

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

BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2/CHD/2024

निर्धारण वर्ष / Assessment Year : 2011-12

The ACIT, Circle-1, Chandigarh.	बनाम VS	Heritage Education Society, C/o Delhi Public School, Sector 40, Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AAATH2893Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA Nos. 10, 11 & 12/CHD/2024

निर्धारण वर्ष / A.Y : 2012-13, 2013-14 & 2017-18

The ACIT, Circle-1 (Exemptions) Chandigarh.	बनाम VS	Heritage Educational Society, C/o Delhi Public School, Sector 40, Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AAATH2893Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR

तारीख/Date of Hearing : 06.08.2024

उद्घोषणा की तारीख/Date of Pronouncement : 07.08.2024

PHYSICAL HEARING

आदेश/ORDER

PER A.D.JAIN, VICE PRESIDENT

These are Department's appeals for assessment years 2011-12, 2012-13, 2013-14 and 2017-18. As common issues

are involved in all these appeals, these were heard together and are being disposed of by this common order.

2. The facts, for convenience, are being taken from ITA No.2/CHD/2024, for assessment year 2011-12. The common grounds taken by the Department are as follows :

“1. That the Ld. CIT(A) has erred in law in not appreciating that the order of ITAT Chandigarh Bench "A" ITA Nos.1069 to 1071/Chd/201 9 for A.Y 2010-11,2014-15 and 2015-16 in the appellant's own case is not applicable as the facts and observation made by the AO in this case are different.

2. That the Ld. CIT(A) has erred in law in allowing relief to the assessee as the assessee society has made payments to specified persons which are covered u/s 13(l)(c)(ii) r.w.s 13(2)(c) r.w.s 13(3) of the Income Tax Act.”

3. The facts are that the assessee society is registered u/s12AA of the Act, and is running a school named 'Delhi Public School' at Chandigarh. During the relevant year, the assessee had made payment of salary/honorarium to three specified persons u/s 13(3) of the Act, namely (i) Anup Soni, (ii) Sh. Mukesh Bansal (iii) Sh. Amit Bansal. The Assessing Officer noted that the amount paid to these three persons, totaling to Rs.57,60,000/- was beyond the objects of the society and also the payment was unreasonable and excessive. The assessee claimed before the Assessing officer

that the specified persons had not benefited from the contract, but they were qualified persons and the salary being paid to them was in accordance with the services provided by them. The Assessing Officer disallowed the amount paid to the specified persons by invoking the provision of section 13(1)(c) of the Act, and also denied the benefit of exemption u/s 11 and 12 of the Act. The Assessing Officer held as follows:

"6. I have gone through the submission of the assessee, however, the same is not acceptable and is discussed in the following paras.

Point 3 (xviii) on page No. 3 alongwith clause 8 para (xi) of point 9 of the Memorandum of Association deal with the issue under consideration. These are reproduced hereunder:-

"xviii) No member of the Governing Body of the Society shall be appointed to any salaried office of the Society"

"....the Governing Body shall have the authority to

....xi) to recompense members for all bonafide expenditure incurred for the Society and to provide for other services required for the discharge of functions of the Society. However, no member of the Governing Body shall be appointed to any salaried office."

7. The above paras are very clear and unambiguous. The intent of the memorandum is not to pay the members regular salary/payments but to reimburse them for any expense incurred for the society. However, the assessee has attempted to derive a convoluted meaning out of a straight forward clause which is common for charitable trusts. According to the assessee, the members were being provided salary/honorarium for the services they perform for the society which includes expenditures they incur for the purpose of the society such as travel for attending meetings with CBSE Board, DPS society, etc. This interpretation is misplaced and cannot be accepted. What was allowed as per the Memorandum was reimbursement of travel and other bonafide expenses if they were incurred for attending meetings on behalf of the assessee or for engaging in other activities for the benefit of the

assessee in order to ensure that the funds of the assessee were used for the objects of the assessee. By paying regular salary/honorarium, the assessee has diverted the funds of the society to its members even before any expenditure is incurred for the society and there is no way to ensure/check if the expenditure is bonafide and if it is actually incurred for the society.

8. *Vide notice u/s 142(1) dated 23.08.2018, the assessee was asked to furnish details of the meetings held with DPS society and CBSE Board during the year under consideration alongwith documentary proof. The assessee was also asked to submit proof of travel expenses and other expenses actually incurred by the members for the purpose of the assessee. In response, vide letter received on 24.08.2018, the assessee submitted that it did not have any proof of the expenses incurred by the members for the society. This buttresses the fact that the assessee has only tried to misinterpret the clauses of the Memorandum in order to justify the diversion of funds to its members and that there is no basis on which it can justify the salary/honorarium paid to the members beyond the scope of the Memorandum.*

9. *It is also noted that although Sh. Anup Soni, Amit Kumar Bansal and Mukesh Bansal are office bearers of the society, they are not regularly coming to school and they attend the meeting of the society only occasionally. This fact has already been verified earlier by the then inspector of the investigation wing, Sh. Joti Parkash, as well by the then inspector of circle 1 (exemptions), Chandigarh, Sh. Anurag Lakra as can be seen from the assessment order for the A.Y. 2010-11 dated 28.12.2017. The assessee too accepts this fact and has tried justifying it by stating that nowhere in CBSE norms it is written that they have to be present all the time in the school and have to maintain any attendance record of the trustees. The assessee further added that they have to travel a lot to Delhi. In this regard, it is brought on record that assessee has not submitted any proof, whatsoever, regarding the specific works done by the members for the society, despite being given numerous opportunities to do so.*

10. *Further, a perusal of the ITRs of the three "specified persons" brings out some material facts. From the ITRs, it is seen that these persons are engaged in other businesses, are looking after house properties, have invested in mutual funds and have sold properties. All these activities demand time and commitment and when this fact is seen alongwith the fact that the members are not available in school for most of the time, it can safely be concluded that the members have not been giving the time and commitment to the society for which they are being paid and have rather been busy doing other commercial activities.*

11. Furthermore, the assessee has submitted that the payments made to the three members was reasonable as they are all graduate/post graduate and belong to the "home circle" i.e. the wards of the trustees and therefore, it was convenient for the society as an inside person will work with more dedication and devotion than the hired outside persons but not justified with proof of work. This argument is not justified as the concerned members have not been spending enough time in the school and there is nothing to show what contributions they have made in terms of efforts for the society. These "specified persons" have been diverting their energies to other business and other works which are not related to the objects of the assessee society. Moreover, the argument that inside persons work with more dedication does not hold water. Running a quality educational institute requires training and decent experience in the field of education. The assessee has failed to show what qualifications and experience each of the members possessed in order to justify the salary paid to them.

12. The assessee was also asked to submit details with proof of salary being paid to the principal and other senior employees of the assessee. In this regard, the assessee has submitted form 16 of only the principal of the school, Smt. Reema Dewan, which is Rs. 11,13,214/- for the year under consideration. It is noted that, as gathered from the internet, Smt. Reema Dewan is an accomplished educationist with a long experience of more than 30 years. Her association with the DPS Society dates back to 1990 and she has also received State honour for her contribution in the field of education. It is also noted that a principal of a school is the person who has the greatest responsibility of ensuring that the educational standards are maintained as well as of looking after the administration of the institution. A principal's job is very demanding as it requires involvement in day to day functioning of the school. Given the large bag of experience of the principal and the great responsibility attached to the post, it is no way justified that the aforementioned three members of the society are paid Rs. 19,20,000/- each as against the pay of the principal of the school which is Rs. 11,13,214/- for the year under consideration.

13. The assessee further goes on to justify the salary by stating that it is only 4% of the receipts during the year under consideration. This argument is also not acceptable as the quantum of payment was not commensurate with the time and effort devoted to the assessee and the payment being made was unreasonable. There is nothing to justify what work was being done by the members. Also, the "memorandum does not allow payment of salary to the members and therefore, the salary was being paid outside the scope of the assessee society.

14. Yet another argument of the assessee is that the tax on salary had I already been paid by the members and an income can only be taxed once

and cannot be taxed in the hands of the assessee. It is noted that it is not a case of taxation of salary in wrong hands or double taxation. It is a case where unreasonable and undue benefit has been given to persons specified u/s 13(3) of the Act. There is no question of double taxation.

15. Further, the assessee is not right in stating that it is the responsibility of the department to prove the reasonableness of salary paid to "specified persons". On the contrary, it is for the assessee to prove the same in order to be eligible for claiming exemption u/s 11 and 12 of the Act. This stand has been confirmed by the very recent judgement of the Hon'ble Supreme Court in the case of M/s Dilip Kumar & Company dated 30.07.2018, wherein the Hon'ble Apex Court has stated that the exemption clauses are to be strictly interpreted in favour of the Revenue. It held that when there is ambiguity in tax exemption notification/clause, the benefit of such uncertainty must be interpreted in favour of the State. Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. Through this decision, the Hon'ble Supreme Court has overruled its own judgement in the case of Sun Export [2002-TIOL-118-SC-CX-LB] and all the decisions which took similar view as in Sun Export Case wherein it was held that if two views are possible in interpreting the tax exemption notification, the one favourable to the assessee in the matter of taxation has to be preferred. The case laws cited by the assessee stand countered by this recent judgement of the Hon'ble Supreme Court referred to above. Nonetheless, it is stated that detailed discussion has already been made in the previous paras to prove that the salary being paid was not only unreasonable but also beyond the scope of the memorandum.

16.

17. concluded that the assessee has given undue and unreasonable benefit to its members who are "specified persons" u/s 13(3) of the Act. The assessee is providing special treatment to members and their relatives. The members are the persons managing the society and they have decided for themselves what benefits are to be extracted from the society for themselves and the family members by manipulating the meaning of the clause of the Memorandum. This is blatant misuse and manipulation of the society by its own members and such transactions are covered u/s 13(1)(c)(ii) r.w.s. 13(2)(c)r.w.s.13(3) of the Act.

4. Thus, the AO disallowed the salary/honorarium paid to Trustees, under Section 13(1)(c) of the Income Tax Act, read

with Sections 13(3) and 164(2) thereof invoking the provisions of Section 40A(2)(b), holding such payment to be unreasonable. For this, the AO held that what was allowed as per the Memorandum of Association of the assessee Society was reimbursement of travel and other bonafide expenses, if they were incurred for attending meetings on behalf of the assessee or for engaging in other activities for the benefit of the assessee in order to ensure that the assessee's funds were used for the objects of the assessee; that by paying regular salary/honorarium, the funds of the assessee were diverted to the members even before incurrence of the expenditure for the Society without there being any check as to whether the expenditure was bonafide and as to whether it had actually been incurred for the Society; that the assessee did not have any proof of the expenses incurred by the Members in the Society; that nor had any proof been submitted regarding the specific works done by the Members for the Society; that from the Income Tax Returns of the three specified persons, it was seen that they were engaged in other businesses, were looking after house properties, had invested in mutual funds and had sold properties; that thus, the Members had not been giving time and commitment to

the Society; that the assessee had submitted that the payment was reasonable, as all the three Members were Graduate/Post Graduate and belonged to the Home Circle, i.e., the wards of the Trustees and that so, it was convenient for the Society, as an inside person would work with more dedication and devotion than hired outside persons; that however, the assessee had not submitted any justification with proof of the work done by these Members; that the assessee had failed to show the qualifications and experience possessed by these three Members, so as to justify the salary paid to them; that it was in no way justified that the salaries paid to these Members were more than the pay of the Principal of the school run by the Society; that the assessee had further tried to justify the salary, stating it to be only 4% of the receipts of the assessee; that however, the quantum of payment was not commensurate with the time and effort devoted to the assessee and so, the payment was unreasonable; and that though the assessee had argued that the tax on the salary had already been paid by the Members and that an income could only be taxed once and so, it could not be taxed in the hands of the assessee, it was noted that it was not a case of taxation of salary in wrong hands or a

case of double taxation, but, it was a case of unreasonable and undue benefit having been given to persons specified under Section 13(3) of the Act.

5. By virtue of the impugned order, the ld. CIT(A) allowed the assessee's appeal, relying on the Tribunal decision in assessee's case for assessment years 2010-11, 2014-15 and 2015-16, wherein, the Tribunal held as follows :

"15.3 In the present case also the payments made to the specified persons was reported by the Tax Auditor and thus said payment was not in dispute and no comparable case has been cited by the AO to substantiate that how and in what manner the payment made to the members of the society was excessive while invoking the provisions of Section 13(1)(c) of the Act.

15.5 In the present case also when the assessee society was availing the services of the members of the society and if they have not provided those services to assessee society, it would have engaged the person from outside to whom salary was required to be paid. Therefore, the disallowance made by the AO and sustained by the Ld. CIT(A) was not justified particularly when nothing is brought on record to substantiate that the salary paid to them was excessive.

15.7 In the present case also the-AO himself admitted that the specified persons were having the higher qualification and no comparable case was brought on record to substantiate that the salary / remuneration paid to them was excessive. Therefore, the disallowance made by the AO and sustained by the Ld. CIT(A) was not justified.

15.8 In the present case it is also noticed that the remuneration / salary paid to the same persons in the earlier years had been accepted while framing the assessment orders under section 143(3) of the Act. Therefore, by keeping in view the principles of consistency no disallowance is to be made for the year under consideration if the facts are identical in the preceding years wherein the similar payments have been accepted by the Department.

15.13 In the present case also as we have already pointed out that similar claim for making the payment on account of salary / remuneration to the same specified persons had been accepted by the Department in the preceding years therefore keeping in view the principles of consistency the disallowance made by the AO and sustained by the Ld. CIT(A) for the year under consideration was not justified.

17. The facts in the remaining A.Y's 2014-15 and 2015-16 in ITA No. 1070 & 1071/Chd/2019 are similar to the facts involved in ITA No. 1069/Chd/2019 for the A.Y. 2010-11, therefore, our findings given in the former part of this order shall apply mutatis mutandis for the A. Y's 2014-15 and 2015-16 also."

6. Aggrieved, the Department is in appeal.

7. The ld. DR has contended that the Ld. CIT(A) has erred in law in not appreciating that the order of ITAT Chandigarh Bench "A" ITA Nos.1069 to 1071/CHD/201 9 for A.Y. 2010-11, 2014-15 and 2015-16 in the assessee's own case is not applicable as the facts and the observation made by the AO in this case are different and that the Ld. CIT(A) has erred in law in allowing relief to the assessee as the assessee society has made payments to specified persons which are covered under Section 13(1)(c)(ii) r.w.s I3(2)(c) r.w.s 13(3) of the Income Tax Act.

8. On the other hand, the ld. Counsel for the assessee has placed strong reliance on the impugned order. It has been stated that the order passed by the Tribunal correctly

followed by the CIT(A), is well versed and the issue has been dealt with therein elaborately. It has been stated that for the years under consideration, there is no change in the facts and circumstances of the case and the specified persons are also the same; that once the similar salaries/honorarium had been allowed in the earlier years under similar facts and circumstances, there is no reason for the Department to take a divergent view in the years under consideration, as taken into consideration by the ITAT for assessment years 2010-11, 2014-15 and 2016-17; that therefore, the ld. CIT(A) has correctly followed the Tribunal order for assessment years 2010-11, 2014-15 and 2015-16; and that therefore, there being no error in the orders passed by the ld. CIT(A), the same be upheld and the appeals, carrying no merit whatsoever, be ordered to be dismissed.

9. We have heard the parties and have perused the material on record. The ld. CIT(A), for all the years under consideration, has followed the Tribunal order for assessment years 2010-11, 2014-15 and 2015-16, wherein it has been held that the assessee society was availing the services of the members of the society and if they had not provided those services to the assessee society, it would have

engaged persons from outside, to whom, salary was required to be paid. The AO himself admitted that the specified persons were having the higher qualification and no comparable case was brought on record to substantiate that the salary / remuneration paid to them was excessive. The remuneration/ salary paid to the same persons in the earlier years had been accepted while framing the assessment orders under section 143(3) of the Act.

10. It is seen that for the years under consideration, as rightly submitted on behalf of the assessee and not disputed on behalf of the Department, the facts have not undergone any change whatsoever. The specified persons also remain the same. The Department has not been able to show as to how, as contended in Ground No.1, the observations of the AO in the years under consideration, are effectively any different from those made by the AO for assessment years 2010-11, 2014-15 and 2015-16, the years decided by the Tribunal in favour of the assessee. Therefore, we do not find any merit in the appeals filed by the Department, which appeals are liable to be dismissed. They are ordered to be dismissed.

11. In the result, all the appeals filed by the Department are dismissed.

Order pronounced on 07th August,2024.

Sd/-

(KRINWANT SAHAY)
ACCOUNTANT MEMBER

Sd/-

(A.D.JAIN)
VICE PRESIDENT

“Poonam”

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

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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar