

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA No. 166 & 167/Srt /2023 (Assessment Year: 2014-15)

*(Physical hearing)*

I.T.O., Exemption Ward, Surat.	Vs.	Satyam Educational Trust, Silvassa, Plot No. 52/2, Near Prabhat School, Chandandevi Road, Dadra and Nagar Haveli, Gujarat-396230. <b>PAN No. AABTS 9661 C</b>
Appellant/ Revenue		Respondent/ Assessee

Department represented by	Shri Vinod Kumar, Sr. DR
Assessee represented by	Shri Hardik Kakadiya, C.A.
Date of institution of appeals	06/03/2023
Date of hearing	31/08/2023
Date of pronouncement	14/09/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. These two appeals by the revenue are directed against the separate orders of learned National Faceless Appeal Centre, Delhi (NFAC)/ Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A) dated 10/01/2023 and 05/01/2023 for the Assessment year (AY) 2014-15. In ITA No. 166/Srt/2023, the revenue has challenged the order of Id. CIT(A) in deleting the addition of Rs. 7,786/- made by Assessing Officer in assessment order dated 13/10/2016 passed under Section 143(3) of the Income Tax Act, 1961 (in short, the Act) and in ITA No. 167/Srt/2023, the revenue has filed appeal against deleting the disallowance of application of income under Section 11 and 13 of the

Act of Rs. 30,52,808/- in assessment order dated 19/12/2019 passed under Section 143(3) r.w.s. Section 147 of the Act. Both the appeals of the revenue relate to A.Y. 2014-15. In both these appeals, certain facts are common, therefore, with the consent of parties both appeals were clubbed, heard together and are being decided by this consolidated order. In ITA No. 166/Srt/2023, the revenue has raised following grounds of appeal:

*“1. Whether in the law and the facts of the case, the Id. CIT(A) erred in deleting the addition made by the Assessing Officer in disallowing the claim of chairpersons’ birthday celebration expenses of Rs. 7,786 being personal expenditure incurred for Birthday celebration of Chairperson and therefore the same cannot be said to be incurred for the objects of the trust.*

*2. The appellant craves leave to add, amend, delete or modify grounds of appeal before the finalization of appeal.”*

2. Brief facts of the case are that the assessee is an educational trust, filed its return of income for A.Y. 2014-15 on 27/09/2014 declaring NIL income after claiming application of Section 11 & 13 of the Act. The case of assessee was selected for scrutiny. During assessment, the Assessing Officer noted that the assessee has claimed expenses of Rs. 7,786/- on account of celebration expenses of chairperson’s birthday. The Assessing Officer was of the view that the said expenses were not incurred for the object of the Trust. On the basis of such view, the Assessing Officer issued show cause notice vide order sheet dated 23/09/2016 as to why such expenditure should not be disallowed. The

assessee furnished their reply dated 10/10/2016. In the reply, the assessee stated that such expenses are general expenses and not for the benefit of any trustee but for school staff and students of the school. Such expenses are list like festival celebration expenses and like a school expenses only. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer was of the view that such celebration expenses are personal expenditure of the chairperson and cannot be said to be incurred for the object of the trust and accordingly, disallowed such expenses of Rs. 7,786/- in the assessment order dated 13/10/2016 passed under Section 143(3) of the Act.

3. Aggrieved by the additions/disallowance, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed written submissions. The assessee in its submissions reiterated the submission as made before the Assessing Officer. The assessee also stated that founder trustee had served full time until her death without any remuneration and expenses incurred for her memory by staff and student were for the object of the trust and could not be disallowed.
4. The Id. CIT(A) after considering the submission of assessee, held that incurring such small expenses or even a large amount of expenses, if the institution's income is larger for the commemoration of the founder of an institution or a substantial contributor of the trust for recollection of their contribution for the school who had devotedly acted for setting

up the institution and also to appraise their ideology for the greater cause amongst the students and staff subsequent to their death, in no case, could be treated as infringement of provisions of Section 13(1)(c) r.w.s. 13(3) of the Act and accordingly allowed such expenses. Aggrieved by the order of Id. CIT(A), the Revenue has filed present appeal before this Tribunal.

5. We have heard the submissions of the learned Senior Departmental Representative (Id. Sr. DR) for the revenue and the learned Authorised Representative (Id. AR) of the assessee and have gone through the orders of the lower authorities carefully. Though, we find that the Revenue has challenged the deletion of addition of Rs. 7,786 which is very meagre amount and tax effect if any thereof is only Rs. 2,920/-, which is below the limit of tax effect for filing appeal before Tribunal, yet, the Assessing Officer/ITO has filed this appeal. The assessing officer has raised plea in the grounds of appeal itself that this case falls under the exception clause in para 10(c) of CBDT Circular No. 03/2018 dated 11/07/2018. Exception clause in para 10(c) of CBDT Circular (supra) prescribe to audit objection. There is no reference of any audit objection in the assessment order or any material before us that the impugned addition of Rs. 7,786/-.
6. We instead of going in such controversy, decided to adjudicate the issue on merit. The Id. Sr. DR for the revenue supported the view taken

by the Assessing Officer while denying such expenditure. The Id. Sr. DR for the revenue submits that by not act of imagination, the impugned expenses could be considered as incurred for the object of the trust and Assessing Officer has took a correct view.

7. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that a very small expenses was incurred for the memory of chairperson on account of his birthday celebration who has devoted his life for setting up of the institution. Such expenses were such a meagre or negligible expenses and/or the assessee in its true disclosure has recorded the nature of expenses with all honesty. None of the trustee or managing trustee or chairman has got any specific benefit on account of such expenses. The Id. AR of the assessee also relied on a number of decisions in the form of legal paper book.
8. We have considered the submissions of both the parties and find that the Assessing Officer made disallowance by taking a view that the expenses incurred on account of chairperson's birthday cannot be said to be incurred for the object of the trust. The Id. CIT(A) deleted the addition by taking a view that the assessee has incurred such expenses for the birthday celebration of the chairperson who has already expired and incurring such small expenses in his memory by the staff and students of the institutions. The institution/assessee is incurring large

amount of expenses and incurring of such small expenses in commemoration of the founder who had devoted for setting up of institution cannot be treated as infringement of provisions of Section 13 of the Act. The Id. CIT(A) also held that there is no element of benefit taken by interested person under Section 13(3) of the Act. We fully concur with the finding of Id. CIT(A) that incurring such a negligible amount which were disclosure of which was made honestly, require disallowance. Thus, we do not find any merit in the grounds of appeal raised by the Revenue and dismiss the same.

9. In the result, this appeal of revenue is dismissed.

**ITA No. 167/Srt/2023 for A.Y. 2014-15.**

10. In this appeal, the revenue has raised following grounds of appeal:

- “1. Whether in the law and the facts of the case, the Id. CIT(A) erred in deleting the addition made by the Assessing Officer on account of disallowing the accumulation of income claimed u/s 11(1)(a) of Rs. 30,52,808/-, since the assessee trust had benefitted the persons specified U/s 13(3) of the Act, by incurring expenditure of Rs. 7,786/- on the celebration of chairperson’s birthday, which was clear infringement of the provision of Section 13(1)(c)(ii) of the Act.*
- 2. The appellant craves leave to add, amend, delete or modify grounds of appeal before the finalization of appeal.”*

11. Brief facts of the case are that while disallowing the expenses of Rs. 7,786/- on account of chairperson’s birthday as the Assessing Officer was of the view that the trust has directly and indirectly benefited the person specified under Section 13(3) and the assessee is not eligible for

availing benefit of Section 11 and 12 of the Act. Further taxable income of assessee in A.Y. 2014-15 revealed that the assessee has allowed accumulation of income @ 15% under Section 11(1)(a) of Rs. 30,52,808/- which was not allowable to the assessee as hit by Section 13 of the Act. The Assessing Officer on the basis of such view, has reason to believe that income of assessee has escaped assessment. Therefore, case of assessee was reopened under Section 147 of the Act. Notice under Section 148 dated 23/03/2019 was issued after recording reasons. The assessee filed his return of income in response to notice under Section 148 on 29/04/2019. Reasons recorded was provided to the assessee. The Assessing Officer after serving statutory notices, proceeded for reassessment. During reassessment, the Assessing Officer recorded that in response to various notices, the assessee neither explained the fact nor furnished any documentary evidences. The Assessing Officer accordingly disallowed the application of income under Section 11 and 13 of Rs.30,52,808/-.

12. Aggrieved by the action of Assessing Officer, the assessee filed appeal before Id. CIT(A). Appeal of assessee against addition in the reopening assessment was taken up alongwith appeal against the assessment framed under Section 143(3) of the Act. The assessee filed combined and detailed written submissions on 25/12/2021 in both the appeal. The assessee against the addition of disallowance of application of

income under Section 11 and 13, submitted that addition of surplus was allowable up to 15% of total income after making eligible expenses for the trust and reasonable service expenses. No personal expenses were incurred for the beneficiaries of the school. The activities of the assessee trust is for imparting education and not for business or trade in nature. So far as addition of Rs. 30,52,808/- on account of exemption application of income is concerned, the same was allowed in this year in the assessment order passed under Section 143(3) on 13/10/2016. The assessee again vide submission dated 25/12/2021 submitted that donation received by assessee is capital receipt and not taxable as the receipt itself shows corpus donation which is capital in nature. The assessee furnished sample copies of donation receipts. On furnishing such evidences, the matter was remanded to the Assessing Officer to give his remand report after making proper verification.

13. The Id CIT(A) after considering the contents of assessment order and submissions of the assessee, in para 6 of his order held that the assessee has not raised separate ground of appeal with regard to corpus donation, therefore, he is not in a position to deal with such submission. However, on the denial of exemption under Section 11, the Id. CIT(A) held that the Assessing Officer made basis for denial of exemption of expenses incurred for birthday celebration by treating it personal in nature. As the Id. CIT(A) in other appeal has allowed relief

to the assessee on disallowance of expenditure of birthday celebration by taking a view that there was no element of benefit to any interested person under Section 13(3) of the Act, so he also held that the Assessing Officer was not justified in denying the claim of exemption under Section 11 of the Act by invoking provisions of Section 13(1)(c) r.w.s. 13(3) of the Act. The Id. CIT(A) held that once the benefit of exemption under Section 11 is allowed, consequently, the statutory accumulation @ 15% of the receipt is to be allowed to the assessee. Aggrieved by the order of Id. CIT(A), the revenue has filed present appeal before this Tribunal.

14. We have heard the submissions of both the parties. The Id. Sr. DR for the revenue supported the order of Assessing Officer and reiterated that the assessee-trust was incurring expenses for the benefit of trustee which has not in accordance with object of the trust and the Assessing Officer rightly disallowed the exemption under Section 11 by invoking provisions of Section 13(1)(c) r.w.s. 13(3) of the Act. The Id Sr DR for the revenue submits that though the tax effect in the present appeal is below the limit of tax effect, however, the case is covered under clause (c) of Para 10 of CBDT Circular(supra).

15. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that he has filed detailed written submission alongwith various case laws relied by him in his

written submission. The Id. AR of the assessee submits that there is a restriction to the person specified under Section 13(3), who have not followed the condition under Section 13(1)(c) to get monetary or non-monetary benefit of the trust. In this case, the initial dispute was of with regard to Rs. 7,786/- incurred for celebration of birthday of chairperson of the assessee trust. The trustees have not taken any personal benefit. On the basis of disallowance of Rs. 7,786/-, the Assessing Officer treated the infringement of provisions of Section 13(1)(c) r.w.s. 13(3) of the Act. The Assessing Officer treated the said expenditure for personal purpose. Since, there was no element of benefit availed by any interested person as defined under Section 13(3) of the Act which was in fact incurred for ceremonial function where only students and staff members participated. In show cause notice dated 16/12/2019, the assessee already explained that surplus of Rs. 24,73,746/- can be disallowed only under Section 13(3) as Section 13(3) is not applicable as there was no direct or indirect benefit availed by related party. The assessee trust is registered under Section 12A of the Act and is eligible for application of income under Section 11 of the Act. The assessee is undertaking its activity for the purpose of object of the assessee-trust. The onus lies on the Assessing Officer to prove that application of violation of conditions specified in Section 13 of the Act.

The Id. AR of the assessee submits that he has relied on number of decisions, copy of which has been placed in the paper book.

16. We have considered the rival submissions of both the parties and perused the record. We find that the tax effect involved in the present appeal is only Rs. 9,25,317/- as mentioned by I.T.O.(Exemption)/Revenue in Form-36/appeal form. Though, the revenue has pleaded in the grounds of appeal that tax effect involved in the present appeal is below the monetary limit specified by CBDT in its Circular No. 17/2019 dated 08/08/2019. However, the issue involved in the case falls under exception clause enumerated in para 10(c) of Circular No. 3/2018 dated 11/07/2018. We have perused the CBDT Circular No. 3/2018 dated 11/07/2018 which deals with the exception related with audit objection. We find that in entire assessment order, the Assessing Officer has not mentioned that action of reopening is based on audit objection or any such audit objection was raised either by internal auditor or otherwise and which was expressly accepted. No such evidence is placed on record, merely pleading such fact is sufficient. Thus, the appeal of revenue is not maintainable.

17. Even on merit, we find that the Assessing Officer based his action for making disallowance under Section 11 on the basis of the fact that the assessee trust incurred expenses of Rs. 7,786/- on the birthday occasion of chairperson of assessee-trust. We find that the Id. CIT(A) in

the appeal against such disallowance, clearly held that there was no benefit availed by any related party/trustee. The Id. CIT(A) while granting relief to the assessee also clearly held that such expenses could not be disallowed as there was no element of benefit availed by interested person prescribed under Section 13(3) of the Act. The Assessing Officer, accordingly, was not justified in denying the claim of exemption under Section 11 of the Act. We find that the assessee trust is engaged in imparting education as per its object. The object of the trust and the activities of the assessee in consonance with its object, is not doubted by the assessing officer. There is no finding of the assessing officer that any trustee got any specific benefit on incurring meagre amount on birthday celebration of chairperson, discloser of which was made honestly. On the basis of afforesaid observation, we concur with the finding of Id. CIT(A) that once there was no personal element or benefit availed by the Trustee, the basis of disallowance itself was not justified. Thus, in our view, the assessee also deserve relief on merit as well. In the result, ground of appeal raised by the revenue in this appeal is dismissed.

18. In the result, this appeal of revenue is also dismissed.  
Order pronounced in the open court on 14<sup>th</sup> September, 2023.

Sd/-  
**(Dr. ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Surat, Dated: 14/09/2023

*\*Ranjan*

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr.Private Secretary, ITAT, Surat