

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

ITA No. 321/Ind/2023
Assessment Year: 2014-15

Bal Bhavan School, 1, Shyamla Hills, Bhopal (Assessee/Appellant)	बनाम/ Vs.	DCIT (Exemption), Bhopal (Revenue/Respondent)
PAN: AAAAB3678G		
Assessee by	Ms. Nisha Lahoti, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	15.05.2024	
Date of Pronouncement	10.06.2024	

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 26.06.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 23.12.2016 passed by learned DCIT (Exemption), Bhopal ["AO"] u/s 143(3) of the Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2014-15, the assessee has filed this appeal.

2. The background facts leading to present appeal are such that the assessee is a society engaged in charitable purpose of imparting education

and registered by Income-tax Department u/s 12A of the Act. The assessee states that it runs a school named "Bal Bhavan School" since 1976 which is a very famous school for class I to class XII for CBSE Board and its students have done their names in India and abroad. For AY 2014-15, the assessee filed return declaring a total income of Rs. Nil after claiming exemption u/s 11/12 of the Act. The case of assessee was selected for scrutiny and the AO completed assessment u/s 143(3) after making certain adjustments, namely (i) addition of Rs. 12,04,820/- on account of excessive payment of lease-rent to specified persons attracting section 13(1)(c)/13(2), (ii) another addition of Rs. 41,72,105/- on account of bogus payment of computer charges to a specified person attracting section 13(1)(c)/13(2) and (iii) addition of Rs. 98,55,734/- due to denial of exemption u/s 11/12 consequent upon violation of section 13(1)(c)/13(2). Accordingly, the AO determined total income at Rs. 1,52,32,659/-. Aggrieved, the assessee contested these adjustments in first-appeal but did not get any relief. Now, the assessee has come before us in next appeal.

3. At the start of hearing, referring to Para No. 4.2 of assessment-order, Ld. DR for revenue/respondent pointed out that the AO has noted that identical adjustments were also made in assessee's case in an earlier AY 2012-13, therefore the status of AY 2012-13 has to be ascertained. In reply, Ld. AR for assessee/appellant submitted that the assessee has opted for 'Vivad Se Vishwas' Scheme for that year and hence the issues stand closed.

4. The assessee has raised following grounds in this appeal:

- “(1) On the facts and circumstances of the case and applicable law, Ld. DCIT (Exemption), Bhopal erred in passing the assessment order u/s 143(3) which is contrary to the material on record and provisions of the Act, unjust and bad in law.*
- (2) On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in sustaining the addition of Rs. 12,04,820/- as alleged excess lease rent payment to the specified persons within the meaning of section 13(1)(c) and 13(2).*
- (3) On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in sustaining the addition of Rs. 41,72,105/- made towards computer expenses as diversion of income to the persons specified within the meaning of section 13(1)(c) and 13(2).*
- (4) On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in denying the benefit of exemption claimed u/s 11 of Rs. 98,55,734/- by alleging that the assessee has applied the income towards the benefit of persons specified u/s 13(3).*
- (5) On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in not considering the submissions and documentary evidences placed on record in response to the various notices issued in proper perspective.*

Ground No. 1 and 5:

5. These grounds are general in nature and covered by other grounds. Therefore, they do not require any separate adjudication by us. We proceed to adjudicate other specific grounds in subsequent discussions.

Ground No. 2:

6. In this ground, the assessee claims that the CIT(A) has erred in sustaining addition of Rs. 12,04,820/- made by AO on account of excessive lease rent paid to specified persons attracting section 13(1)(c)/13(2).

7. The AO has dealt this issue in Para 4.5 & 4.5 of assessment-order. The AO has noted that the assessee paid lease rent of Rs. 14,65,992/- (or

Rs. 14.65 lacs) to specified persons. When the AO show-caused assessee for justification of payment, the assessee tried to show the reasonable of rent by filing property tax return showing 'municipal rent value' of Rs. 26,59,957/-. The assessee claimed that the rent paid by two tenants was just Rs. 20.05 lacs viz. Rs. 14.65 lacs paid by assessee (+) Rs. 5.40 lacs paid by another tenant named "M/s West Wind", thus the total rent paid by two tenants was much lesser than the 'municipal rental value'. The AO, however, rejected assessee's submission for the reason that the property tax return showed 'municipal rental value' of entire property consisting of land (+) building and the value of land was only Rs. 3,57,770/-. The AO further noted that as per lease-agreement submitted by assessee, the assessee had taken only land on rent; the building was constructed and owned by assessee. Then, the AO noted that the rent of Rs. 14.65 lacs paid by assessee constituted 73% of the total rent of Rs. 20.05 lacs paid by both tenants. Therefore, 'municipal rental value' of land *qua* assessee shall be Rs. 2,61,172/- (73% of Rs. 3,57,770/-). Thus, the AO computed excess rent of Rs. 12,04,820/- paid by assessee [Rs. 14,65,992 (-) Rs. 2,61,172] to specified person in terms of section 13(1)(c) r.w.s. 13(2). Accordingly, the AO made an addition of excessive payment of Rs. 12,04,820/- and also applied maximum marginal rate.

8. During first-appeal, the assessee submitted a valuation-certificate to show that the 'market value' of the land taken by assessee on rent was Rs. 68.31 crore and the assessee has paid rent of Rs. 14.65 lacs only which

constitutes approx. 0.21% of 'market value'. The assessee submitted that the **ITAT, Mumbai in The Sardar Pratap Singh Education Society Vs. CIT, ITA No. 487/Mum/2021 order dated 11.06.2021** accepted 1.86% of 'market value' of property as a reasonable rent. The assessee also submitted that the land taken by assessee was located in posh area of city forming a major attraction. Accordingly, the assessee claimed that the payment made by it was lesser as compared to prevailing market rate and the same should be accepted. However, the CIT(A), in Para 4.3.2 of his order, made following observation, rejected assessee's submission and upheld AO's order.

"When the municipal rental value for the land was arrived at Rs. 2,61,772/- only, why such payment of Rs. 14.65 lakhs had been made, could not be explained by the appellant either before the AO during the assessment proceedings or before the undersigned during the appellate proceedings. Whether the same payment was 0.21% of the market value as how such market value had been arrived at on the land owned by the interested persons vis-à-vis the construction of the building made by the appellant, had also not been explained by the appellant in the submission so made."

9. Before us, Ld. AR for assessee raised following contentions to assail the action of lower-authorities:

- (i) The assessee has taken a vast area of 2.25 acres (or 0.910 hectare or 98,010 square feet area) of land on rent from joint owners Shri Omar Ali and Shri Raashid Ali and paid rent of Rs. 8,62,992/- and Rs. 6,03,000/- respectively to them aggregating to Rs. 14,65,992/- in terms of written lease-deeds duly stamped, copies filed at Page 82 to 91 of Paper-Book.
- (ii) The assessee has filed 'valuation-certificate' in support of 'market value' of land, the same is submitted at Page 94 of Paper-Book and reproduced below:

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SHAILENDRA SHARMA & ASSOCIATES

Architecture, Planning, Interior, Landscape consultancy services

This is to certify that collector guideline rate of commercial land situated at Shyamla Hills, Bhopal- 462013 for the financial year 2013-14 is Rs 75000/- per Square Meter (i.e Rs 6970.26 per Square Feet).

Mr Omar Faruq Ali and Mr Raashid Ali owner of property situated at Gram Dharam Puri Patwari halka No 40 R.N.M.- 16 Vikas Khand Fanda Tehsil Huzur Shyamla Hills Bhopal-462013 having total market value of Rs 68.31 Crore details of which is enclosed hereunder.

S.No	Particulars	Total Area	Total Amount (in Rs)
1	Property situated at Gram Dharam Puri Patwari halka No 40 R.N.M.- 16 Vikas Khand Fanda Tehsil Huzur Shyamla Hills Bhopal-462013	2.25 Acre/.910 Hectare/98010 Square Feet	Rs 68,31,55,182.6 (6970.26*98010)
	Total		Rs 68,31,55,182.60



Yours sincerely
(Shailendra Sharma)

For Shailendra Sharma & Associates

Office: A-105, Janki Nagar Chunnabhathi, Bhopal (M.P.)
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In this certificate, the valuer has adopted collector guideline rate of land @ Rs. 6,970.26 per square feet and accordingly computed the market value of 98,010 square feet area of land at Rs. 68.31 Crore. The certificate is clearly mentioning all these facts/figures/working. Therefore, the CIT(A) has wrongly stated that how the 'market value' was found, is not explained by assessee. Having said thus, Ld. AR went on submitting that the rent paid by assessee was Rs. 14,65,992/- whereas the market value of land was Rs. 68.31 crore; thus the rent-payment was just 0.21% of the 'market value'. In ***The Sardar Pratap Singh Education Society (supra)***, the market value of land was Rs.13,03,76,400/- crore and the assessee paid rent of Rs. 24 lakhs which worked out 1.86%. The ITAT, Mumbai accepted 1.86% as reasonable. Then, the rent of 0.21% paid by assessee is very reasonable, in fact much lower.

- (iii) That the same issue of reasonability of rent has been examined by AO in scrutiny-assessment for subsequent AY 2020-21. The AO has passed assessment-order u/s 143(3) dated 19.09.2022, copy at Page 115-119 of Paper-Book. Drawing our attention to Para 3.2.2 and 3.2.4 of order, Ld. AR showed that in subsequent AY 2020-21, the assessee paid much higher rent of Rs. 53.77 lacs constituting about 0.82% of the market value and the AO has accepted the same as reasonable in the light of very same decision of ***The Sardar Pratap Singh Education Society (supra)*** and not taken any adverse inference

regarding section 13(1)(c)/13(2). Therefore, the payment of Rs. 14,65,992/- made in current year constituting just 0.21% of market value, is very much reasonable and must be accepted.

- (iv) The assessee has made month-to-month payment to the payees through banking channel after deduction of appropriate TDS u/s 194-I. Copies of Ledger A/c of Lease-Rent and TDS certificates (Form No. 16A) issued by assessee are filed at Page 53-77 of Paper-Book.
- (v) That both of the payees have filed their respective returns, declared rental incomes, paid due taxes and claimed credit of TDS deducted by assessee out of rent payments, copies of ITR documents of payees are filed at Page 92-93 and 121-122. From these documents, it can be clearly ascertained that both payees have declared very high amount of taxable rent and paid heavy amounts of taxes thereon @ 30%+Cess in highest slab. The department has duly assessed rental incomes in the hands of payees, charged tax thereon and also allowed credit of TDS deducted by assessee.
- (vi) It is submitted that by making a payment of Rs. 14,65,992/- on account of rent, there is a hefty tax burden of more than 30% in the hands of payees whereas the assessee's income was anyways exempt u/s 11. In such a situation, why would the assessee and the specified persons make an arrangement which results in increasing overall tax

burden and clearly against them? This vital point, without speaking further, shows that there is a genuine payment made by assessee.

10. With these submissions, Ld. AR submitted that the payment made by assessee is very genuine as well as reasonable and no adverse inference should be taken against assessee.

11. Per contra, Ld. DR relied upon orders of lower-authorities, re-iterated the observations made by lower authorities and prayed to uphold the same.

12. We have considered rival contentions of both sides and perused the orders of lower-authorities as well as the material held on record to which our attention has been drawn. There is no doubt or dispute regarding taking of land on rent, the only controversy is whether the rent paid by assessee was excessive or reasonable? In this regard, *firstly* we find that the assessee has submitted a valuation-certificate showing market value of land at Rs. 68.31 crore and the rent paid by assessee is Rs. 14.65 lacs which constitutes about 0.21% of market value. In ***The Sardar Pratap Singh Education Society (supra)***, the Mumbai, ITAT has accepted rent of 1.86% of market value of property as reasonable. Therefore, the rent payment by assessee is very reasonable, in fact much lower. The CIT(A) has rejected this plea of assessee with the observation that the assessee has not explained as to how the market value of land had been arrived? But a careful reading of the valuation-certificate filed by assessee, re-produced above, clearly states that the market value has been arrived at by multiplying area of land taken

by assessee by 'Collector Guidelines Rate' per square feet. Thus, the basis as well as working of market value is mentioned in the certificate of valuer itself. It seems that the CIT(A) has, due to oversight, missed to read the certificate carefully. Notably, the revenue is not raising any question on the admissibility of the certificate submitted by assessee as evidence to show the fair/reasonable rent of property. *Secondly*, we find that the AO has himself allowed rent as high as Rs. 53.77 lacs constituting about 0.82% of the market value in scrutiny-assessment of subsequent AY 2020-21 as is evident from copy of assessment-order filed in Paper-Book, of the same land on same set of facts and having regard to the same decision of ITAT, Mumbai in ***The Sardar Pratap Singh Education Society (supra)***. *Thirdly*, we also find much weightage in the contention raised by Ld. AR that the assessee's income is fully exempt u/s 11 and does not attract a single penny of tax. On the other hand, the payees have paid tax in the highest bracket of 30%+Cess on income arising from impugned rental payments. When it is so, why would the assessee and the payees (who are closely-connected persons of assessee) make a tax-inefficient arrangement unless there is a strong genuineness in payments? Thus, considering all these aspects, we are inclined to hold that the rent payment made by assessee cannot be said to be excessive. In that view of matter, we are inclined to delete the addition made by AO and we do so. This ground is accordingly accepted.

Ground No. 3:

13. In this ground, the assessee claims that the CIT(A) has erred in sustaining addition of Rs. 41,72,105/- made by AO on account of computer expenses paid to specified persons attracting section 13(1)(c)/13(2).

14. The AO has dealt this issue in Para 4.6 of assessment-order. He has noted that the assessee made a payment of Rs. 41,72,105/- to 'M/s West Wind' which is a specified person being a partnership firm of Shri Omar Ali and Shri Raashid Ali. When the AO show-caused assessee for justification of payment, the assessee submitted that it has paid computer charges which comes to approx. Rs. 170/- per student as it is very difficult to maintain computer lab at such a low cost by itself and it was a better option to outsource. The AO, however, rejected assessee's submission citing following reasons:

- (i) The assessee failed to submit any evidence, even bill/voucher, except the Ledger A/c of charges paid.
- (ii) The assessee has not made any effort to obtain market rates of similar services before taking from specified persons.
- (iii) The assessee has also claimed payment of Rs. 6,58,260/- as computer expenses to NIIT and Rs. 4,00,000/- as NIIT Smart Classes expenses, which shows that the actual computer training was provided only by NIIT.

- (iv) The Balance-Sheet of M/s West Wind shows value of the 'computer systems' owned by it as on 31.03.2013 at Rs. 1,14,810/- and as on 31.03.2014 at Rs. 45,924/-. The assessee itself has computers valuing at Rs. 48,023/- as on 31.03.2014 which is more than the value of computers shown by M/s West Wind. Therefore, it is not understandable as to how M/s West Wind is charging huge amount from assessee?

Ultimately, the AO treated the payment made by assessee as a bogus payment/diversion of income to specified person in terms of section 13(1)(c)/13(2) and made an addition of entire payment of Rs. 41,72,105/- and also applied maximum marginal rate.

15. During first-appeal, the CIT(A) confirmed AO's observations and upheld AO's order.

16. Before us, Ld. AR for assessee made following submissions:

- (i) That when the AO raised a query in notice u/s 142(1) dated 05.08.2016, the assessee made following submission in Point No. 7 & 8 of its letter, copy at page 44-45 of Paper-Book:

"7. During the year the society has paid Rs. 41.40 lacs as computer hire charges to west wind firm. West wind provides training to around 2000 students of the Bal Bhavan School per month per year. Charges paid per month are Rs. 3,45,000/- for around 2000 students. Hence per student per month charge is around Rs. 170/-. Bal Bhavan finds it difficult to maintain computer lab at such low cost by itself and it is better option to outsource this service. Further, West Wind is taxable entity and pays income tax on the computer hire charges received by it. Hence there would have been substantial revenue loss to the income tax department if the Bal Bhavan has itself running the computer lab. This is for regular computer courses.

NIIT offers computer courses which was taken during the year, Bill of 219420*3 is enclosed. Remember that computer were used of west wind. NIIT did not provide the computer.

NIIT provides specialized courses of Smart class, which was also hired during the year. Smart class covers all subject and a graphic content of courses. Copy of ledgers are enclosed.

8. Copy of final account of M/s. West Wind enclosed. As the computer expenses were paid a concessional rate, no tenders were floated."

- (ii) The copy of sample invoice dated 04.05.2013 issued by M/s West Wind to assessee for the month of April, 2013 filed at Page 97 of Paper-Book, contains following description of supply made by payee to assessee:

"Computer charges for Computer Lab,
Computer Staff and Maintenance of Computer
Lab for April Rs. 3,45,000.00"

Ld. AR submitted that the Bills of other months are identical. The assessee has paid a total sum of Rs. 3,45,000 X 12 = 41,40,000/- to M/s West Wind and balance sum of Rs. 32,105/- to others (Page 51 of Paper-Book).

- (iii) That the school run by assessee received "1st Computer Literacy Excellence Awards for Schools-2002" from then Hon'ble President of India, Shri Dr APJ Abdul Kalam (Page 51 of Paper-Book) for the state of Madhya Pradesh in recognition of distinguished performance in imparting Computer Education. Photograph of the event and copy of certificate given by Govt. of India are filed at Page 113-114 of Paper-Book.
- (iv) That the payments made to NIIT / NIIT Smart classes were made for providing computer courses/specialized courses and not for computer lab, the computer lab was provided by M/s West Wind only. This fact was very much explained to AO in assessee's letter but still the AO has missed or overlooked and made adverse observation.

- (v) Ld. AR drew us to "Schedule-2-Fixed Assets" forming part of audited Balance-Sheet of M/s West Wind, copy at Page 103 of Paper-Book to show that the value of Rs. 45,924/- picked by AO is actually W.D.V. as on 31.03.2014 shown under the heading "Net Block". The AO has missed to see that the heading "Gross Block" shows cost of Rs. 55,61,557/- and the heading "Depreciation" shows accumulated depreciation of Rs. 55,15,632/-, leaving the WDV at Rs. 45,924/-. Thus, the entire observation made by AO is incorrect because the cost of computers deployed by the payee is Rs. 55,61,557/- and not Rs. 45,924/-. Ld. AR pointed that the accumulated depreciation is so high because the depreciation rate on computers is 60% and a big portion of value depreciates in just three years. That apart, the AO is very much wrong in basing his decision solely upon the value of computers ignoring several other factors i.e. (i) the payee has incurred a very high maintenance cost for keeping the working condition of computers and (ii) the payee has also incurred a very high cost on providing 10 staff members in computer lab and all necessary expenses for maintaining computer lab (Page 51 of Paper-Book). Ld. AR invited our attention to the audited P&L A/c of payee filed at Page 101 of Paper-Book showing a very high cost being incurred by payee against gross-receipts.
- (vi) The assessee has made month-to-month payments to the payee through banking channel after deduction of appropriate TDS u/s 194C. Copies of Ledger A/c of Computer Expenses and TDS

certificates (Form No. 16A) issued by assessee are filed at Page 95-96 and 105-112 of Paper-Book.

- (vii) The payee is a partnership firm and it has filed income-tax return, declared the income, paid due taxes and claimed credit of TDS deducted by assessee out of payments, copies of ITR documents of payee are filed at Page 98-104 of Paper-Book. From these documents, it can be clearly ascertained that the payee has declared very high amount of taxable income and paid tax @ 30%+Cess. The department has duly assessed income in the hands of payee, charged tax thereon and also allowed credit of TDS deducted by assessee.
- (viii) It is submitted that by making a payment of Rs. 41,40,000/-, there is a hefty tax burden of more than 30% in the hands of payee whereas the assessee's income was anyways exempt u/s 11. In such a situation, why would the assessee and the specified person make an arrangement which results in increasing overall tax burden and clearly against them? This vital point, without speaking further, shows that there is a genuine payment made by assessee.

17. Per contra, Ld. DR relied heavily upon observations made by AO and defended the orders passed by lower-authorities. He submitted that the invoice issued by payee does not show the details of computers, manpower, manhours, etc. He contended that in absence of such details, the justification of payment cannot be established.

18. We have considered rival contentions of both sides and perused the orders of lower-authorities as well as the material held on record to which our attention has been drawn. On a careful consideration, we find that the assessee has made a payment of Rs. 41,40,000/- to M/s West Wind (specified person) and rest of payment of Rs. 32,105/- has been made to others. The payment of Rs. 41,40,000/- made to M/s West Wind is made up of Rs. 3,45,000/- per month for 12 months. The assessee has filed a sample invoice for the month of April, 2013 issued by the payee from which it is discernible that the assessee has taken a computer lab inclusive of staff and maintenance from the payee at a fixed charge of Rs. 3,75,000/-. The assessee is running a school and it was submission of assessee to AO that the sum of Rs. 3,75,000/- was paid for about 2,000 students which shows cost of approx. Rs. 170/- per month per student. The assessee also submitted that it has found difficult to maintain computer lab at such a low cost. The assessee also submitted that the payments to NIIT / NIIT smart classes were made for computer courses/specialized courses but NIIT did not provide computer lab, the lab was provided by M/s West Wind only. The assessee also submitted that since the computer lab was taken at a concessional rate from M/s West Wind, no tenders were floated. Thus, the assessee has made a sufficient explanation to AO but the AO seems to have not considered assessee's explanation properly while making assessment-order. Then, the AO has made an observation that the value of computers held by M/s West Wind as on 31.03.2014 was only Rs. 45,924/- but the Ld.

AR has successfully shown, by referring to audited documents of M/s West Wind, that the actual cost of computers was Rs. 55,61,557/- and the value picked by AO at Rs. 45,924/- was only a depreciated WDV. Ld. AR has also explained that the payee has also incurred substantial cost on staff and maintenance of computer lab. These vital aspects pointed out by Ld. AR clearly show that the AO has drawn adverse conclusions without any valid basis or rather incorrectly. Lastly, we also find much weightage in the contention raised by Ld. AR that the assessee's income is fully exempt u/s 11 and does not attract a single penny of tax. On the other hand, the payee is a partnership firm which has paid tax @ 30%+Cess on income arising from impugned payments. When it is so, why would the assessee and the payee (who is a closely-connected person of assessee) make a tax-inefficient arrangement unless there is a strong genuineness in payments? Thus, considering all aspects, we are inclined to hold that the payments made by assessee are not bogus. Being so, we direct the AO to delete the addition made. This ground is also accepted.

Ground No. 4:

19. This ground challenges the denial of exemption u/s 11 by AO and thereby making an addition of Rs. 98,55,734/-. The AO has taken this action as a consequence of finding excessive/bogus payments of Rs. 12,04,820/- and Rs. 41,72,105/- to specified persons in terms of section 13(1)(c) r.w.s. 13(2). Since we have already held, while adjudicating earlier grounds, that there was no excessive/bogus payment, the issue involved in

ground No. 4 automatically abates. Therefore, we direct the AO to allow exemption u/s 11 to assessee after necessary verification. This ground can be said to be allowed for statistical purpose.

20. Resultantly, this appeal is allowed as mentioned above.

Order pronounced in open court on 10.06.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक /Dated : 10.06.2024
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