

**| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**  
**&**  
**SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

**I.T.A. No. 2393 & 2386 /Mum/2024**  
**Assessment Year: 2017-18 & 2018-19**

<b>Income Tax Officer (Exemptions)- 2(1), Mumbai</b>	<b>Vs</b>	<b>MMTIS Educations and Research Trust, Andheri West 2<sup>nd</sup> Floor, Excel House 41-B, Azad Nagar Road No.2, Off Veera Desai Road Andheri West Mumbai - 400053 [PAN: AABTM2192E]</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

**C.O. No. 118 & 117 /Mum/2024**  
**Assessment Year: 2017-18 & 2018-19**

<b>MMTIS Educations and Research Trust, Andheri West 2<sup>nd</sup> Floor, Excel House 41-B, Azad Nagar Road No.2, Off Veera Desai Road Andheri West Mumbai - 400053 [PAN: AABTM2192E]</b>	<b>Vs</b>	<b>Income Tax Officer (Exemptions)- 2(1), Mumbai</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by :	Shri Arati Vissanji, A/R
Revenue by :	Smt. Mahita Nair, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 19/08/2024  
घोषणा की तारीख/Date of Pronouncement : 21/08/2024

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM:**

I.T.A. No. 2393 & 2386 /Mum/2024, are two separate appeals by the revenue preferred against two separate orders of the NFAC, Delhi, [in short "Id. CIT(A)"] dated 18/03/2024, pertaining to Assessment Years 2017-18 & 2018-19.

C.O. No. 118 & 117 /Mum/2024, are cross-objections by the assessee directed towards the same order of the Id. CIT(A).

2. All these were heard together and are disposed off by this common order for the sake of convenience and brevity.

3. The common grievance in revenue's appeals relate to the payments on account of salary and rent to the persons specified u/s 13(3) of the Act which the AO treated as excessive payments for denying the claim of exemption u/s 11 of the Act and which was dismissed by the Id. CIT(A).

4. Representatives of both the sides were heard at length. Case records carefully perused and the relevant documentary evidences considered in the light of Rule 18(6) of the ITAT Rules, 1963.

5. During the course of scrutiny assessment proceedings, the AO noticed that the assessee is registered with the Directorate of Income Tax (Exemption), Mumbai u/s 12A of the Act and is also registered with the Charity Commissioner, Mumbai. The trust claims to be engaged in charitable activities in the field of Education and conducting marine courses. The AO found that the assessee has claimed exemption u/s 11 of the Act. While scrutinizing the return of income, the AO noticed that the assessee has paid total rent of Rs. 51,00,000/- and fees of Rs. 60,88,400/- for modular courses to specified persons covered u/s 13(3) of the Act. The assessee was asked to showcause, why the total rent paid

of Rs.51,00,000/- and fees of Rs. 60,88,400/- for modular courses to specified persons covered u/s 13(3) of the Act, should not be disallowed and added to the total income.

5.1. In its reply, the assessee explained that the payment of rent is made for premises owned by the Trust at village Kalote, NH-04, Old Mumbai-Pune Highway, Taluka, Khalapur, Dist: Raigad, Maharashtra 410202 and to Tara Meera education trust for the office at New Excel house, 2nd Floor, 41-B, Azad Nagar Road no. 2, Off. Veera Desai Road, Andheri(W), Mumbai. It was further explained that the modular course fees is for certain courses for which the trust does not have facilities at its premise and has to send its student to Andheri at Tara Meera education trust.

5.1.1. The reply of the assessee did not find favour with the AO who was of the opinion that the income of the trust is applied for the benefit of certain specified interested persons. The belief of the AO was that the income should be applied for charitable purposes rather than for the benefit of the creators of the Trust. Taking a leaf out of the order of the Id. CIT(A) for AY 2011-12, the AO denied the claim of exemption u/s 11 of the Act and taxed the entire income of the assessee.

5.2. The assessee agitated the matter before the Id. CIT(A) and reiterated its claim of exemption. After considering the facts and the submissions, the Id. CIT(A) found that the AO has simply proceeded to disallow the payments made to specified persons but did not try to assess the reasonability of the expenses incurred. The Id. CIT(A) was of the opinion that the AO has simply disallowed the said expenses without assigning the reason for the same and has blindly followed the

findings given by the Id. CIT(A) in AY 2011-12. The Id. CIT(A) further observed that, the AO did not consider the provisions of Section 40A(2)(b) of the Act while making the impugned disallowance u/s 13(3) of the Act completely ignoring the fact that, the disallowance has to be made where payment is made to related party if such expenditure is excessive and unreasonable, having regard to the fair market value of the goods, service or facilities. After properly appreciating the facts and referring to certain judicial decisions, the Id. CIT(A) was convinced with the claim of exemption u/s 11 of the Act and accordingly allowed the same.

6. After giving a thoughtful consideration to the orders of the authorities below, let us see the comparables brought by the assessee which were completely ignored by the AO.



**MMTI's Education & Research Trust**  
**Assessment Year: 2017-18**

**Comparative statement showing comparison of rent paid to Mount View Club & Resort Pvt. Ltd. and to the Trustees of the assessee for use of building and other facilities.**

Sr. No.	Particulars	Rent paid to		
		Mount View Club & Resort Pvt. Ltd.	Trustees of the appellant	
1	Period for which rent is paid	From 22/02/2006 to 21/01/2007	From 01/04/2009 to 31/03/2016	From 01/04/2016 to 31/03/2017
2	Address where the building is situated	Vinegaon, Tal. Khalapur, Dist. Raigad, Maharashtra	Village Kalote, Tal. Khalapur, Dist. Raigad, Maharashtra	Village Kalote, Tal. Khalapur, Dist. Raigad, Maharashtra
3	Area of the building (in sq. ft.)	8,000	55,000	55,000
4	Area of the land used for undertaking activities (in sq. ft.) (A)	43,560	1,08,900	1,08,900
5	<u>Break-up of the rent per month</u>			
	Building Rent		4,50,000	
	Playground Rent		60,000	3,00,000
	Swimming Pool Rent		1,05,000	
	Workshop Rent		1,50,000	
	<b>Total Rent per month (B)</b>	<b>3,41,250</b>	<b>7,65,000</b>	<b>3,00,000</b>
6	Rent per month for use of building & other facilities (based on area of land used for undertaking activities) [B/A]	7.83	7.02	2.75
7	Deposit	14,10,000	-	-

**MMTI's Education & Research Trust**

**Assessment Year: 2017-18**

**Comparative statement showing comparison of rent paid for Office Premises at New Excel Building, Andheri (West) for the year ended 31st March, 2017.**

Sr. No.	Particulars	Rent paid by Tara Meera Education Trust to Mr. C.L. Dubey, Mrs. Tara Dubey and Mrs. Rashmi Pandey	Rent paid by the assessee to Tara Meera Education Trust
1	Period for which rent is paid	From 12/06/2010 to 11/06/2020	From 01/04/2011 to 31/12/2019
2	Address where the building is situated	201, 2nd Floor, New Excel Building, Azad Nagar, Veera Desai Road, Andheri (W), Mumbai-400053.	201, 2nd Floor, New Excel Building, Azad Nagar, Veera Desai Road, Andheri (W), Mumbai-400053.
3	Total Area of Office Premises (in Sq. Ft.)	1,700	-
4	Area let-out by Tara Meera Education Trust to the assessee (in Sq. ft.)	-	850
5	Rent paid per month during the year under reference	3,00,000	1,25,000
6	<b>Rent per month per Sq. ft.</b>	<b>176.47</b>	<b>147.06</b>

**MMTI's Education and Research Trust**

**Assessment Year: 2017-18**

**Statement showing details of modular course fees paid for the year ended 31.03.2017**

Sr. No.	Name of the Course conducted at Khopoli	Duration of the said course	No. of candidates undergone modular course	Rate per candidate	Amount (Rs.)
1	GP Rating	July 2015 to December 2015	39	26,600	10,37,400
2	GP Rating	January 2016 to June 2016	39	26,600	10,37,400
3	GP Rating	July 2016 to December 2016	39	26,600	10,37,400
4	GP Rating	January 2017 to June 2017	39	26,600	10,37,400
5	Deck Cadet	August 2015 to July 2016	16	32,900	5,26,400
6	Deck Cadet	February 2016 to December 2016	12	32,900	3,94,800
7	Saloon Rating	January 2016 to June 2016	23	21,200	4,87,600
8	Saloon Rating	July 2016 to December 2016	25	21,200	5,30,000
<b>Total</b>					<b>60,88,400</b>

7. It can be seen from the first chart that the rent paid by an unrelated party in the same area is Rs.7.83/- per sq. ft. whereas the same was Rs.7.02/- per sq. ft., till 31/03/2016 and Rs.2.75/- per sq. ft. as on 31/03/2017 by the assessee. Similarly, rent paid to Tara Meera Education Trust by unrelated party come to Rs. 176.47/- per sq. ft. per month and the rent paid by the assessee for the same premises is Rs.147.06/- per sq. ft. per month.

7.1. While completing the assessment for AY 2018-19, the AO has referred to an agreement but the same was for a different premise in the

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same locality and not the premise for which the assessee has paid rent. Therefore, the AO proceeded on appreciation of wrong facts.

8. After considering the facts in totality and the comparables mentioned hereinabove, we do not find the impugned payments to be excessive or unreasonable and, therefore, do not find any reason to interfere with the findings of the Id. CIT(A). Accordingly, both the appeals of the revenue are dismissed and the cross-objections become infructuous.

9. In the result, both the appeals of the revenue are dismissed.

**Order pronounced in the Court on 21<sup>st</sup> August, 2024 at Mumbai.**

*Sd/-*  
(SANDEEP SINGH KARHAIL)  
JUDICIAL MEMBER

*Sd/-*  
(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER

Mumbai, Dated 21/08/2024

*Sd/-*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai