

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

IT(SS)A Nos.02 & 13/Ind/2017(AYs: 2011-12 & 2012-13)

Dy. Commissioner of Income-tax, (Central)-I, Bhopal	<u>बनाम/</u> Vs.	Shrinivas Education Society, E-5, 3 rd Floor, Tawa Complex, Bittan Market, Bhopal (PAN:AAAAS 7060 B)
(Appellant/Revenue)		(Respondent/Assessee)

C.O.Nos. 29 & 30/Ind/2017
(Arising out of IT(SS)A No. 02 & 13/Ind/2017
(AYs: 2011-12 & 2012-13)

Shrinivas Education Society, E-5, 3 rd Floor, Tawa Complex, Bittan Market, Bhopal (PAN:AAAAS 7060 B)	<u>बनाम/</u> Vs.	Dy. Commissioner of Income-tax, (Central)-I, Bhopal
(Cross-Objector/Assessee)		(Respondent/Revenue)

Assessee by	Shri Anil Khabya, CA & AR
Department by	Ms. Simran Bhullar, CIT DR

Date of Hearing	28.02.2024
Date of Pronouncement	29.02.2024

आदेश / O R D E R

Per Bench:

Feeling aggrieved by a consolidated appeal-order dated 19.10.2016 passed by Commissioner of Income-tax (Appeal)-3, Bhopal ["CIT(A)"] which in turn

arises out of a consolidated assessment-order dated 27.03.2014 passed by DCIT(Central), Bhopal ["AO"] u/s 153A/143(3) of the Income-tax Act, 1961 ["the Act"] for assessment-years ["AY"] 2011-12 & 2012-13, the revenue has filed captioned two appeals and the assessee has filed captioned two cross-objections. Since all these matters emanate from common orders of lower-authorities and involve identical issues, they were heard together at the request of both sides and are being disposed of by this consolidated order.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. The background facts leading to filing of these matters are such that the assessee is a society registered u/s 12A of Income-tax Act, 1961 engaged in educational activity. It is claiming exemption u/s 11/12 of Income-tax Act, 1961. A search u/s 132 was conducted upon assessee on 01.06.2011 in pursuance of which the assessments of assessee for 7 years from AY 2006-07 to 2012-13 were framed u/s 153A/143(3). Presently, we are concerned with AY 2011-12 and 2012-13 in these matters wherein the AO, while finalising assessments, made certain additions. Aggrieved, the assessee carried matters in first-appeal and got substantial relief. Now, the revenue as well as assessee have come in next appeals before us on their respective grievances emanating from order of first-appeal.

4. The grounds taken by parties are as under:

Revenue's IT(SS)A No. 2/Ind/2017 for AY 2011-12:

1. *Ld. CIT(A) has erred in facts and circumstances of the case in deleting the addition by relying selectively upon the decisions of the Hon'ble High Courts as (2015) 57 taxman.com 383 (P & H), (2015) 231 Taxman 719 (P&H) – Freedom Board & Paper Mills (2015) 55 taxmann.com 253 (A.P. and Telangana) : Lakshmi Constructions, (2014) 45 taxmann.com 248 (Guj) : Me & Mummy Hospital etc. which are not even by the jurisdictional High Courts ignoring the decision of Hon'ble Allahabad High Court in the case of CIT vs. Raj Kumar Arora (367 ITR 517), wherein, it has been held that addition can be made.*
2. *Ld. CIT(A) has erred in facts and circumstances of the case by deleting the addition of Rs. 1,28,000/- for assessment year 2011-12 made by the AO as society has violated the provisions of Section 13 of the Income-tax Act, 1961.*
3. *Ld. CIT(A) has erred in facts and circumstances of the case by deleting the addition of Rs. 9,28,06,233/- for A.Y. 2011-12 made by the AO as society has income over expenditure.*
4. *Ld. CIT(A) has erred in facts and circumstances of the case by deleting the addition of Rs. 8,62,52,994/-, Rs. 1,60,40,891/- and Rs. 15,66,571/- made by the AO on account of difference in the value of investment made in college buildings at Indore, college building at Bhopal respectively, as declared by the assessee and estimated by the District Valuation Officer, being it an undisclosed investment u/s 69B of the Income-tax Act, 1961.*

Revenue's IT(SS)A No. 13/Ind/2017 for AY 2012-13:

1. *Ld. CIT(A) has erred in facts and circumstances of the case in deleting the addition by relying selectively upon the decisions of the Hon'ble High Courts as (2015) 57 taxman.com 383 (P & H), (2015) 231 Taxman 719 (P&H) – Freedom Board & Paper Mills, (2015) 55 taxmann.com 253 (A.P. and Telangana) : Lakshmi Constructions, (2014) 45 taxmann.com 248 (Guj) : Me & Mummy Hospital etc. which are not even by the jurisdictional High Courts ignoring the decision of Hon'ble Allahabad High Court in the case of CIT vs. Raj Kumar Arora (367 ITR 517), wherein, it has been held that addition can be made.*
2. *Ld. CIT(A) has erred in facts and circumstances of the case by deleting the addition of Rs. 1,44,000/- for assessment year 2012-13 made by the AO as society has violated the provisions of Section 13 of the Income-tax Act, 1961.*

3. *Ld. CIT(A) has erred in facts and circumstances of the case by deleting the addition of Rs. 9,70,52,488/- for A.Y. 2012-13 made by the AO as society has income over expenditure.*
4. *Ld. CIT(A) has erred in facts and circumstances of the case by deleting the addition of Rs. 2,35,474/- for A.Y. 2012-13 made by the AO on account of unexplained cash found u/s 69A of the Income-tax Act, 1961.*
5. *Ld. CIT(A) has erred in facts and circumstances of the case by deleting the addition of Rs. 3,94,27,706/- and Rs. 1,85,49,777/- made by the AO on account of difference in the value of investment made in college buildings at Indore and college building at Bhopal respectively, as declared by the assessee and estimated by the District Valuation Officer, being it an undisclosed investment u/s 69B of the Income-tax Act, 1961.*

Assessee's C.O. No. 29/Ind/2017 for AY 2011-12:

1. *That the Ld. CIT(A) erred in not adjudicating grounds no. 3 and Grounds no. 13 to 19 of appeal memo on merit.*
2. *That the Ld. CIT(A) ought to have adjudicated all the grounds of appeal even when other grounds were decided in favour of appellant.*

Assessee's C.O. No. 30/Ind/2017 for AY 2012-13:

1. *That the Ld. CIT(A) erred in not adjudicating grounds no. 3 and Grounds no. 13 to 19 of appeal memo on merit.*
2. *That the Ld. CIT(A) ought to have adjudicated all the grounds of appeal even when other grounds were decided in favour of appellant.*

5. We first start with Revenue's Appeals and thereafter take up Assessee's C.O. In the discussions to follow, we shall be taking grounds of both AY 2011-12 and 2012-13 analogously since identical issues are involved. During arguments, Ld. AR for assessee took lead to make presentations with the consent of Ld. DR for revenue and Bench. The request was allowed.

Revenue's Appeals:

Ground No. 1 for both years:

6. In these grounds, the revenue precisely claims that the CIT(A) was wrong in giving benefit of certain decisions of non-jurisdictional High Courts to assessee and at the same time ignoring the decision of non-jurisdictional High Court in *CIT Vs. Raj Kumar Arora 367 ITR 517 (Allahabad High Court)* favouring revenue.

7. Ld. AR for assessee submitted that in the present case, the search was conducted on 01.06.2011 and the AY 2011-12 & AY 2012-13 with which we are concerned in present-appeals were falling within the category of 'pending years' as on the date of search whereas the decision in *CIT Vs. Raj Kumar Arora 367 ITR 517 (Allahabad High Court)* was pertaining to 'completed/unabated years' wherein it was held that the addition can be made in 'completed/unabated years' even in absence of incriminating material. Ld. AR submitted that the *Raj Kumar Arora* decision has no relevance to assessee's case and the ground raised by revenue should not arise for AY 2011-12 and 2012-13 under consideration before us. Further, the decision in *Raj Kumar Arora* is not valid after subsequent decision of Hon'ble Supreme Court in *PCIT Vs. Abhishar Buildwell Pvt. Ltd. (Civil Appeal No. 6580 of 2021)*. Therefore, the grounds raised by revenue are meritless and liable to be dismissed. After consideration, we find sufficient strength in

Ld. AR's submission which could not even be rebutted by Ld. DR for revenue. Therefore, these grounds are dismissed.

Ground No. 2 for both years:

8. In these grounds, the revenue precisely claims that the CIT(A) has erred in deleting the addition of Rs. 1,28,000/- and Rs. 1,44,000/- in AY 2011-12 and 2012-13 respectively and thereby not approving AO's action of holding violation of section 13 of the Act by assessee.

9. The AO has dealt this issue in Para 11.1 to 11.5 of assessment-order. Basically, the AO has observed that the assessee-society has given its office premise on rent to three concerns, namely (i) M/s Bansal Construction Works, (ii) M/s S.D. Bansal Construction Pvt. Ltd., and (iii) M/s Bansal Extraction & Export Pvt. Ltd., wherein the members of society were directors/shareholders/partners/substantially interested. The AO further noted that the assessee charged rent of Rs. 5,40,000/- and Rs. 7,20,000/- in AY 2011-12 and 2012-13 respectively yielding Rs. 7.50 and Rs. 10/- per square feet of rent in those respective years which was less than prevalent rates of rent. The AO also got an enquiry report from departmental inspector informing that the prevailing rent was minimum Rs. 10/- and Rs. 12/- in those respective years. Accordingly, the AO computed fair rent of Rs. 7,20,000/- and Rs. 8,64,000/- in those years on the basis of Rs. 10/- and Rs. 12/- per square feet for 6,000 square feet area of the premise. On that

basis, the AO made addition of differential of Rs. 1,28,000/- (the AO has incorrectly added Rs. 1,28,000/- though differential comes Rs. 1,80,000/-) and Rs. 1,44,000/-. Further, the AO held this as a violation of section 13 of the Act. During first appeal, the CIT(A), however, reversed AO's order.

10. Ld. AR for assessee carried us to Page No. 2 of Paper-Book being a reply-letter dated 24.03.2014 filed by assessee to AO in response to show-cause notice dated 20.03.2014 issued by AO qua this issue during assessment-proceeding. Simultaneously, Ld. AR also carried us to Para No. 11.2 and 11.3 of assessment-order wherein the AO has, though mentioned that the reply of assessee was considered but neither re-produced the assessee's reply nor considered the same correctly. Ld. AR iterated the contents of para No. 5 to 8 of assessee's reply in which the assessee informed to AO that (i) out of the area of 6,000 square feet, only an area of 400 square feet was provided to each of the three concerns, (ii) the major portion of premise was used for assessee-society's own activities, and (iii) the rent of Rs. 20,000/- per month charged from each of those concerns for 400 square feet was yielding a very high rent to assessee more than the prevailing market rent. Ld. AR submitted that despite such correct, clear-cut and to-the-point submission, the AO has ignored to discuss the assessee's submission in assessment-order. That apart, Ld. AR submitted, the AO has wrongly assumed that the entire 6,000 square feet area was let out to three concerns as against the aggregate area of approx. 1,200 square feet (400

square feet to each concern). Ld. AR carried us to the order of CIT(A) and submitted that the CIT(A) has correctly appreciated the assessee's reply made before AO and therefore deleted the addition, his order is very much correct and must be upheld.

11. Per contra, Ld. DR for revenue submitted that the assessee has not provided any document to show that only 1,200 square feet of area was let out. She submitted that the submission made by assessee in reply letter filed to AO is self-serving and not supported by any evidence. She submitted that the CIT(A) is wrong in giving credence to assessee's submission.

12. We have considered rival submissions of both sides and perused the orders of lower-authorities. We find that when the AO show-caused assessee on this issue vide notice dated 20.03.2014, the assessee immediately filed reply dated 24.03.2014, copy of the same is filed in the Paper-Book at Page 2. The AO has also acknowledged in Para 11.2-11.3 of assessment-order about filing of reply by assessee. Hence, the reply filed by assessee cannot be disputed. In the said reply, as demonstrated by Ld. AR, the assessee has categorically mentioned that only 400 square feet of area was used by each of three concerns, which means total area used by them was 1,200 square feet. The assessee submitted that rest of the area was used by assessee-society itself. The AO has, however, not re-produced this submission of assessee in his order and went on making comments of lesser rent being

charged by assessee as if the assessee had let out entire 6,000 area. Since there is no discussion by AO rebutting the assessee's submission of 1,200 square area provided to three concerns, we find that the CIT(A) has passed an apt order in this regard. The order passed by CIT(A) is being re-produced here for an immediate reference:

"19. From the facts on records it can be gathered that the AO has completely misunderstood the relevant facts in spite of those having been specifically pointed out by the appellant at the time of assessment proceedings vide explanation dated 24.03.2014, that the area which was given on rent was 1200 sq.ft. @ 50/- per sq.ft. per month, out of the total available area with the appellant comprising of 6000 sq.ft.; whereas the AO has assumed that the entire area was given on rent by the appellant of 6000 sq.ft. @ Rs. 7.50 per sq.ft. per month. In the reply given to the AO during the assessment proceedings, the appellant had specified the area given on rent and the rate at which it was given. The AO has not rebutted this claim of the appellant in the assessment order. In fact the AO has assumed incorrect rate as well as incorrect area given on rent without contradicting the claim of the appellant in the assessment order. The AO estimated the fair rental of Rs. 10 per sq.ft. per month for 6000 sq.ft. for A.Y. 2011-12 and @ Rs. 12 per sq.ft. per month for A.Y. 2012-13. However, as per the submissions given, the rent shown by the appellant @ Rs. 50 per sq.ft. per month was in excess of the estimation done by the AO. Given these facts, the AO's invocation of section 13 would not be justified as the market rents assumed by him were less than what were charged by the appellant. In any case the unilateral reliance of the AO on the inspector's report which is just an estimate cannot be treated as the 'arms length price' for the rental in the area which can be a good reason to invoke section 13 of the Act. Besides it cannot be disputed that rentals can never be determined in absolute and precise terms as it can vary on number of factors like the condition of the property, floor on which property is located and various factors including who the prospective tenant is. The appellant society in any case was not set up for the primary purpose for giving properties on rent."

13. The submission of Ld. DR for revenue that the assessee's submission in letter dated 24.03.2014 was self-serving is not convincing because of the reason that when the assessee made such a categorical submission, it was

the minimum duty of AO to discuss the assessee's submission in assessment-order and to rebut or contradict the same. But the AO has kept silence on assessee's submission and went ahead to make adjudication against assessee. In the situation, we are inclined to accept CIT(A)'s order which takes into account assessee's categorical submission and thereby hold that the rent charged by assessee was fair, rather higher than prevailing rent and further holding that there was no violation of section 13 of the Act. Faced with this situation, we are not inclined to make any interference with the order of CIT(A); the same is hereby upheld. These grounds are therefore dismissed.

Ground No. 3 for both years:

14. In these grounds, the revenue claims that the CIT(A) has erred in deleting addition of Rs. 9,28,06,233/- and Rs. 9,70,52,488/- for AY 2011-12 and AY 2012-13 respectively.

15. This issue has been dealt by AO in Para 11.7-11.8 of assessment-order. Basically, due to alleged violation of section 13 on account of charging of lesser rent from three concerns as discussed in foregoing paras, the AO came to a further conclusion that the assessee was not entitled to the benefit of exemption u/s 11/12 of the Act. Accordingly, the AO denied exemption u/s 11/12 fully to assessee and considered the net surplus of Rs.

9,28,06,233/- and Rs. 9,70,52,488/- for AY 2011-12 and AY 2012-13 respectively shown by assessee as taxable income.

16. This issue is consequential to the issue of violation of section 13 dealt in foregoing paras. Since we have already agreed with CIT(A)'s order that there was no violation of section 13, this issue automatically comes to an end. Consequently, the grounds raised by revenue do not have any worth and are being dismissed.

Ground No. 4 of AY 2011-12 and Ground No. 5 of AY 2012-13:

17. In these grounds, the revenue claims that the CIT(A) has erred in deleting addition of Rs. 8,62,52,994/- + Rs. 1,60,40,891/- + Rs. 15,66,571/- in AY 2011-12 and Rs. 3,94,27,706/- + Rs. 1,85,49,777/- in AY 2012-13 made by AO u/s 69B on account of unexplained investments in buildings.

18. Ld. AR carried us to Para No. 13 to 15 where the AO has made these additions. It is submitted by Ld. AR that the AO has made these additions by making a reference dated 02.08.2013 to Departmental Valuation Officer (DVO) u/s 142A and after taking into account the final report dated 03.12.2013 submitted by DVO to him, on the basis of difference in the cost of construction recorded in books of account of assessee and the valuation thereof reported in DVO's report. Thereafter, during first-appeal, the CIT(A)

deleted addition by holding the reference made by AO u/s 142A as non-maintainable. The reasoning adopted by Ld. CIT(A) is that prior to amendment in section 142A from 01.10.2014, the AO could not have make such a reference without finding any defect in books of account and without rejecting books of account. In accepting this, Ld. CIT(A) relied upon several judicial rulings including the decision of Hon'ble Apex Court in **Sargam Cinema Vs. CIT (2010) 328 ITR 513 (SC)**. Ld. AR submitted that the same view has also been taken by ITAT, Indore in assessee's own case for AY 2013-14 & 2014-15 in **ITA No. 479 & 480/Ind/2018, order dated 15.12.2023**. Therefore, Ld. AR contended that this issue is already settled in favour of assessee by Hon'ble Apex Court as followed by ITAT, Indore in assessee's own case and the same view should be applied here also.

19. Ld. DR for revenue dutifully relied upon order of AO although she could not contradict the submissions made by Ld. AR.

20. We have considered rival submissions of both sides and perused the orders of lower-authorities. After a careful consideration, we find that the assessee's case is directly covered by the decision of **ITAT, Indore** in assessee's own case read with the decision of Hon'ble Supreme Court in **Sargam Cinema (supra)**. Respectfully, following the same, we are inclined to uphold the order of CIT(A) and dismiss these grounds of revenue.

Ground No. 4 of AY 2012-13:

21. In this ground, the revenue claims that the CIT(A) has erred in deleting addition of Rs. 2,35,474/- made by AO on account of unexplained cash u/s 69A.

22. Ld. AR carried us to Para 12 of assessment-order where the AO has made this addition. Referring to same, he submitted that during search-proceeding, physical cash was found with different colleges of assessee as under:

1	Shriniwas Education Society, Anand Nagar, Bhopal	32,279/-
2	Sushila Devi College, Indore	1,09,800/-
3.	Bansal Engineering College, Bhopal	93,395/-
	Total	2,35,474/-

During assessment-proceeding, when the AO asked assessee to explain sources of such cash found, the assessee submitted in reply letter dated 18.03.2014 that the cash found with various colleges was normal petty cash balance maintained at each college to run day to day activities and the same was duly reflected in normal books. However, the AO rejected assessee's reply by stating that at the time of search, the assessee has not explained such cash with books of account. Ld. AR submitted that the AO has made full addition of cash physical found as if there was Nil cash balance in books of assessee; this approach of AO itself shows that the addition has been made in utter disregard to assessee's factual submission. Ld. AR went on submitting that during first-appeal, the CIT(A) has rightly deleted addition holding that the AO has not pointed out any specific error in the cash-book and also holding that the AO has not pointed out difference between books of account vis-à-vis cash found. He submitted that the order passed by CIT(A) is very much correct and must be upheld.

23. Ld. DR for revenue re-iterated the observations made by AO and argued that assessee has not explained the availability of cash-balance with reference to books of account at the time of search. However, Ld. DR accepted that the amount involved is small and the Bench may take a call.

24. We have considered rival submissions of both sides and perused the orders of lower-authorities. After a careful consideration, we find that the search authorities have found petty amounts of cash with three different colleges at three different places which are not abnormal or unusual. Further, the assessee has also submitted that the cash-balance is duly reflected in its cash-book. Considering these aspects, the submission of assessee can be treated as bona fide and believable. Therefore, we are not persuaded to upset the order passed by CIT(A) in this regard, the same is hereby upheld. These grounds are also dismissed.

25. In view of above discussions, all grounds raised by revenue in both of the appeals are dismissed.

Assessee's C.O. for both years:

26. In both of the Cross-Objections, the assessee has raised identical grounds. Basically, the assessee's grievance is that the CIT(A) has erred in not adjudicating Ground No. 3 and Ground No. 13 to 19 of the first-appeal raised by assessee before him in both years even though the CIT(A) has granted relief to assessee on primary grounds. Ld. AR submitted that the assessee needs such an adjudication for any litigation which may ensue. The request of assessee is not objected by Ld. DR. In view of this, we direct the CIT(A) to adjudicate assessee's grounds appropriately after giving

necessary opportunity to assessee. The assessee is also directed to extend full co-operation to CIT(A) for disposal of those grounds. Consequently, the assessee's Cross-Objections are allowed.

27. Resultantly, the revenue's appeals are dismissed and assessee's cross-objections are allowed.

Order pronounced in open court on 29.02.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/ Dated : 29.02.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore