

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 126/Asr/2019
निर्धारण वर्ष / Assessment Year : 2008-09

J.K. Educational Society C/o Shri P.N. Arora, Advocate 3 rd Floor SRK Mall, 14-Kennedy Avenue, Mall Road, Amritsar- 143001- Punjab	बनाम	The DCIT(E) Circle-1 C.R. Building, Chandigarh
स्थायी लेखा सं. / PAN NO: AABTJ9000A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं. / ITA NO. 428/Chd/2019
निर्धारण वर्ष / Assessment Year : 2009-10

J.K. Educational Society C/o Shri P.N. Arora, Advocate 3 rd Floor SRK Mall, 14-Kennedy Avenue, Mall Road, Amritsar- 143001- Punjab	बनाम	The DCIT(E) Circle-1 C.R. Building, Chandigarh
स्थायी लेखा सं. / PAN NO: AABTJ9000A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं. / ITA NO. 685/Chd/2022
निर्धारण वर्ष / Assessment Year : 2009-10

J.K. Educational Society C/o Shri P.N. Arora, Advocate 3 rd Floor SRK Mall, 14-Kennedy Avenue, Mall Road, Amritsar- 143001- Punjab	बनाम	The DCIT Circle-1 Chandigarh
स्थायी लेखा सं. / PAN NO: AABTJ9000A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri P.N. Arora, Advocate
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 21/11/2023
उद्घोषणा की तारीख/Date of Pronouncement : 30/01/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

The first two appeals filed by the assessee society are against the orders of the Ld. CIT(A)-1, Ludhiana dt. 01/01/2019 and 08/02/2019 for A.Y 2008-09 and 2009-10 respectively against sustaining of denial of exemption u/s 11 and the

third appeal is in respect of sustenance of levy of penalty u/s 271(1)(c) of the Act for A.Y 2009-10.

2. All these cases are heard together and are being disposed off by this consolidated order. With the consent of both the parties, appeal in ITA No. 126/Asr/2019 for A.Y 2008-09 was taken as a lead case wherein the assessee has taken the following grounds of appeal:

1. *"That the order of the DCIT, Circle-1 (Exemption), Chandigarh as well as the order of Learned CIT(A) are both against the facts of the case and are untenable under the law.*
2. *That the worthy CIT(A) has not appreciated the facts of the case and merely relied on order of the DCIT, Circle-1 (Exemption), Chandigarh and without any rhyme & reason, the Ld. CIT(A) has confirmed the order of the DCIT, Circle-1 (Exemption), Chandigarh. As such order of the CIT(A) is liable to cancelled.*
3. *That the Ld. CIT(A) further failed to appreciate that issuance of notice 147/148 of the Income-Tax Act, 1961, is illegal, invalid and void ab-initio, as it does not fulfill the conditions as laid down under the law. That there was no application of mind while issuing the notice under section 147/148 of the Income-Tax Act, 1961, and the correct facts have not been brought on the record on the basis of which the proceedings were initiated and from the plain reading of the reasons recorded for re-opening the case, it is crystal clear that there was no reason and material on the record and there was no application of mind on the basis of which the proceedings have been initiated and the DCIT, Circle-1 (Exemption), Chandigarh was not justified in re-opening the case u/s 147/148 of the Income-Tax Act, 1961. As such the re-opening of the case in itself is illegal, invalid and void ab-initio and the assessment completed on the basis thereof is liable to be cancelled. In view of these circumstances, the worthy CIT(A) should have annulled the assessment made u/s 147/148 of the IT Act, 1961.*
4. *That the reopening u/s 147/148 is illegal in the eyes of law as the basis on which the case was reopened is illegal and invalid as no addition was made on the basis of which the case was reopened. As such the assessment order is bad in the eyes of law and the same is liable to be cancelled.*
5. *That the reopening u/s 147/148 is bad in the eyes of law as the reasons on the basis of which the case was reopened, the addition was never made on that very basis. As such the order of the DCIT, Circle-1 (Exemption), Chandigarh is illegal and invalid in the eyes of law. Similarly the CIT(A) has grossly erred in confirming the order of the DCIT, Circle-1 (Exemption), Chandigarh.*
6. *That the DCIT, Circle-1 (Exemption), Chandigarh has erred in making the addition of Rs.1,05,35,186/- on account of surplus amount which was taxed in the total taxable income. The Ld DCIT has erroneously come to the conclusion that the assessee has deposited security to M/s Lala Daswandi Ram Family Trust against the lease rent on land.*

7. That the DCIT, Circle-1 (Exemption), Chandigarh failed to appreciate that the trust to whom the security was given was an interest free security deposit with them against the lease rent on land.

8. That the DCIT, Circle-1 (Exemption), Chandigarh did not appreciate that this was done in accordance with the market prevailing rates and DCIT was not at all justified in invoking the provisions of section 13(3) as specified person and according to the DCIT the transaction of security deposit and rent paid was covered under the provisions of section 13(l)(c), 13(1)(d) r.w.s. 13(3) and 11(5) of the IT Act, 1961. Similarly the CIT(A) has grossly erred in confirming the order of the DCIT, Circle-1 (Exemption), Chandigarh.

9. That the authorities below did not appreciate that the rent paid to the landlord was very reasonable, genuine and was much below the market rate. Furthermore, the authorities below did not appreciate that even after considering the interest free security deposit, the lease rent paid was much below the prevailing market value of the land/property and these transactions were not colorable and doubtful and was paid as genuine payment. As such no undue benefit from security deposit is taken by the trustees directly or indirectly.

10. That the authorities below did not appreciate that there was no violation of provisions of section 13(l)(c) r.w.s. 13(3) of the IT Act, 1961 as the security given to the trust was necessary for taking the land for running the school and the payment was made much below the prevailing market rate. Similarly CIT(A) has grossly erred in confirming the same. Thus it is a clear case where there was no violation of provisions of section 13(3) of the IT Act, 1961 or any provisions of section 13 as the society is exclusively engaged in pursuance of educational activities.

11. It is prayed that exemption u/s 11 as claimed may be allowed as the surplus of Rs. 1,05,35,186/- may not be taxed. Alternatively the addition made is very high & excessive.

12. That any other grounds of appeal which may be urged at the time of hearing of the appeal."

3. Briefly the facts of the case are that the assessee society is a charitable society engaged in running of an Educational Institution and registered under section 12AA of the Act. For the year under consideration, the assessee society filed its return of income claiming exemption under section 11 and declaring NIL income. Subsequently, basis information that the assessee society had made huge cash deposits of Rs. 1,41,50,000/- in its saving bank account, the case of the assessee was reopened by issuance of notice under section 148 of the Act dt. 17/03/2015.

3.1 During the course of reassessment proceedings, the deposit of cash was found to be explained by the AO. At the same time, it was noticed by the AO that the assessee society had made security deposit of Rs. 21.49 lacs with a closely related family trust i.e; Lala Daswandi Ram Family Trust. The assessee society was thereafter called upon to explain as to why it should not be considered as infringement of the provision of Section 13(1)(c), 13(1)(d), 13(3) read with section 11(5) and as to why the exemption claimed may not be disallowed, and the entire surplus of income over expenditure be brought to tax.

3.2 In response, the assessee society submitted that it had taken 52.16 Kanals of land on lease at concessional rate from the aforesaid family trust for construction of school building. It was further submitted that in order to restrict the rent from increasing to match the market rate, interest free security deposit was given to the aforesaid trust.

3.3 The AO was however not satisfied with the explanation so submitted by the assessee society and held that there is a violation of the aforesaid provisions and benefit has been given directly/indirectly to the trust being a specified person, it is not eligible for exemption u/s 11 and the entire amount of surplus of Rs. 1,05,35,186/- was brought to tax vide order dt. 29/02/2016 passed under section 147 r.w.s 143(3) of the Act.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since sustained the denial of the exemption and the taxability of the entire surplus of income over expenditure.

5. Against the said findings and directions of the Ld. CIT(A), the assessee society is in appeal before us.

6. During the course of hearing, the Ld. AR submitted that during the year under consideration, the assessee society has paid rent and security deposit to Lala Daswandi Ram Family Trust against lease of the land taken for construction

of school building. It was submitted that Lala Daswandi Ram Family Trust was a private trust and being a sister concern of the assessee, the AO was of the view that the assessee was providing undue benefit to its sister concern by paying security deposit without interest. The AO further observed that in the balance sheet, the assessee society has shown security deposit of Rs. 21.49 lacs and rent of Rs. 8,80,320/- and given that there was similar Trustees in both the trusts, the transaction of security deposit and rent paid were treated by the AO to be covered under the provisions of section 13(1)(c), 13(1)(d) r.w.s Section 13(3) and 11(5) of the Act.

6.1 In this regard, it was submitted that the assessee society had taken 52.16 Kanal of land on rent for construction of building for running the school and rent is being paid to Lala Daswandi Ram Family Trust since 1997-98.

6.2 It was submitted that the Trust has given land at very low rate as compared to market value of Rs. 4,22,40,000/- and rent of Rs. 140800/- per month which is very much clear from the valuation certificate of Arora & Arora Associates, copy of which was filed before the AO and a copy thereof is also placed on record. It was submitted that the market value of rent as per the valuation certificate was Rs. 140800/- per month against Rs. 73360/- per month paid by the assessee society to the Trust. As far as security deposit was concerned, it was stated before the AO that the trust was pressing hard to increase the rent which was very low as compared to the market value of the rent. So the demand raised by the trust was either to increase the rent to Rs. 140800/- per month from Rs. 73360/- per month or to vacate the land of the trust.

6.3 It was submitted that at that time it was decided among the parties that the trust will not press the market rate of rent and in lieu thereof, the society will give a sum of Rs. 21,49,733/- as advance / security deposit without interest. It was further submitted that market value of the rent during the year under consideration was Rs. 4,22,40,000/- and not Rs. 15,36,482/- as mentioned by the

AO rather the amount of Rs. 15,36,482 has been shown by the trust against the cost of land in connection with the A.Y. 2013-14. It was accordingly submitted that the rent of Rs. 73360/- per month totaling of Rs. 880,380/- per annum for 52.16 Kanal of land is very nominal and as such, no undue benefit in terms of rent or for that matter, security deposit has been given by the assessee society to the trust either directly or indirectly. It was accordingly submitted that the facts have not been properly appreciated by the AO as well as by the Ld. CIT(A).

6.4 It was further submitted that the rent so paid during the year under consideration was quite genuine, reasonable and consistent with the past as well as the subsequent history and the details thereof read as under:

Asstt. Year	Rent Paid	Security/Debtors	Total	Remarks
2006-07	7,60,320/-	13,27,472/-	20,87,792/-	Accepted
2007-08	8,80,620/-	7,37,768/-	16,18,388/-	Accepted
2008-09	8,80,320/-	21,49,733/-	30,30,053/-	Under Appeal before ITAT
2009-10	7,60,320/-	25,61,733/-	33,22,053/-	Pending before ITAT
2010-11	9,50,400/-	38,26,733/-	47,77,133/-	Accepted u/s 143(3)
2011-12	9,50,400/-	29,74,253/-	39,24,653/-	Accepted u/s 143(3)
2012-13	12,67,200/-	25,00,000/-	37,67,200/-	Accepted u/s 143(3)
2013-14	14,57,280/-	25,00,000/-	39,57,280/-	Accepted by ITAT [Refer Page No. 172 to 180]
2014-15	16,47,360/-	25,00,000/-	41,47,360/-	Accepted and tax was charged u/s 164(2)
2015-16	19,00,800/-	25,00,000/-	44,00,800/-	Accepted and tax was charged u/s 164(2)

6.5 It was further submitted that the provisions of section 13(l)(c) r.w.s. 13(l)(d) are not at all applicable to the present facts of this case. In this connection decision of Hon'ble Gujarat High Court in the case of CIT vs. Bholaram Educational Society reported in 100 taxmann.com 508 is fully applicable to the present facts and circumstances of the case. It was submitted that this case further went to Hon'ble Supreme Court of India and their Lordships of Supreme Court has confirmed the order of Gujarat High Court. A copy of the judgment is

available in assessee's paper-book in which it was observed that the lease rent paid by the assessee trust to a trustee for using land & building was not excessive and thus exemption could not be denied to the assessee u/s 11 by invoking the provisions of section 13(1)(c).

6.6 It was further submitted that under the same and similar circumstances, the Ld. CIT(A) accepted the appeal of the assessee in the case of M/s Om Parkash Bansal Charitable Trust in connection with AY 2015-16 & 2016-17 in which the lease rent was paid to the family member of the trust and the same treatment was given by the AO and the provisions of section 11 and 13(l)(c) were invoked. Against the said order, the Ld. CIT(A) allowed these payments and against which the department went in appeal before the Hon'ble ITAT, Chandigarh Bench, Chandigarh and the ITAT, Chandigarh Bench accepted the appeal in favour of the assessee and dismissed the appeal of the department in ITA No. 339 & 340/Chd/2020, order dated 30/09/2021 in connection with AY 2015-16 and 2016-17. The relevant Para 14 & 14.1 on Page No. 182 & 183 is reproduced hereunder:-

"14. We have gone through the order of the Ld. CIT(A). The factual findings of the Ld. CIT(A) that the ownership of Smt. Suman Bansal of the land leased to the assessee was established by documentary evidences, has not been controverted before us. Therefore, the findings of the AO that there was no evidence of ownership of land by Smt. Suman Bansal, merits no consideration. The findings of the Ld. CIT(A) to the effect that the land had been leased by the assessee consistently for educational purpose and the rental payments were consistent with the past history of the assessee has also remained uncontroverted before us. He has also stated that the rental payment, in his view, was reasonable payment for such a huge chunk of land in a capital city like Jammu. The assessee had justified the same by stating the market value of the land as assessed by the Revenue Authorities was Rs.5,74,55,000/- and, therefore, the rent paid of Rs. 12,35,434/- was much less considering its huge market value. The Revenue has been unable to controvert this factual finding of the Ld. CIT(A).

14.1 In view of the above, we see no reason to disagree with the Ld. CIT(A) whose order we find is based on appreciate of facts, which the Revenue has been unable to controvert before us. "

6.7 In view of these circumstances, it was submitted that facts and circumstances of our case are similar to the facts in the case of Om Parkash

Bansal Charitable Trust. Under the same and similar circumstances, it was held by the ITAT, Chandigarh Bench, that the rent paid is reasonable and does not fall within the mischief of section 13(l)(c) r.w.s. 13(3) of the IT Act, 1961 and the total addition made was deleted. As such, it is prayed that the addition made and confirmed may be deleted in view of the facts and circumstances and the cases relied upon.

6.8 Without prejudice to the above, it was submitted that in case any disallowance has to be made, the entire surplus cannot be charged to tax and only that part of income which is not exempt u/s 11 virtue of clause (c) or clause (d) of section 13(1) can be charged to tax at Maximum Marginal Rate as per provisions of section 164(2) of the IT Act, 1961 on account of rent, in that case only the tax can be levied on that said disallowance, if any and the tax can be charged at the maximum marginal rate as provided in section 164 of the IT Act, 1961 and the exemption u/s 11 cannot be denied and the whole of the excess income over expenditure of the trust cannot be added back and assessed as the income during the year under consideration. In this connection, attention was invited to assessment order in connection with AY 2014-15 where the so-called excess payment of rent was disallowed. The relevant Para 8 is reproduced hereunder:-

"8. Disallowance of excess rent:

On Perusal of the same it is also found that assessee is paying huge rent to M/s Lala Daswandi Ram Family Trust against the land which is not reasonable. On perusal of the payments compared to last years it is seen that assessee is paying rent of Rs. 16,47,360/- which is Rs. 1,90,080/- higher than last year and 13.04% higher to last year, which is not reasonable u/s 13(2) of I. T. Act. Actually market rate of increasing is 5% after one year and in this case it is 13.04% which is higher side. It is also seen that assessee has paid amount of Rs.14,57,280/- in A.Y. 2013-14 and assessee has paid amount of Rs.9,50,400/- in A.Y. 11-12. The increasing of rent from A.Y. 2011-12 to 2013-14 is very high which is not reasonable. As per market increase the reasonable rent calculation is as under:-

A.Y.	Rent Paid	Increasing of 5%	As per market	Excess payments
2010-11	9,50,400/-	—	—	—
2011-12	9,50,400/-	47,520/-	9,97,920/-	—

2012-13	N.A.	49,896/-	10,47,816/-	—
2013-14	14,57,280/-	52,390/-	11,00,206/-	3,57,074/-
2014-15	16,47,360/-	55,010/-	11,05,707/-	5,41,653/-

In the above facts, reply of assessee that this transaction is covered u/s 13(l)(c) r.w.s. 13(3) of IT. Act, 1961, assessee has paid excess rent of Rs.5,41,653/- compared to market rate. Assessee has failed to justify the excess payment of rent. So amount of Rs.5,41,653/- is not allowed and taxed the same u/s 13(l)(c) r.w.s. 13(3) of IT. Act, 1961. "

6.9 Thus, only excess so-called excess payment of rent was disallowed. Again, attention is invited to Assessment Order relating to AY 2015-16 which is available on Page No. 199 to 213 of the paper-book and the relevant Para 8 on Page No.212 is reproduced hereunder:-

"8. Disallowance of excess rent:

On Perusal of the same it is also found that assessee is paying huge rent to M/s Lata Daswandi Ram Family Trust against the land which is not reasonable. On perusal of the payments compared to last years it is seen that assessee is paying rent of Rs. 19,00,800/- which is Rs.2,53,440/- higher than last year and 15.38% higher to last year, which is not reasonable u/s 13(2) of I. T. Act. Actually market rate of increasing is 5% after one year and in this case it is 15.38% which is higher side. It is also seen that assessee has paid amount of Rs.16,47,360/- in A.Y. 2014-15 and assessee has paid amount of Rs.9,50,400/- in A.Y. 11-12. The increasing of rent from A.Y. 2011-12 to 2015-16 is very high which is not reasonable. As per market increase the reasonable rent calculation is as under:-

A.Y.	Rent Paid	Increasing of 5%	As per market	Excess payments
2010-11	9,50,400/-	—	—	—
2011-12	9,50,400/-	47,520/-	9,97,920/-	—
2012-13	9,97,920/-	49,896/-	10,47,816/-	—
2013-14	14,57,280/-	52,390/-	11,00,206/-	3,57,074/-
2014-15	16,47,360/-	55,010/-	11,05,707/-	5,41,653/-
2015-16	19,00,800/-	55,285/-	11,60,992/-	7,39,807/-

In the above facts, reply of assessee that this transaction is covered u/s 13(l)(c) r.w.s. 13(3) of IT. Act, 1961, assessee has paid excess rent of Rs. 7,39,807/- compared to market rate. Assessee has failed to justify the excess payment of rent. So amount of Rs.7,39,807/- is not allowed and taxed the same u/s 13(l)(c) r.w.s. 13(3) of IT. Act, 1961. "

6.10 Thus at the most tax can be charged only on that part of income which is not exempt and the entire surplus cannot be added back to the returned income. In this regard, reliance was also placed on the decision of Hon'ble

Karnataka High Court in case of CIT Vs. Fr. Mullers Charitable Institutions (2014) 363 ITR 230 as well as the decision of Hon'ble Bombay High Court in case of DIT(E) Vs. Sheth Mafatlal Gagal Bhai Foundation Trust, [2001] 249 ITR 533.

6.11 It was further submitted that an identical question came up for consideration before the ITAT Chandigarh Bench in case of the assessee for A.Y 2013-14 in ITA No. 72/Chd/2020 and the matter is squarely covered by the said decision and the relevant findings therein read as under:

"4. We have heard the rival contentions and perused the material available on record. In A.Y 2014-15 and A.Y 2015-16, we find that under identical facts and circumstances of the case, the AO has determined the impugned transaction of payment of rent to M/s Lala Daswandi Ram Family Trust as covered under section 13(1)(c) r/w 13(3) of the Act and has worked out excess rent and the same has only been brought to tax. During the course of hearing, as we have noted above, the Id AR has also raised alternate contention that the aforesaid findings of the AO for A.Y 2014-15 and A.Y 2015-16, which are not under challenge by either of the parties, may be followed for the impugned assessment year and only excess rent may be brought to tax in the hands of the assessee and whole of the surplus cannot be brought to tax. It was submitted by the Id AR that the same is acceptable to the assessee and the assessee has no objection where the same is directed to be followed for the impugned assessment year. The Id DR has also not raised any objection where the said findings are followed in the instant case. Therefore, taking into consideration the said plea and submissions made by the Id AR, the AO is directed to tax the excess rent of Rs 3,57,074/- so computed and bring the same to tax as per provisions of section section 13(1)(c) r/w 13(3) of the Act and the remaining addition is hereby directed to be deleted."

7. Per contra, the Ld. DR referring to the provision of Section 11 submitted that where any part of the income of the trust is applied directly or indirectly for the benefit of any person specified under section 13(3), then the entire income of the trust is not eligible for exemption under section 11 of the Act. It was submitted that in the instant case, it is an admitted fact that the assessee society during the period under consideration has given interest free security deposit of Rs. 21,49,733/- to a family trust who is a specified person within the meaning of Section 13(3) of the Act. It was submitted that the contention of the assessee that interest free security deposit was given to the family trust in lieu of the concessional lease rent paid for plot of land taken on lease from the family trust

is evidently misleading in view of the variable rent and security deposit year after year as can be seen from the figures submitted by the Ld. AR for A.Y 2006-07 to A.Y 2014-15.

7.1 It was further submitted that the assessee society was conscious of the fact that it was utilising the Family Trust property at a very concessional rate, it could have increased the rent accordingly. There cannot be any other reason for purportedly complementing the rent by interest free security deposit than providing direct benefit to the Family Trust, whose income was not exempt. The reasons are not far to seek. Any increase in rent would have resulted in taxable rental income in the hands of the Family Trust, which would not be the case in case of interest free security deposit. The assessee society has been consistently divesting its funds for the benefit of the Family Trust. The mis-utilisation of the assessee society's funds is glaring and it cannot escape the clutches of law, nor any sympathy or equity can be extended. Section 13 (1) (c) of the Act, as extracted hereinabove, speaks of "any income" which has been used to provide benefit "directly or indirectly" to any person referred to in section 13 (3). A plain reading of this section would show that the aforesaid provisions are intended to eliminate any possibility of the funds of the Trust enjoying exemption under the provisions of section 11 & 12, being used for the benefit of any interested person. In the present case, it cannot be denied that the benefit has "directly or indirectly" reached the interested person, namely, the aforesaid Family Trust and, thus, there is clear violation of Ss. 13 (1) (c)/13 (2) (a) of the Act. Once there is violation of the aforesaid provisions, the provisions of Ss. 11 & 12 of the Act shall not operate so as to exclude the income of the Trust from the total income of the previous year, whereby all the receipts of the assessee society either by voluntary contribution or income derived from its property or any surplus income earned during the discharge of the charitable activity would be income in normal course and shall be chargeable to tax.

7.2 Further reliance was placed on the decision of Hon'ble Delhi High Court in case of Pt. Kanahya Lal Punj Charitable Trust, reported in [2008] 297 ITR 0066, decision of Hon'ble Andhra Pradesh High Court in case of Aware Vs. DCIT, reported in [2003] 263 ITR 0013 and the decision of Hon'ble Supreme Court in case of DIT(E) Vs. Bharat Diamond Bourse [2003] 259 ITR 280 (SC).

7.3 It was further submitted that the decision of Hon'ble Karnataka High Court in case of CIT Vs. Fr. Mullers Charitable Institutions as well as the decision of Hon'ble Bombay High Court in case of DIT(E) Vs. Sheth Mafatlal Gagaj Bhai Foundation Trust does not support the case of the assessee as the facts are distinguishable.

7.4 It was accordingly submitted that in light of aforesaid submissions the Ld. CIT(A) was correct in sustaining the action of the AO in bringing the tax entire surplus of income over expenditure. It was accordingly submitted that the appeal so filed by the assessee therefore deserves to be dismissed.

8. We have heard the rival contentions and perused the material available on record. We find that an identical question came up for consideration before this Bench in case of the assessee for A.Y 2013-14 in ITA No. 72/Chd/2020. In the said decision, we have noted that in A.Y 2014-15 and A.Y 2015-16, under identical facts and circumstances of the case, the AO has determined the impugned transaction of payment of rent to M/s Lala Daswandi Ram Family Trust as covered under section 13(1)(c) r/w 13(3) of the Act and has worked out excess rent and the same has only been brought to tax and entire claim of exemption u/s 11 has not been denied by the AO. We had further noted in the said decision that during the course of hearing, the Id AR had raised an alternate contention that the aforesaid findings of the AO for A.Y 2014-15 and A.Y 2015-16, which are not under challenge by either of the parties, may be followed for the assessment year 2013-14 and only excess rent may be brought to tax in the hands of the assessee and whole of the surplus cannot be brought

to tax leading to denial of exemption in its entirety. It was submitted by the Id AR that the same was acceptable to the assessee and the assessee has no objection where the same is directed to be followed for the said assessment year and the Id DR didn't object to the same. Therefore, taking into consideration the said plea and submissions made by the Id AR, the AO was directed to tax the excess rent of Rs 3,57,074/- so computed and bring the same to tax as per provisions of section 13(1)(c) r/w 13(3) of the Act and the remaining addition was directed to be deleted.

9. In the instant case as well, we find that similar contention has been raised by the Id AR and no specific objection has been raised by the Id DR. In terms of determining the reasonability of rent and security deposit, we find that the AO has adopted annual increment @ 5% as reasonable increase in rent which can be followed in the instant year. As regards security deposit, looking into the past and subsequent history of the assessee and the fact that the security deposit is inextricably linked to security of the rental payments and related covenants and flowing from the same agreement and understanding between the parties regarding lease of land and building, we find that it would be reasonable to determine security deposit equivalent to two month's rent as reasonable in the facts and circumstances of the case. Taking rent of Rs 7,60,320/- for A.Y 2006-07 as the base rent which has also attained finality and annual increment of 5%, the rent for the impugned assessment year 2008-09 will come to Rs 8,38,253/- and security deposit equivalent to two month's rent would be Rs 16,76,506/-. Therefore, total rent and security deposit comes to Rs 25,14,759/- as against actual rent and security deposit of Rs 30,30,053/- paid by the assessee resulting into excess payment of Rs 5,15,294/-. Therefore, taking into consideration the aforesaid plea and submissions made by the Id AR, the AO is directed to tax the excess payment of Rs 5,15,294/- so computed and bring the same to tax as per provisions of section 13(1)(c) r/w 13(3) of the Act and the remaining addition is hereby directed to be deleted.

10. In the result, the appeal of the assessee is partly allowed.

ITA No. 428/Chd/2019 for A.Y. 2009-10

11. Both the parties fairly submitted that the facts and circumstances in ITA No. 428/Chd/2019 for A.Y. 2009-10 are exactly identical and similar contentions as advanced in ITA no. 126/Asr/2019 for A.Y 2008-09 be considered. Therefore, considering the submissions made by both the parties, our findings and directions contained in ITA No. 126/Asr/2019 shall equally apply to this appeal.

12. Taking rent of Rs 8,38,253/- for A.Y 2008-09 as determined above and annual increment of 5%, the rent for the impugned assessment year 2009-10 will come to Rs 8,80,166/- and security deposit equivalent to two month's rent would be Rs 17,60,313/-. Therefore, total rent and security deposit comes to Rs 26,40,497/- as against actual rent and security deposit of Rs 33,22,053/- resulting into excess payment of Rs 681,555/-. Therefore, taking into consideration the plea and submissions made by the Id AR, the AO is directed to tax the excess payment of Rs 681,555/- so computed and bring the same to tax as per provisions of section 13(1)(c) r/w 13(3) of the Act and the remaining addition is hereby directed to be deleted.

13. In the result, the appeal of the assessee is partly allowed.

ITA No. 685/Chd/2022 for A.Y. 2009-10

14. Connected to the aforesaid appeal for A.Y 2009-10, in this appeal, the assessee has challenged the levy of penalty u/s 271(1)(c) of the Act.

15. In this regard, we find that the order has been passed *ex-parte* by the Id CIT(A). During the course of hearing, the Id AR has pleaded for one more opportunity to be provided to the assessee in the interest of substantial justice. In light of the submissions made and material available on record and given

that we have decided on the merits of the case supra, it would be appropriate that said findings be taken into consideration and the assessee be allowed one more opportunity to represent its case before the Id CIT(A). In view of the same, the matter is set-aside to the file of the Id CIT(A) who shall decide the same a fresh as per law after providing reasonable opportunity to the assessee.

16. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 30/01/2024.

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 30/01/2024

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar