

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA Nos. 822, 823 & 824/Del/2023  
Assessment Years: 2013-14, 2015-16 & 2017-18**

JCIT(OSD), Central Circle-16,  
New Delhi

Versus Saket Education Society,  
A-152, New Friends Colony,  
New Delhi.

(Appellant)

**PAN: AACTS5460Q**  
(Respondent)

Assessee by : Sh. Neeraj Jain, C.A.  
Sh. P.K. Mishra, C.A

Revenue by : Sh. H.K. Choudhary, CIT-DR

Date of hearing : 28.08.2023

Date of pronouncement: 28.08.2023

**ORDER**

**PER SAKTIJIT DEY, V.P.**

Captioned appeals by the Revenue arise out of three separate orders, all dated 24.01.2023, of learned Commissioner of Income-tax (Appeals)-26, Delhi pertaining to assessment years 2013-14, 2015-16 and 2017-18 respectively.

2. Grounds raised by the Revenue in all these appeals are identical and read as under :

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the facts that the assessee has setup a school in collaboration with DPS Society at the land owned by M/s. Nirbhay Realtors Pvt. Ltd.(NRPL), which is a specified person as defined in section 13(3) of the Income Tax Act, 1961 and the entire cost of land was paid by the assessee-society to NRPL as interest free long term deposit and thereby unreasonable benefit was passed on to the specified person in violation of the provisions of section 13(1)(c);

2. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in ignoring the facts that the assessee has constructed the building on the land owned by NRPL which is violation of provision of section 13(l)(d) of the Act.

3. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in ignoring the facts that the entire payment of security deposit to related person is based on forged document i.e. a Memorandum of Undertaking (MOU) dated 03.09.2012 as established by the Ld. CIT(A) in his order for AY 2014-15 and is therefore unreasonable in terms of section 13(1)(c).

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the facts that the Ld. CIT(A) in its order for A.Y. 2014-15 has recorded on page 27 para 7.2.4 (V-VIII) that the entire transactions of taking the land on long term lease and furnishing the cost of land as interest free security deposit to NRPL is through MOU dated 03.09.2012 in which the details of land registered with sub-registrar on 28.09.2012 and 16.11.2012 have been entered, which proves that the MOU is a forged document.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the facts that the Balance Sheet and annual accounts of NRPL clearly establish that it is not having any substance and is merely a shell company. The only asset, owned by NRPL, is the land that has been leased to the assessee, which proves the non-genuineness of the transaction.

6. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the facts that the assessee entered into an agreement with the Delhi Public School Society without entering into any agreement with NRPL which proved that NRPL does not have any separate existence & is just a conduit to facilitate the diversion of profit to the owners of the group.

7. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the facts that this transaction was not disclosed in Form 10B submitted by the assessee where the auditor is required to report all the transactions with the specified persons u/s. 13(3), thus confirming the intention of illegal enrichment of owners of the group.

8. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the fact that both the assessee-society and NRPL have same management and that NRPL has been used by the members of the society to get the ownership of the land at the cost of the funds of the society.

9. (a) Whether on the facts and circumstance of the case, the order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.

(b) The appellant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal.”

3. As could be seen from the grounds raised, the Revenue is aggrieved with the decision of learned first appellate authority in holding that the assessee has not violated the provisions of section 13(1)(c) and 13(1)(d) of the Income-tax Act, 1961, hence, is eligible to claim exemption under section 11 of the Act.

4. Briefly, the facts, more or less, common in all these appeals are, the assessee is a society registered under The Societies Registration Act, 1860. Further, the assessee, as a charitable institution, has been granted registration under section 12A of the Act

by the competent authority vide order dated 17.06.2009. As stated by the Assessing Officer, the main objects of the assessee-society are as under :

“(i). To create a sense of brotherhood, co-operation, mutual harmony, love and affection amongst the members of the society and also amongst the general public.

i) To promote the cause of National Integrity and unity of India and to fight against the forces of separatism in India.

ii) To organize seminar on social justice, educational and economical upliftment to raise legal demands and fundamental right provided by the constitution of India.

iii) To open, found, establish, promote, set up, run, maintain, assist, finance, support and/ or help the various charitable, educational, industrial, technical/ non-technical, industrial, . vocational, agricultural & community development programs for all and all over in India.

iv) To open, run, establish, maintain and manage schools for providing education to the poor and needy students.”

5. As could be seen from the facts on record, the assessee has set up a higher secondary school in the name and style of ‘Delhi Public School’, Indirapuram in Ghaziabad, in the year 2001, in collaboration with Delhi Public School Society and provides education to children irrespective of caste, creed and religion. In the assessment years under dispute, the assessee had filed its returns of income declaring nil income. In assessment year 2013-14, assessment was initially completed under section 143(3) of the Act

vide order dated 29.03.2016. Subsequently, assessments for assessment years 2013-14 and 2015-16 were reopened under section 147 of the Act.

6. The reopening of assessments was based on an order passed by learned Commissioner (Appeals) in assessee's own case for the assessment year 2014-15, wherein, learned Commissioner(Appeals) observed that the assessee had set up the school in collaboration with Delhi Public School Society on a land owned by Nirbhay Realtors Pvt. Ltd. According to learned Commissioner (Appeals), Nirbhay Realtors Pvt. Ltd. is a group concern and entire cost has been paid by the assessee to Nirbhay Realtors Pvt. Ltd. as deposit. He further observed that the amount paid to Nirbhay Realtors Pvt. Ltd. was claimed as application of income. Being of the view that Nirbhay Realtors Pvt. Ltd. is a specified person under section 13(3)(e) of the Act, learned Commissioner (Appeals) ultimately concluded that since, the assessee has violated the provisions of section 13(1)(c) and 13(1)(d) of the Act while making payment to Nirbhay Realtors Pvt. Ltd. towards cost of land, it is not entitled to claim exemption under section 11 of the Act.

7. In course of assessment proceedings, though, the assessee objected to the reopening of assessment and claimed that it is entitled for exemption under section 11 of the Act, however, relying upon the decision of the first appellate authority in assessee's own case in assessment year 2014-15, the Assessing Officer ultimately concluded that the assessee is not entitled to claim exemption under section 11 and 12 of the Act. Accordingly, he proceeded to complete the assessments for the aforesaid two assessment years under section 143(3) read with section 147 of the Act. In so far as assessment year 2017-18 is concerned, the Assessing Officer completed the assessment in similar line, though, under section 143(3) of the Act.

8. Against the assessment orders, so passed, the assessee preferred appeals before learned first appellate authority. In course of appellate proceedings, learned Commissioner (Appeals), having noted that in assessment year 2014-15 the order passed by the first appellate authority denying assessee's claim of exemption under section 11/12 of the Act, was reversed by the Tribunal, directed the

Assessing Officer to allow assessee's claim of exemption under section 11 and 12 of the Act.

9. We have heard Shri Neeraj Jain, learned counsel appearing for the assessee and Shri H.K. Choudhary, learned CIT-DR. Before us, it is a common point between the parties that the issues arising in the present appeals are squarely covered in favour of the assessee by the decision of the Tribunal in assessee's own case in the assessment year 2014-15, in order dated 18.06.2018 passed in ITA No. 1166/Del/2018. Having carefully perused the aforesaid order of the Tribunal, we find, while considering identical nature of dispute between the parties, the Tribunal has decided the issue in favour of the assessee with the following observations :

11. We have given thoughtful consideration to the orders of the authorities below. There is no dispute in so far as the transaction with NRPL is concerned. Admittedly, NRPL is a specified person and the same has been accepted by the assessee during the course of assessment proceedings itself. Facts on record show that the assessee 6 society has paid a total sum of Rs. 11,02,73,500/- to NRPL till 31.03.2014, break up of which is as under: Paid upto 31.03.2013 Rs. 5,48,75,500/- Paid during the year Rs. 5,53,98,000/-

12. We are surprised to find that Rs. 5.48 crores was paid in F.Y. 2012-13 relevant to A.Y 2013-14 which is the immediately preceding A.Y to the year under consideration and no adverse inference has been drawn by the AO. We fail to understand why the AO has taken a different view for the same set of transaction in this year. We are told that A.Y 2013-14 was assessed u/s 143(3) of the

Act and the exemption u/s 11/12 of the Act was granted to the assessee

13. Let us now understand the transaction with NRPL. It is true that the assessee did not purchase the said piece of land at Raj Nagar Extension, Ghaziabad. It is equally true that vide agreement dated 17.02.2012 with DPSS, the assessee agreed for setting up an English Medium School with DPSS for an educational joint venture. On finding difficulty in acquiring the ear-marked land at Ghaziabad, the assessee approached NRPL and agreed to take the land to be acquired by NRPL on a long term lease for 30 years which was renewable for another 30 years at the option of the assessee – society against an interest free 7 deposit which was equivalent to the cost of the land. The assessee further agreed to pay a notional lease rent of Rs. 2000/- p.m. from the year in which the academic session started. The NRPL purchased the said piece of land. The detail of land purchased is as under:

Sl. No.	Khasra No.	Khata No.	Area (Hect)	Area (Meter)	Area (Sq. Yds.)	Purchased From	Land Cost Amount (Rs.)	Stamp Duty and Other Exp.(Rs.)	Total Cost (Rs.)	Agreement Date to Purchase	Purchase Deed Date
1	853	199	0.5700	5700	6817.20	Ghanshyam-, Vikram, Ramesh, Phoot Singh and Rajkishore, Navin	27053014	2605206	29658220	13- 02- 2012	28-09- 2012
2	852	651	0.5235	5235	6261.06	Ratan Kumar-5235 Mtr. Village Morta,	21288123	1878150	23166273	07- 06- 2012	06 08- 2012
3	851	420	0.8427	8427	10078.69	Priyanka Arora - R 9/110 Rajnagar Gzb., Lata-R-6 Flat No. 4	33259677	2366100	35625777	05- 06- 2012	06-08- 2012
4	851	407	1.2569	12569	15032.52	Prashant, Manoj, Virhla, Pramod, Subodh, Nitin, Sushila, Vljay,	67648005	5045700	72693705	27 06-2012	16-11- 2012
Total			3.1931 Acres 7.8870	31931	38189.48		149248819	11895156	1611439 75		

14. From the above chart, it can be seen that two purchases were made in F.Y. 2012-13 pertaining to A.Y 2013-14 and as mentioned elsewhere, no adverse inference has been drawn during that year. After taking the lease rights, the assessee constructed the school building and started running a school as per MOU entered into with DPSS.

15. On appreciation of facts on record, we are of the opinion that the assessee has not passed on any benefit directly or indirectly to the specified person NRPL. Firstly, by paying a meagre lease rent of Rs. 2000/- p.m., the assessee could get the possession of 7.88 acres of land. Interest free deposit of Rs. 5.53 crores paid during the year is nothing but akin to a security deposit. The Revenue's allegation that after the expiry of lease period, the building will go alongwith the piece of land thereby benefitting the specified person NRPL is a farfetched thought in as much as we cannot presume happening or nonhappening of an event, which would take place after 30/60 years. Moreover, the provisions of section 13 of the Act clearly show that the benefit should enure to the specified person during the year under consideration itself.

16. At this stage, let us consider the provisions of section 13(2) of the Act which read as under:

*“(2) Without prejudice to the generality of the provisions of clause (c) 3 and clause (d)] of sub- section (1), the income or 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),- (a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub- section (3) for any period during the previous year without either adequate security or adequate interest or both;*

*(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;*

*(c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub- section (3) out of the resources of the trust or institution for services*

*rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;*

*(d) if the services of the trust or institution are made available to any person referred to in sub- section (3) during the previous year without adequate remuneration or other compensation;*

*(e) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub- section (3) during the previous year for consideration which is more than adequate;*

*(f) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub- section (3) during the previous year for consideration which is less than adequate;*

*(g) 1 if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in subsection (3):*

*Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed one thousand rupees;]*

*(h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971 ) in any concern in which any person referred to in sub- section (3) has a substantial interest.”*

17. A perusal of the aforesaid relevant provision shows that even the legislature allows transactions with specified persons if the same are at arms length.

18. It is not the case of the Revenue that the assessee has not started operation of the school on the leasehold land. It is also not the case of the revenue that the assessee has not utilised the money in furtherance of its objects of the trust. No doubt, NRPL is a specified person but then the Act does not bar any normal transaction done with a specified person. All that is provided in the provisions of section 13 of the Act is that any transaction with

specified person should not enure any benefit to that person directly or indirectly. If we consider the transaction with NRPL in its right perspective, the only logical conclusion comes is that no benefit has been passed on to NRPL by the assessee-society.

19. The decision relied upon by the Revenue in the case of Chiranjiv Charitable Trust [supra] is misplaced in as much as in that case the assessee paid 95% of the price of the land to its specified person and yet after a lapse of more than one year, sale could not be completed and no registered document was executed. In that case, real motive was to advance its surplus money to its specified person without charging any interest which was directly hit by section 13(3) of the Act whereas the facts of the case in hand show that the assessee paid interest free deposit only when NRPL has purchased the land and leased out to the assessee on which the assessee constructed the school building and started its operation.

20. Considering the facts in totality, we are of the considered opinion that since no benefit has been enured to the specified person from the impugned transaction, denial of exemption u/s 11/12 of the Act is uncalled for. We, accordingly, set aside the findings of the CIT(A) and direct the AO to allow exemption u/s 11/12 of the Act.

10. Undisputedly, the facts relating to the disputed issues arising in the present appeals are identical to assessment year 2014-15. In fact, the foundation of the impugned assessment orders is the order passed by learned first appellate authority in assessee's case in assessment year 2014-15. Thus, keeping in view the decision of the coordinate Bench in assessee's own case for the assessment year 2014-15, as discussed above, we find no valid reason to interfere

with the decisions of learned first appellate authority. Accordingly, we uphold them by dismissing the grounds raised.

11. In the result, appeals are dismissed.

Order pronounced in the open court on 28<sup>th</sup> August, 2023.

**Sd/-**

**(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SAKTIJIT DEY)  
VICE-PRESIDENT**

Dated: 28.08.2023

\*aks/-