs.2,50,000/-

Rs.8,02,500/-

Less : Sale proceeds in respect of the assets sold..Rs.2,00,000

WDV of the block for the assessment year 1988-89 …….. Rs.6,02,000/-

Depreciation for the assessment year 1988-89 at 33[1] /3% of Rs.6,02,000/- …… Rs.2,00,667/-

WDV for the assessment year 1989-90…… Rs.4,01,333/-

Example II: Presuming that in the case of company 'X' referred to in Example I, for the financial year 1988-89 (assessment year 1989-90): Items 2 and 3 of the machinery were sold for the consideration of Rs. 5,00,000 ;

expenditure wholly and exclusively relating to the sale amounted to Rs. 5,000 ; and

a new item (5) falling in the same block was purchased for Rs. 25,000. In this case, the new provisions of section 50(1) of the Income-tax Act will apply as follows :

.

WDV of the block at the beginning of the year	*Rs.4,01,333*
Add: Actual cost of new assets acquired	*Rs. 25,000*
	Rs.4,26,333/-
Add: Expenses incurred wholly and exclusively for sale……	*Rs. 5,000/-*
	Rs.4,31,333/-
Sale proceeds received in regard to assets sold	*Rs.5,00,000/-*

Hence, the deemed short-term capital gain will be equal to Rs. 68,667 (Rs. 5,00,000 - Rs. 4,31,333).

Example III: Suppose that in the case of the company 'Y' having financial year 1988-89 as the previous year relevant to the assessment year 1989-90, the WDV of a block of assets consisting of factory buildings is Rs. 10,00,000 at the beginning of the financial year 1988-89 (i.e., WDV for the financial year 1987-88 less depreciation allowed in respect of the said financial year), this company acquires a godown in May 1988, for Rs.2,00,000/- and then sells the factory building and the £ndown in December for Rs.9,00,000/-. If there is no asset left in the relevant block at the end of the year, the new provisions of section 50(2) of the Income-tax Act will apply as follows :

WDV at the beginning of the year Rs.10,00,000
Add: Actual cost of new asset acquired..... Rs. 2,00,000
Rs.12,00,000

Less : Sale proceeds received in respect of all the assets from that block sold during the year Rs.9,00,000

Loss deemed to be short-term capital loss under section 50(2).....Rs.3,00,000/-".

16. It has been demonstrated before us that assets were purchased prior to 1st April, 2015 i.e. April, 2008. They are forming part of block of asset and if these facts are visualized in the light of second and third example, then it would reveal that the assessee's case falls in this category. The Board has explained the situation as to how the new scheme is to be implemented on number of assets forming a single block. The ld. Assessing Officer has failed to construe the meaning and scope of this concept in the impugned assessment order rather he has not applied his mind and just made the addition. Therefore, ld. CIT(Appeals) has rightly deleted the addition and we do not find any merit in this ground of appeal of the Revenue, it is dismissed.

17. In Ground No.2 in this appeal, the grievance of the Revenue is that the ld. CIT(Appeals) has erred in deleting the addition of Rs.20,13,54,800/-. The finding recorded by the ld. Assessing Officer on this issue reads as under:-

> *"Disallowance u/s 13(3) - Violation of provisions of section 13 :*
>
> *During the course of assessment proceedings, it was found that the assessee had made transactions for the purpose of acquiring the following properties:*
>
> 1. *Factory building at Okhla Industrial area, Phase II, Block B, New Delhi at a consideration of Rs 5.40 crores*
>
> 2. *Flat in 13th floor in 'Elements' at New D N Nagar, Andheri West Mumbai with two parking spaces, club, fitness center etc at a consideration of Rs 12,66,04,800 /-.*
>
> 3. *Residential house with land appurtenant there to in Goa at a consideration of Rs.2,07,50,000 /-.*
>
> *In this context, it is pertinent to mention that as per assessee's submission, dated 11/02/2019 in response to the questionnaire as per notice u/s 142(1) of the Act, the assessee has been imparting education upto class XII through its four schools situated at Patna, Pune, Ludhiana and Coimbatore.*
>
> *In none of the three places that is in New Delhi, Mumbai and Goa, as mentioned above , the assessee is running any school. The basic structures of the properties also hint to the fact that they were not being used for any charitable purpose, and rather was used for luxury, the promotion of which cannot be an objective of a trust. When confronted, the assessee replied that the land at Okhla Industrial area was meant for keeping old records and the luxurious flats in Mumbai is to be used for entertaining the guests and residential houses etc. in Goa is used for adult learning etc.*
>
> *It is pertinent to mention here that the activities of the trust were being run in places like Patna, Pune Ludhiana etc which were placed far away from where those luxurious/ high value flats etc were purchased. From the very nature of the property*

and from the location at which the properties are situated, it can be inferred without an iota of doubt that these were being used for the personal benefit of the specified persons of the trust or persons who are close relatives of the specified person as ' provided in section 13 (2) and 13(3) of the Act. Further the assessee have not produced any evidence also to prove that these were being used for the purposes for which the trusts were created except a mere mention that the properties are registered in the name of the society and not in the name of any person. In absence of any supporting evidence related to the AY under consideration, the capital expenditure in respect of the above properties totaling Rs.201354800 /- are disallowed".

18. Dissatisfied with the above, the assessee carried the matter in appeal before the ld. CIT(Appeals). It has filed detailed written submission, which has been reproduced by the ld. CIT(Appeals) on pages no. 12 & 13 of the impugned order. The ld. CIT(Appeals) after going through the submissions of the assessee and finding of the ld. Assessing Officer has deleted the addition by observing as under:-

""I have gone through the submission and material on record. I find from the material on record that the property at Delhi and Mumbai were not put to use in the year under consideration as Delhi property was under construction and the flat at Mumbai was given possession after payment of Rs. 1.01 crores on 08.06.2017 and execution of the Registered Sale Deed on 28.06.2017. However, the property at Goa was in use in the year under consideration i.e. A.Y. 2017-18. Thus, the invocation of section 13(2) r.w.s. 13(3) in respect of property at Okhla, Delhi and flat at Mumbai are otherwise not sustainable as these have not been in use in the year under consideration. As a matter of fact the Assessing Officer has not proved the use of any of the property by any of the specified person or their close relative. One of the properties at Okhla was not in use and was under construction, a fact not in dispute. Similarly, with regard to the flat at Mumbai, the same cannot be put to use as it was not in possession of the Society in the year under consideration and with regard to property at Goa, the Assessing Officer has not brought on record any material or evidence to prove that the same was not being used by

the society or the same was used by any of the specified persons or their relatives.

Further, the Assessing Officer has made the disallowance of the entire cost of acquisition of the three properties although admittedly these properties are purchased by the society in its own name and not in the name of any specified person. The provisions of section 13(1)(b) puts restriction on use of the property of the institution directly or indirectly for the benefit of person referred to in section 13(3) if such use is without charging adequate rent or other compensation. The use per se is not prohibited. What has been prohibited is use without charging adequate rent or other compensation. The value of the benefit conferred to the specified person is to be determined with reference to fair rental value of the property as explained in the circular of the CBDT dated 21.07.1966. In the present case the Assessing Officer has not determined the fair rental value of any of the property which alleging its use for the benefit of specified person or their close relatives and thus neither the provisions of section 13(2)(b) or the circular of the CBDT dated 21.07.1966 supports the action of disallowance of entire cost of acquisition of Rs. 20.13 crores as the value of use.

In the circumstances the addition of Rs. 20.13 crores made by the Assessing Officer without fulfilling the pre-requisite of invoking section 13(2) read with section 13(3) of the Income Tax Act is hereby deleted".

19. With the assistance of ld. Representatives, we have gone through the record carefully. Brief facts are that the ld. Assessing Officer has disallowed Rs.20,13,54,800/- on account of purchase of three properties namely Okhla (New Delhi) Rs.5.40 crores, Flat at Mumbai Rs.12.66 crores and property at Goa Rs.2.07 crores. The total of these three properties comes to Rs.20,13,00,000/-. A perusal of the finding of the ld. Assessing Officer extracted supra would reveal that ld. Assessing Officer has added the purchase cost of these three properties with the aid of sections 13(2) and 13(3). We deem it

appropriate to take note of these clauses, which read as under:-

> *"13(2)- Without prejudice to the generality of the provisions of clause (c) and clause (d of sub-section (1), the income of the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),-*
>
> *(b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation".*

20. A bare perusal of above clauses would reveal that the properties shall be deemed to be in use for the benefit of specified person if such person is using it without charging adequate rent or other compensation. The ld. Assessing Officer has just expressed his apprehension that the nature of property would suggest that these will be used by other person referred to in sub-section (3) of section 13 of the Income Tax Act and these properties would be used without paying rent to the assessee. The ld. Assessing Officer has no where recorded a finding demonstrating the fact that these properties have factually been used by specified persons. In other words, the persons who are associated with the Society and because of their position taken undue

advantages. Neither any investigation was made towards that issue nor any finding has been recorded. During the course of hearing, ld. Counsel for the assessee drew our attention towards CBDT Circular dated 21st July, 1966 whereby the scope of sections 13(2) and 13(3) were explained and this Circular contemplates that few instances in which property of a Trust or Institution may be taken to be used or applied for the benefit of an 'excluded' person namely house property belonging to the Trust or Institution and used by such excluded person free of rent or at concessional rent. The value of benefit conferred on the 'excluded' person in such cases would be determinable, respectively, with reference to fair rental value of the house property. Thus according to the Department, acquisition of property is not inherently disallowed to a Charitable Institution because it is in the domain of the Charitable Institution to acquire property for furtherance of its charitable activity and those properties are not being used by the Institution but used by some other associated persons on account of their proximity to the Institution by misusing the property, in that case, fair market value of such utilization is to be determined and to that extent benefit will not be granted to the Institution while determining the taxable income. The ld. Assessing Officer has made the additions without comprehending the true scope of sections 13(2) and 13(3) of the Income Tax Act. Therefore, the additions are

rightly deleted by the ld. CIT(Appeals) and no interference is called for at the end of the Tribunal. In view of the above, we do not find any merit in this appeal, it is dismissed.

21. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 14.07.2023.

Sd/-	**Sd/-**
(Rajesh Kumar)	**(Rajpal Yadav)**
Accountant Member	**Vice-President**

Kolkata, the 14th day of July, 2023

Copies to :(1) Assistant Commissioner of Income Tax,
Central Circle-2, Patna,
6th Floor, C.R. (Annexe) Building,
Bir Chand Patel Marg, Patna-800001, Bihar

(2) M/s. Takshila Educational Society,
C-404, Basement, Defence Colony,
New Delhi-110024

(3) Commissioner of Income Tax (Appeals)-3,
Patna
(4) Commissioner of Income Tax- ,
(5) The Departmental Representative
(6) Guard File
TRUE COPY

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.