

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 4218/Del/2017
Asstt. Year: 2012-13

Shri Balaji Human Resources Development Trust, 75-76, Amrit Nagar, South Extn.-1, New Delhi – 110 003 PAN AAGTS6912B	Vs.	ITO, Exemption Ward-2(2) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Ajay Baheti, Advocate
Department by:	Shri Anuj Garg, Sr. DR
Date of Hearing:	07.05.2024
Date of pronouncement:	20.05.2024

ORDER

PER VIMAL KUMAR, JM

The appeal is against order dated 20.4.2017 of Learned Commissioner of Income Tax (Appeals) confirming assessment order dated 23.3.2015 assessing income of assessee as Rs. 2,13,77,560/- and ordered that amount of Rs.1,38,07,600/- out of Rs. 2,13,77,560/- was to be taxed at maximum marginal rate.

2. Brief facts of case are that appellant / assessee "Shri Balaji Human Resources Development Trust" filed return of income for

the year 2012-13 declaring income as NIL on 28.09.2012. The return was processed under section 143(1) of the Income Tax Act, 1961. The case was selected for scrutiny through CASS. Initial notice under section 143(2) dated 23.09.2013 was issued. Learned Authorised Representative of assessee appeared and filed requisite details and documents. The appellant / assessee is trust registered under section 12A of Income Tax Act, 1961 vide order dated 29.11.2007. The trust is engaged in field of education and running "Fostiima Business School", New Delhi. The assessee during the year under consideration declared income from college fee, bank interest and miscellaneous income. After assessment proceedings Learned Assessing Officer vide order dated 23.3.2015 determined an amount of Rs. 2,13,77,560/- and ordered that amount of Rs. 1,38,07,600/- was to be taxed.

3. Appellant assessee preferred an appeal before the Learned CIT(A) which was dismissed vide order dated 20.4.2017.

4. Being aggrieved appellant / assessee preferred present appeal.

5. Learned Representative for assessee submitted that appellant / assessee is a registered trust and is engaged in field of education and running "Fostima Business School". New Delhi. Learned CIT(A) erred in upholding disallowance of Rs. 1,01,47,600/- under section 13(2)(g) read with section 13(1)(c) of the Income Tax Act, 1961. Amount of Rs. 1,01,47,600/- was paid to M/s. Fostiima Integrated Learning Resources Private Limited (FILR) an entity covered under section 13(3) of Income Tax Act for the scope of work undertaken by it by under the

Memorandum of understanding dated 11.7.2011. The amount paid was not excessive at all and was commensurate with the scope of work involved and in fact the said entity had incurred business loss as is clear from the audited financial statement for the relevant financial year. Learned Assessing Officer nowhere have demonstrated in Assessment Order as to how business support expenses incurred by the appellant trust was not commensurate with the market value of the services availed of from FILR. Learned Assessing Officer failed to hold that payments made by appellant trust for taking the work from that sister concern was at arm's length price or not. The Learned Assessing Officer disallowed the expenses of appellant trust on the solitary basis that FILR was an entity covered under section 13(3) of Income Tax Act and thus the appellant by availing services from it had violated conditions stipulated under section 13(2)(g) of Income Tax Act and had diverted its income during the year in favour of sister entity.

6. Learned Representative of assessee submitted that Learned CIT(A) erred in upholding disallowance of Rs. 36,60,000/- under section 13(2)(c) being the amount paid as salary to the faculty members being unjustified. It is a fact that the persons had educational qualifications and experience to conduct day to day activities. The persons were engaged in full time management and teaching activities. Profile of the three persons submitted before the departmental authority are as under:-

“Profile of Anil Somani

Anil Somani is a Chemical Engineer from IITM Mumbai and PGDM from Indian Institute of Management from Ahmedabad.

He had wide varieties of industry experience in various domains. He is the Chairman of the Fostiima Business School. He oversees entire operations of placement admissions and the academics at Fostiima Business School as well as gives the strategy directions to the institute for growth and way forward.

Profile of Geetika Somani

Geetika Somani is a B.Com Graduate from Jesus and Marry College, Delhi University New Delhi. She is an accomplished language trainer, PDP expert has been instrumental in improving the English communication skills of the Students of antennal specially from Bihar and Eastern Uttar Pradesh. Through her grooming exercise, personality development activity, mock interviews and group discussion preparations she has manage to raise the interview performance of Fostiima Students so that they have been able to crack good high value Corporate jobs helping the placement of the College.

Profile of Kamal Sharma

Kamal Sharma is Graduate from St. Stephan College, New Delhi from the premium st. Stephan College of New Delhi and Indian Institute of Management Ahmedabad as director of the institute He is fully responsible for academic delivery to the students which intels curriculum design, course outline, lesson plan, learning outcomes for every subject and also the mapping of learning outcomes as well as a feedback of the faculty. Mr. Sharma also does Faculty selection and allotment for various courses and subjects.”

7. Learned Authorised Representative for appellant / assessee submitted that Learned CIT(A) erred in confirming disallowance of Rs. 15,05,000/- being commission paid to various entities. The note justifying different commissions to consultants provide:-

“In order to meet our fixed expenses it is imperative that we have a certain number of students.

Pressures in the job market are such that the number of students seeking admission to MBA colleges have dropped greatly.

To mitigate the situation we take the extensive help of referrals by consultants and counselors.

There is no standard amount in the industry, the payment is always negotiated amount which depends upon the number of referred student taking admission, quality of students, the consultants infrastructure and expense on prospecting & marketing.

The fees paid are cumulative and increase with the years and numbers; successful consultants and counselors negotiate with various parties and get different commissions from various business schools.

These are negotiated settlements varying/depending on success rate of consultants.”

8. Learned Authorised Representative for appellant assessee submitted that Learned CIT(A) erred in confirming disallowance of Rs. 20,50,000/- being expenses on purchase of computer for free distribution to the students despite filing of copies of invoice, quotations and studentwise list illegal.

9. Learned Authorised representative of appellant assessee submitted that Learned CIT(A) erred in upholding not considering the claim of depreciation of Rs. 12,59,460/- against Rs. 1,92,507/-. Hon'ble Supreme Court of India in Civil Appeal No. 7186 of 2014 in the case of CIT vs. Rajasthan and Gujarati Charitable Foundation Poona held that charitable institutions registered under section 12A of the Income Tax Act are entitled to depreciation of cost of assets. Therefore appeal may be accepted.

10. Learned DR submitted that impugned orders are well reasoned and sustainable. Appeal may be rejected.

11. From examination of record in light of aforesaid rival contentions it is crystal clear that appellant / assessee is a charitable trust registered under section 12A of the Income Tax Act vide order dated 19.11.2007. Appellant assessee is engaged in field of education and running the “Fostima Business School”. Appellant/assessee has entered into memorandum of understanding dated 11.7.2011 with M/s. Fostima Integrated Learning Resources Private Limited (FILR). Appellant trust availed exemption of its income under section 11 of Income Tax Act by complying with stipulated conditions under section 12AA of Income Tax Act read with section 11 and 13 of Income Tax Act, 1961. Learned Assessing Officer disallowed sum of Rs. 1,01,47,600/- under head of Business Support Services paid to FILR being violative of section 13(3) of Income Tax Act, 1961. Learned Assessing Officer nowhere demonstrated as to how the business support expenses incurred by appellant trust was not commensurate with the market value of the services availed from FILR an entity covered under section 13(3) and thus the appellant trust by filing services violated the conditions under section 13(2)(g) of the Income Tax Act, 1961 and diverted its income. The statement of assessable income, balance sheet and statement of profit and loss accounts of FILR shows income of Rs.1,09,49,450/- .

12. In absence of any facts and circumstances demonstrating as to how the business support expenses were not commensurate was not sustainable. Salary expenditure of Rs. 36,60,000/- to faculty members was disallowed due to non filing of qualifications and experience and elaborate the services rendered by persons.

In fact appellant assessee trust had engaged in highly technical qualified persons in whole time management activities of trust as well as regular time teachers in business school. The details of educational qualification and experience in absence of any other evidence to the contrary cannot be said to be not just fair and reasonable.

13. As per note payment of Rs. 15,05,000/- as commission to consultants and counsellors was justified.

14. Keeping in view invoice, quotations and studentwise list the disallowance of expenses of Rs. 20,50,000/- on computers to students is not just fair and reasonable. In view of above material facts the impugned orders are not legal and sustainable.

15. No other point was argued.

16. In the result appeal of the assessee is allowed. Both the impugned orders of Learned Assessing Officer and Commissioner of Income Tax (Appeals) are set aside.

Order pronounced in the open court on 20th May, 2024.

sd/-

**(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER**

Dated: 20/05/2024

sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT 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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	