

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.1551/Del/2023
(Assessment Year :2015-16)**

JCIT (OSD) (E),
Circle 2 (1),
New Delhi.

vs.

Saffron Educational Trust,
104, Chiranjiv Towers,
43, Nehru Place,
New Delhi – 110 019.

(PAN : AAETS2830G)

(APPELLANT)

(RESPONDENT)

ASSEESSEE BY : Shri K. Sampath, Advocate
Shri V. Rajkumar, Advocate
REVENUE BY : Shri Anuj Garg, Sr. DR

Date of Hearing : 18.12.2023
Date of Order : 20.12.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the Revenue is directed against the order of Id.
CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated
23.02.2023 for the Assessment Year 2015-16.

2. Grounds of appeal taken by the Revenue are as under :-

“1. Whether on the facts and circumstances of the case, Ld.
CIT (A) is right in law in allowing exemption u/s 11 of the I.T.
Act, 1961.

2. Whether on the facts and circumstances of the case, Ld. CIT (A) is justified in not treating the activities of the assessee as violation of provisions of section 13(1)(c) r.w.s. 13 (3) of the I.T. Act, 1961.

3. Whether on the facts and circumstances of the case, Ld. CIT (A) is justified in not considering the activities of the assessee as violation of provisions of section 13(1)(d) r.w.s. 13 (3) of the I.T. Act, 1961.

4. Whether on the facts and circumstances of the case, Ld. CIT (A) is justified by simply allowing ground no.13 without any finding/discussion at their end.”

3. Brief facts of the case are that assessee is a trust, running a school in the name of Saffron Public School at Faridabad. For the present assessment year, the assessee trust filed its return of income at Nil. The assessment under section 143(3) of the Income-tax Act, 1961 (for short ‘the Act’) was completed on 18.12.2017 at the total income of Rs.4,62,59,936/-. The exemption u/s 11 and 12 was not allowed by the Assessing Officer by giving a finding that the assessee trust has violated the provisions of section 13(1)(c) & 13(1)(d) of the Act. The actions of the Assessing Officer is based on the fact that a company named Greater Delhi Planners (P) Ltd has given the land on lease to the assessee trust for 35 years on which the assessee has constructed a building for the school and the Director of the Company is also one of the trustees. The lease can be cancelled under certain situations and after that the building will come to the possession of the lesser company by default.

4. Against the above order, assessee appealed before the Id. CIT (A). Ld. CIT (A) gave elaborate finding. He observed that lease is for a period of 35 years which is not a small period. Further, he observed that these are standard clauses of the Deed; that if Income Tax Department had or has any objections to these clauses, the trust should not have been granted the exemption or the exemption granted should have been cancelled; that however, no such action has been taken by the department; that in later year i.e. AY 2016-17, assessment has been completed under section 143(1) and in AY 2017-18, assessment has been done under section 143(3), accepting the returned income of the assessee trust; that Id. CIT (A) was not in a position to draw any adverse inference on these facts of the case; that it is quite reasonable and natural that trust can be established and operated on a leased land; that however, it is expected that the agreement should not enure direct or indirect benefit to persons mentioned in sub section 3 of section 13 of the Act; that prima facie there is no such violation and the AO has not brought any further material in this regard; that not only in the later years, even in earlier years, assessment has been done without any interference to the returned income. In assessment year 2013-14, assessment has been done, accepting the returned income. In assessment year 2014-15 also the net taxable income has been determined at NIL,

4.1 Furthermore, as regards AO's observation that Trust has violated the provisions of section 13(1)(c) of the Act, Ld. CIT (A) observed that the observation of the A.O. is neither correct nor reasonable; that there is no bar on constructing a building by a trust on a land taken on lease; that further the observation of the A.O. that unreasonable benefit has been passed on by the assessee trust to the lesser company is nothing but a farfetched imagination. Construction of schools, hospitals, marketing complexes, etc. is a normal practice in the development and construction of colonies; that this is not enuring any direct or indirect benefit to any persons referred to in sub section (3) of section 13 of the Act.

4.2 As regards AO's observation regarding violation of section 13(1)(d) of the Act, Ld. CIT (A) observed that AO has further mentioned the violation of section 13(1)(d) in his Order at page-2 and the AO has raised objection to construction of building on a leased land, as after the end of the period of lease of after giving a one month's notice the land will return back to the possession of the lesser company and building will be owned by the lesser by default; that this incident or action has not happened during the present Assessment Year that moreover, this will happen or may happen in future, is just an assumption and the assessment cannot be made on assumption; that if there is such a permanent shady or specious or surreptitious transaction between the assessee trust and lesser company represented by the Director Sri Sunil Kumar Sharma, one of the

trustees there was no case of grant of registration to the assessee trust u/s 12A in the year 2000 and u/s 80G in the year 2007; that further, if the AO was of the opinion that this transaction was not a genuine transaction, he should have approached the Commissioner/ Principle Commissioner / Director / Pr. Director of Income Tax for cancellation of registration, as it was a matter of relevance for all the assessment years, as per his findings but no such action was taken; that thus the action of the AO in present assessment year is not justified.

4.3 Accordingly, Id. CIT (A) allowed the assessee's appeal.

5. Against this order, the Revenue has appealed before us. We have heard both the parties and perused the records.

6. Ld. DR for the Revenue relied upon the order of the AO.

7. Ld. Counsel for the assessee supported the order of Id. CIT (A). He submitted that lease deed was entered on 19.05.2003. The school started functioning in 2003. Since then all along assessee has been granted exemption and no fault has been found in the assessee's conduct. He further submitted that annual lease is of Rs.6,000/- only which is a very nominal amount. He supported the order of CIT (A) for the plea that there was no violation of section 13(1)(c) & 13(1)(d) of the Act.

8. We find that Id. CIT (A) has examined the issue in great detail. We fully agree with his findings that the lease deed is for a period of 35 years which is not a small period. Furthermore, the objections regarding

violation of section 13(1)(c) & 13(1)(d) of the Act has been properly met by the Id. CIT (A). Further, since AY 2003-04 assessee trust's assessment has been done granting the exemption and no fault has been found in assessee's conduct. Accordingly, we do not find any infirmity in the order of the Id. CIT (A), hence we uphold the same.

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

Order pronounced in the open court on this 20th day of December, 2023.

**Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 20th day of December, 2023
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**