

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 104/DEL/2019 [A.Y. 2007-08]

The Dy CIT [E]  
Circle - 1( 1)  
New Delhi

Vs.

Indian Grameen Services  
D-9, 1<sup>st</sup> Floor, Greater Kailash  
Part -1, Kailash Colony, New Delhi

PAN - AAACI 1644 P

(Applicant)

(Respondent)

Assessee By : Shri Arvind Kumar, Adv  
Department By : Shri Sandeep Kumar Mishra, Sr. DR

**Date of Hearing : 08.05.2024**  
**Date of Pronouncement : 15.05.2024**

**ORDER**

**PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-**

This appeal by the Revenue is preferred against the order of the  
CIT(A) - 40, Delhi dated 08.10.2018 pertaining to A.Y. 2007-08.

2. The Revenue has raised the following solitary ground of appeal:

*"Whether on the facts & the circumstances of the case, Id. CIT(A) has erred in allowing the benefit of exemption u/s 11 & 12 of the Act ignoring the fact that the assessee had charged inadequate rent from the specified person within the meaning of section 13(3) of the Act which is a violation of section 13(2)(b) of the Act."*

3. Brief facts relating to this issue are that the assessee filed a return of income for AY 2007-08 on 31.10.07 disclosing nil income on account of it being registered as a company u/s 25 of the Companies Act, 1956 as also registered u/s 12A(a) of the Act vide registration dated 19.08.1987. The assessee has its corporate office at Surabhi Arcade, Hyderabad which was purchased out of part of corpus fund provided by Swiss Agency for Development and Corporation (SDC).

4. During the course of assessment proceedings, the Assessing Officer observed that the assessee had rented out its premises to M/s Bhartiya Samriddhi Finance Ltd (BSFL) and M/s Bhartiya Samriddhi Investment & Consulting Service (BASIC), organizations who are persons specified within the meaning of section 13(3) of the Income-tax Act, 1961 [the Act, for short], which fact was noted in the Audit Report.

5. The assessee was asked to explain details of property given on rent alongwith agreements and justify the rental value.

6. In response, the assessee filed rent agreement alongwith rent valuation report dated 25.07.2007 prepared by a registered valuer and chartered engineer. The assessee contended that the rent was within the market limits.

7. However, the Assessing Officer found no clause regarding termination of the agreement in the agreement entered into on 03.04.2006 and no security deposit was taken. The total rental charges was Rs. 17,68,000/- per annum as per tenancy agreement.

8. Considering the prevailing rental market rates for a similar type of property in the vicinity, the Assessing Officer observed that the monthly rental value should be determined at Rs. 25/- on the lower side to Rs. 28/- per sq. ft on the higher side. The Assessing Officer was of the view that the assessee has given the property on rent at substantially concessional ratable value to companies which controlled its activities by virtue of being majority shareholders of the assessee company. Section 13(2)(b) prohibits such concession.

9. The Assessing Officer concluded by holding that the assessee has made available the building owned by it to persons referred to in section 13(3) of the Act without charging adequate rent or compensation and has violated provisions of section 13(2)(a) and 13(2)(b) r.w.s 13(3) of the Act. Accordingly, the Assessing Officer assessed the total income of the assessee at Rs. 4,35,58,090/- by denying the claim for application of income and exemption u/s 11 on account of infringement of section 13(2)(b) r.w.s 13(3) of the Act.

10. Aggrieved, the assessee went in appeal before the ld. CIT(A) who confirmed the order of the Assessing Officer and dismissed the appeal of the assessee. The assessee went in appeal before the ITAT which set aside the matter back to the CIT(A). In the 2<sup>nd</sup> round, the CIT(A) discussed the issue of adequacy at length and relying on the Hon'ble ITAT Delhi Bench 'A' in the case of Shree Ram Vaikuntha Trust vs ITO [(1986) 15 ITD 1 (Delhi), came to the conclusion that the rent received from the specified concerns was adequate. The ld. CIT(A) supported his conclusion as under :

*"The expression 'adequate' means legally sufficient or such as is lawfully and reasonably sufficient. In the case of CCT v. Indo Traders & Agencies (Madras) (P.) Ltd. [1981] 131 ITR 313, it was held by the Madras*

*High Court that adequate consideration was not necessarily what is ultimately determined someone else as the market value and that unless the price was such as to shock the conscience of the court, it was not possible to hold that the transaction was otherwise than for adequate consideration. This is a test which the rent under consideration had to meet.*

**4.1.9 In the case of Ram Bhawan Dharamsala v. State of Rajasthan [(2002) 258 ITR 725 (Raj.)], it has been held that letting out of properties to interested persons at highly subsidised rent was a clear-cut violation of section 13(2)(b) and, therefore, the assessee was liable to lose its exemption. In this case, a portion of the property was let out at a meagre amount of rent to a firm, in which one of the trustees was a partner and the property of the trust was also utilised by the members of the family of the settlor. The Income-tax Officer was of the view that the rent of the first floor of the trust property let out to the firm was only Rs. 200 per month, as against the estimated rent Rs. 16,000 and, therefore, this was hit by the provisions of section 13(2)(b).**

**4.1.10 From the facts of the case as noted above, it is seen that the rent received was Rs. 17.68 lakhs and the rent which could have been received as per the value given by the valuer taken at the lower side and as determined by the Id. CIT(A) in the earlier proceedings was Rs. 19,18,824/- on the**

basis of which it was held that the provisions of section 13 were applicable since the rent charges was lesser than the fair market value. When considered in view of the observation of the Hon'ble Madras High Court as above and also in view of the observations of the Hon'ble Rajasthan High Court as above, it is seen that the difference between the rent received and as per the valuer is Rs. 1,50,824/ - which is less than 10% and cannot be said to be not adequate.

4.1.11 In view of the discussion above, the finding of the Assessing Officer cannot be upheld and it is held that the rent received from the specified concerns was adequate in view of the facts of the case. Grounds of appeal nos. 1 and 2 are allowed.”

11. The Revenue is now aggrieved and has come in appeal before us.
12. Before us, the ld. DR relied upon the order of the Assessing Officer and argued that the fair market value as determined by the AO should be taken as adequate rent.
13. On the other hand, the ld. counsel for the assessee reiterated what has been stated before the lower authorities. He argued that there is no quarrel on the issue of tenants being specified entities u/s

13(3) of the IT Act. He further argued that the area of the premises rented out is also not a factor in consideration. The ld counsel vehemently argued that the rent paid to the specified parties were adequate and does not violate section 13(2)(b). To buttress his arguments, the ld counsel of the assessee relied upon the judgment of the Hon'ble Delhi High Court in the case of Hamdard National Foundation [India] in ITA 142/2021 and others order dated 16.02.2.22.

14. We have heard the rival submissions and have perused the relevant material on record. The issue for determination raised before us by the revenue in the appeal is on the invocation of Section 13(2)(b) read with Section 13(3) of the Act on the issue of adequacy of rent in the facts of the present case. The provision of sections involved are as under:

" 13. [Section 11](#) not to apply in certain cases. --

*xxxxx (2) Without prejudice to the generality of the provisions of clause (c) 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), --*

xxxxx

*(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;*

*xxxxx (3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely:--*

15. At the outset, there is no dispute to the fact that property of the assessee at Hyderabad was rented out to two companies in which one director is connected by directorship and shareholding and are thus covered u/s 13(3) as specified person. The assessing officer has taken the area of the rented premises at 13,438 sq ft and calculated the rent @ 26.2 per sq.ft at Rs 42,73,284/-. The CIT(A) has corrected the area of rented premise to 9406 sq.ft on the basis of Annexure to statement of total income of the assessee for AY 2007-08 and taken the rent @17 per sq.ft. at Rs 19,68,000/- adopted by the earlier CIT(A). The rent received by the assessee from the specified person is Rs 17,68,000/- which works out to be @ Rs 15.66 per sq.ft. The issue, therefore, for our determination is whether the rent received by the assessee from its 'specified persons' were 'adequate rent or other compensation' to

escape the mischief of section 13(2)(b). To understand the meaning and concept of “adequate consideration”, the judgement of the hon’ble Delhi High Court in the case of Hamdard National Foundation [India] is very illuminating wherein it has been held as under:

*20.2 Under [Section 13\(2\)\(b\)](#), the burden of showing that the rent charged by the respondent/assessee was not “adequate” is on the revenue. Unless the price/rent was such as to shock the conscience of the Court and to hold that it cannot be the reasonable consideration at all, it would not be possible to hold that the transaction is otherwise bereft of adequate consideration. It is necessary for the Assessing Officer to show that the property has been made available for the use of any person referred to in Sub-section (3) of [Section 13](#) otherwise than for adequate consideration. In order to determine the same, the context of the facts of the particular case needs to be appreciated. For determining “Adequate” consideration/rent, however, market rent or rate is not the sole yardstick; other circumstances of the case also need to be considered.*

*20.2.1. In [Reva Investment Pvt. Ltd. v. Commissioner of Gift Tax, Gujarat II](#), (2001) 9 SCC 111, while considering [Section 4\(1\)](#) of the Gift Tax Act, 1958, the Supreme Court held that „it is necessary for the Assessing Officer to show that the property has been transferred otherwise than for adequate consideration. The finding as to the inadequacy of the consideration is an essential sine qua non for application of the provisions of “deemed*

*gift". The provision is to be construed in a broad commercial sense and not in a narrow sense. In order to hold that a particular transfer is not for adequate consideration, the difference between the true value of the property transferred and the consideration that passed for the same must be appreciated in the context of the facts of the particular case."*

20.2.2. In [Commissioner of Gift Tax, Tamil Nadu - I v. Indo Traders & Agencies \(Madras\) P. Ltd.](#), (1981) 131 ITR 313 (Madras), again while considering the provision of [Section 4\(1\)\(a\)](#) of the Gift Tax Act, 1958, the High Court of Madras observed as under:

*"In order to apply this provision, it is necessary for the GTO to show that the property is transferred otherwise than for adequate consideration...*

*... In considering this provision a Full Bench of the Patna High Court in [H. P. Banerjee v. CIT](#) [1941] 9 ITR 137 examined the earlier cases regarding the interpretation of the expression "adequate consideration". The distinction between "good consideration" and "adequate consideration" was pointed out and in the judgment of Manohar Lall J., reference was made to some of the earlier authorities on the point. In *Tennent v. Tennent* [1870] LR 2 Scotch and Divorce Appeal Cases 6, Lord Westbury observed:*

*"But the transaction having been clearly a real one, it is impugned by the appellant on the ground that he parted with the valuable property for a most inadequate consideration. My Lords, it is true*

*that there is an equity which may be founded upon gross inadequacy of consideration. But it can only be where the inadequacy is such as to involve the conclusion that the party either did not understand what he was about or was the victim of some imposition. It is impossible to say that the inadequacy of consideration in this case amounts to anything like proof to warrant either of those conclusions".*

*The same conclusion was reached by the other members, who decided the case in the House of Lords.*

*21. In the present case, the learned ITAT has observed that the revenue had failed to bring on record any cogent evidence to show that the rent received by the respondent/assessee, in the facts of the case, was inadequate. It has held that the material collected from the internet as well as the estate agents cannot be termed as a corroborative piece of evidence in this regard. It has further held that the rent received by the respondent/assessee exceeds the valuation adopted by the Municipal Corporation of Delhi for the purpose of levying house tax. The relevant finding of the learned ITAT is reproduced hereinbelow:*

*"12. It could be seen from the letters issued by HSA reality services and CB Richard Ellis South Asia private limited, they have given information available with them and to the best of their knowledge and belief whereas CB Richard Ellis South Asia Private limited is clear in their observation that there is no verified market referral rate and the information furnished by them and make no guarantee, warranty or representation about it,*

*requested the learned Assessing Officer to independently verify and confirm its accuracy and completeness. They are also specific in their statement that the information furnished by them does not represent the current or future performance of the market. Even on the face of the caveat mentioned above, it does not seem from the record that the Assessing Officer did any independent exercise to verify the correctness or applicability of the information furnished by those two persons vis-à-vis the extent location and suitability of the property in dispute for its comparison to the market rates provided by those persons and also the information gathered from the website.*

*xxxxx*

*15. On consideration of the entire material before us and in the light of the submissions made on either side which are conclusive that the law requires the Revenue to bring on record cogent evidence to justify the invocation of [section 13](#) of the Act and the material collected by the learned Assessing Officer from the Internet as well as the estate agents cannot be termed as the collaborative piece of evidence to any facts which is established substantively first; that the actual rent received by the assessee from HLI far exceeds the valuation adopted by the MCD for the purpose of levying house tax as could be seen from the information furnished by the assessee and also that unless and until the learned Assessing Officer brings on record some credible information, the burden to rebut does not shift to the assessee.*

16. We are, therefore, convinced with the reasoning given by the Ld. CIT(A) in his order for the Assessment Year 2008-09 wherein while dealing with this issue in detail, the Ld. CIT(A) reached a conclusion that on the date of the observations of the learned Assessing Officer that there is no mechanism with the Department to determine valuation of rents imperative the adjudicatory authorities to look further corroborative evidence in the absence of which it is not desirable to disturb the consistent view taken over a period of more than two decades. We are in agreement with the Ld. CIT(A) that not only on the basis of the rule of consistency but also on the basis of the facts relating to the rent received by the assessee from HLI vis-à-vis the rent under the [Delhi Rent Control Act](#). Without vouchsafing the correctness of the information received from the website and without correlating the information furnished by the property dealers without realities on ground with a specific reference to the property in dispute, it is not open for the Assessing Officer to proceed to make addition, that disturbing the accepted position for about more than two decades. No change of facts and circumstances are brought on record and no independent evidence with a specific relation to the property in dispute is available on record. Merely because the other charitable trust guilty property for accommodation of the person covered under [section 13\(3\)](#) of the Act, such a fact ipso facto does not lead to the addition in the hands of the assessee without first clinching the issue with corroborative piece of evidence. We therefore, hold that there is no justification for addition made by the learned Assessing

*Officer by invoking the provisions under section 13(2)(b) of the Act read with section 13(3) of the Act and we direct him to delete the same."*

16. The assessing officer action and the ld DR arguments rest upon the assumption that the fair market value is the sole yardstick for the determination of 'adequate rent'. According to him the rent should be calculated at Rs 26/- per sq.ft while the earlier CIT(A) took the same at Rs 17/- per sq ft. Considering all the factors, the CIT(A), in the instant appeal, arrived at the conclusion that the difference between the rental value adopted by the earlier CIT(A) and the rental value adopted by the assessee is less than 10% and the same therefore cannot be termed as not adequate. Considering the factual matrix of the instant case, we are also of the considered view that the quantum of rent declared by the assessee is adequate and is quite reasonable in the facts and circumstances of the case. To adopt the phrase of the Hon'ble Court above, it does not "shock the conscience of the court". In view of our above observations and elaborate deliberations on the concept of adequacy by the Hon'ble High Court of Delhi [supra], we are inclined to agree with the findings of the ld. CIT(A) and accordingly sustain the same.

17. In the result, the appeal of the Revenue in ITA No. 104/DEL/2019 is dismissed.

The order is pronounced in the open court on 15.05.2024.

Sd/-

**[MADHUMITA ROY]  
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]  
ACCOUNTANT MEMBER**

Dated: 15<sup>th</sup> MAY, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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