

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" DELHI
BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.1369/Del/2020
(Assessment Year: 2015-16)

Children Welfare Trust 3-E, Park, NIT, Faridabad Haryana-121001 PAN No.AABTC6957B	Vs.	ITO (Exemptions) Faridabad Haryana
(APPELLANT)		(RESPONDENT)

ITA No.1368/Del/2020
(Assessment Year: 2015-16)

Children Welfare Society 3-E, Park, NIT, Faridabad Haryana-121001 PAN No.AAAAC0131F	Vs.	ITO (Exemptions) Circle-2, Chandigarh
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Pavan Ved, Adv. Shri Mohit Gupta, CA & Shri Mirza Baig, CA
Revenue by	Shri Narpat Singh, Sr. DR

Date of hearing:	08.10.2024
Date of Pronouncement:	29.10.2024

ORDER

PER PRADIP KUMAR KEDIA, AM:

ITA No. 1369/Del/2020: A.Y. 2015-16 – Children Welfare Trust

The captioned appeal has been filed at the instance of the assessee against the first appellate order passed under Section 250(6) of the Income Tax Act, 1961 (the Act) by the Commissioner of Income Tax (Appeals), Faridabad [CIT(A)] dated 28.02.2020 which, in turn, arises from the assessment order dated 26.12.2017 passed under Section 143(3) of the Act for the AY 2015-16 in question.

2. The grounds of appeal raised by the assessee read as under:

- 1) *“That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in denying the benefit of exemption u/s 11 & 12 and bringing to tax of Rs.10,74,513/- being the amount of excess of income over expenditure.*
- 2) *That in any view of the matter and in any case action of Ld. CIT(A) in denial the benefit of exemption u/s 11 & 12 is bad in law and against the facts and circumstances of the case.*
- 3) *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in making enhancement of income of an aggregate amount of Rs.58,84,070/- on account of amalgamation fund and building fund received during the year claimed as capital receipts and more so when such power could not be exercised by him in the facts and circumstances of the present case.*
- 4) *That in any view of the matter and in any case action of Ld. CIT(A) in making enhancement of income of Rs.58,84,070/- is bad in law and against the facts and circumstances of the case.*
- 5) *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in enhancing the income u/s 251(1)(a) of the Act, denial the benefit of exemption u/s 11 & 12 and making the addition on*

account of amalgamation fund and building fund received during the year under new source of income contrary to law settled in this regard.

6) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action Ld. A.O. in passing the impugned order without giving adequate opportunity of being heard and without observing the principle of natural justice.

7) That the appellant craves the leave to add, alter or amend grounds of appeal at any stage and all the grounds are without prejudice to each other.”

3. Briefly stated, the assessee trust was formed by Trust deed dated 02.09.2014. The Trust took over all the assets and liabilities of the society named “Children Welfare Society”, which society ceased to exist on 29-10-2014. The assessee trust was however formally registered under s. 12AA of the Act vide order dated 27.12.2018 w.e.f. AY 2016-17 onwards.

4. The assessee trust is stated to be formed for charitable purposes to attain its charitable objects. The trust predominantly runs two schools with the same name i.e. 'Gita Bal Niketan Senior Secondary School' at two different places in Faridabad. The erstwhile ‘Children Welfare Society’ was subsumed under the ‘Children Welfare Trust’ with all assets and liabilities along with above mentioned schools with the same set of trustees.

5. For the AY 2015-16 in question, the assessee filed Return of Income(ROI) at Nil on 30.09.2015. The return filed by the assessee was subjected to scrutiny assessment. In the course of the assessment, the Assessing Officer (AO) *inter alia* observed that as per the Income and Expenditure Statement drawn from 30.10.2014 to 31.03.2015, assessee trust has shown gross receipts of Rs.3,74,81,510/- comprising receipts from tuition fee, admission fee, transportation fee and miscellaneous income. In the financial statement, the assessee has declared excess of income over expenditure at Rs.10,74,513/-. The AO further observed that the application of the

assessee under s. 12AA of the Act has been rejected by the CIT(Exemption) vide order dated 29.04.2016. Thus in the absence of registration, the AO treated the excess of income over expenditure amounting to Rs.10,74,513/- as income chargeable to tax. The AO also made some other additions with which we are not presently concerned.

6. Aggrieved by the additions made, the assessee preferred appeal before the CIT(A). The CIT(A) in first appeal endorsed the action of the AO and denied any relief towards taxability of surplus of Rs.10,74,513/- having regard to absence of registration available under s. 12AA of the Act. While adjudicating the appeal of the assessee, the CIT(A) also found that the assessee trust has *inter alia* received Rs.2,68,480/- and Rs.56,15,590/- which have been directly credited in the balance sheet under the head 'Building funds' and 'Amalgamation funds' and thus, treated as capital receipt by the assessee and consequently not chargeable to tax. The CIT(A) concluded that such receipts aggregating to Rs.58,84,070/- are in the nature of revenue receipts chargeable to tax. The CIT(A), in exercise of enhancement powers conferred upon him under s. 251(1)(a) of the Act, enhanced the taxable income by Rs.58,84,070/- on account of money received for designated purposes in Building Fund and Amalgamation Fund.

7. Aggrieved by the denial of relief on the additions made by the AO towards issue of taxability of surplus income and further enhancement of chargeable income, the assessee preferred appeal before the Tribunal.

8. When the matter was called for hearing, Mr. Pavan Ved, the Ld. Counsel for the assessee vociferously countered the upholding of the additions made by the AO.

8.1 The Ld. Counsel also questioned the jurisdiction of the CIT(A) to indulge in enhancement of income and contended that the jurisdiction for enhancement under s. 251(1)(a) of the Act read with the *Explanation* thereto may howsoever be wide, are not plenary. The Ld. Counsel referred to law evolved by several judicial precedents on

the scope of powers of the CIT(A) to carry out enhancement and submitted that the law governing the field do not permit the CIT(A) to exercise powers of enhancement for discovery of all together new source of income *dehors* the source of income which was subject matter of assessment before the AO. The Ld. Counsel pointed out that neither the show cause notices were issued nor the limitations involved in exercise of such powers have been kept in mind.

8.2 The Ld. Counsel also assailed the enhancement action of the CIT(A) on merits. The ld. Counsel pointed out that enhancement of income has been carried out on facts which were not at all related to the assessee trust herein but rather pertained to the erstwhile 'Children welfare Society'. Further, the facts taken by him were incorrect and did not justify the additions on merits either.

8.3 In support of Ground no. 2 of the appeal, the Ld. Counsel placed strong objections to applicability of section 13 of the Act in relation to land advance given in the earlier years by the assessee to Pradeep Sood and Naveen Sood. The Ld. Counsel contested the observations made by the CIT(A) to the effect that loans/ advances were made to 'specified persons' and therefore clauses of s. 13 would apply. The ld. Counsel contended that loans/advance were made to Pradeep Sood & Naveen Sood for purchase of land from them. The CIT(A) wrongly treated the said advance as infringement of section 13 of the Act by considering Mr. Naveen Sood and Mr. Pradeep Sood as specified persons under S. 13(3) in view of the fact that they are spouses of the Principal [Mrs. Renu Sood] or Administrator (Mrs. Anita Sood) of the School, as the case may be. The ld. Counsel submitted that the parties to whom the loans/ advances were given, no-where falls under the category of persons referred under s. 13(3) of the Act. It was contended that the position of a Principal or Administrator of a Trust can not be equated with Trustee or Founder or Author of a Trust or a Manager of the Institution (distinguishable from expression 'Trust' under s. 13(3)(cc)). The CIT(A) has eventually deleted the additions made by the AO towards

land advance given to Pradeep Sood and Naveen Sood. It was submitted that making unwarranted and incorrect observations towards applicability of s. 13 on transactions admittedly relating to different years and also falling outside the ambit of s. 13(3) on non surviving additions, is outside the scope of powers conferred on CIT(A). The CIT(A) is not entitled to make extraneous comments on applicability of s. 13 for the transactions unrelated to the AY 2015-16 in question.

8.4 We shall deal with various pleas raised on lack of jurisdiction as well as on other aspects in the succeeding paras where considered expedient.

9. The CIT-DR, on the other hand, supported the respective orders passed by the AO and the first appellant authority.

10. We have carefully considered the rival submissions and perused the material referred to and relied upon and case law cited. The denial of benefit available under s. 11 and further enhancement of income by the CIT(A) in first appeal is under challenge.

10.1. It is the case of the assessee that the AO has wrongly denied the benefit of exemption under s. 11 of the Act and thereby *inter alia* wrongly made an addition of Rs.10,74,513/- by acting contrary to the provisions contained in s. 12AA of the Act and CBDT Circular No.01/2015 dated 21.01.2015 which says that benefit of exemption shall be given retrospectively from the date of formation of trust even if the registration has been granted in subsequent years provided objects of the trust continue to remain the same. A reference has been made on behalf of the assessee to the decision rendered by the coordinate bench of Tribunal in *Sree Sree Ram Krishna Samity Vs. DCIT (2015) (Kol.) 64 Taxmann.com 330* and *Prem Prakash Mandal Sewa Trust Vs. ITO(E) (2021) 132 Taxmann.com 269 (Raipur)* to contend that the assessee is entitled to benefit of registration in earlier years also where registration has been granted in a later year.

10.2 As emanating from records, the assessee-trust in the present case was formed on 02.09.2014 and thus was in existence from the date of formation. The assessee trust however, has been granted formal registration under s. 12AA of the Act vide order dated 27.12.2018 w.e.f. AY 2016-17. Thus, for the AY 2015-16, the assessee was admittedly not registered under the provisions of the Act resulting in denial of exemption under s. 11 of the Act. The issue is no longer *res integra*. The coordinate bench in the case of *Prem Prakash Mandal Sewa Trust (supra)* and *Sree Sree Ram Krishna Samity (supra)* have taken note of the position of law in the light of CBDT Circular and held that where during the pendency of appeal of the assessee, the registration was granted under s. 12A/12AA of the Act, the case of the assessee would be covered under deemed registration and thus assessee would be entitled to claim benefit under s. 11 of the Act on the strength of registration obtained in the subsequent year. In consonance with the view taken by the co-ordinate benches, the AO is not justified in denying the benefit of registration *albeit* obtained subsequently, to the year under consideration. The additions of Rs.10,74,513/- made by the AO on the pretext of non availability of registration is thus reversed.

11. We now advert to the applicability of mischief of Section 13 to the loans/advances given to Pradeep Sood and Naveen Sood for purchase of Land. The AO made additions of Rs. 3 crore on such advances. The CIT(A) while reversing the additions on the ground that the transaction do not belong to the year under considerations, however, simultaneously observed that the advances given to the parties are specified under Section 13(3) of the Act. The assessee has placed strong objections to such averments. In the context, the plea of the assessee are three fold (i) the observations made towards applicability of Section 13 to transactions carried out in other years are wholly unnecessary and outside the scope of powers conferred under Section 251 of the Act (ii) The observations of the CIT(A) with reference to Section 13 are generic without specification of particular sub-clause of Section 13 (3).

The recipients of the loans/ advances namely Naveen Sood and Pradeep Sood are spouses of the Principal or Administrator of school held in Trust. The assessee has taken support of the judgment rendered by Hon'ble Supreme Court in *Thanthi Trust* to submit that the expressions 'Trust' and 'Institutions' referred in Section 13(3)(cc) and elsewhere are differently constituted and are not the same. The assessee also refers to the decision of the co-ordinate bench in the case of *ACT vs. Inclen Trust International ITA no. 7445/Del/2017* order dated 28-07-2021 to submit that Manager of an Institution is not the manager of a Trust.

11.1 We find force in such legal plea. In the light of decisions rendered, we hold that the provisions of Section 13(3)(cc) would not extend to manager(or her spouse) of the Trust.

11.2 The observations so made with reference to Section 13 of the Act are thus expunged from the first appellate order and would not apply.

12. In the result, Ground nos. 1 & 2 concerning the denial of exemption towards excess of income over expenditure and expunction of observations in the context of s. 13 of the Act are allowed.

13. We now advert to the challenge raised by the assessee towards enhancement of income by the CIT(A) aggregating to Rs.58,84,070/- credited in Amalgamation Fund and Building Fund.

13.1 While adjudicating the subject matter of appeal filed by the assessee before CIT(A), the CIT(A), *inter alia*, noted that the assessee has received certain amounts during the year under the head amalgamation fund Rs.2,68,480/- and building fund Rs.56,15,590/-. The building fund was stated to have been set up to be utilized for the purpose of construction of school building which were received from new admissions. Likewise amount collected from new students for spending on non-routine

development items such as library, cultural activities, etc. were credited to amalgamation fund. The sum so received under the head “building fund and amalgamation fund” were proposed to be used for designated purposes for which such funds were created. Such receipts were directly credited to the respective fund accounts in the balance sheet and were not routed through Income and Expenditure account. In the course of appellate proceedings, the CIT(A) opined that such receipts are in the nature of revenue receipts and remained untaxed. The CIT(A) consequently invoked the provisions of Section 251(1)(a) of the Act to enhance the income of the assessee trust to the extent of such amount received for taxability under the head “business income”.

13.2 In this backdrop, it is the case of the assessee that invocation of power of enhancement under s. 251(1)(a) of the Act in the facts of the case is impermissible in law and tantamount to overreach of powers of enhancement. Multi-prong attack has been made to the enhancement powers exercised in the peculiar facts of the case. The assessee broadly contented that;

(a) The powers of enhancement means there should be some base addition. The expression enhancement cannot be equated with expression ‘additions’. All the additions made by the AO have either been deleted by the CIT(A) or are covered in favour of the assessee by the decisions of the Tribunal and, therefore, in the absence of any substantive taxable income, the enhancement of taxable income could not arise

(b) In view of Section 250(6A), the CIT(A) is under duty to pass the first appellate order within one year from the end of the financial year of filing appeal. Where the order under Section 250(6) has been passed beyond this guiding time limit, the powers of enhancement stands forfeited. Despite the time limit set out in Section 250(6A) to fast track the disposal of an appeal, being recommendatory in nature, the powers of enhancement can not permitted to be exercised to the detriment of the assessee after

such definite period assigned by taking advantage of its own wrong/ delay in disposal by the CIT(A). The enhancement powers exercised after a long gap of period will tantamount to granting indefeasible right of enhancement possibly beyond the statutory time line placed in other provisions such as Section 147 or 263 of the Act. The law on enhancement powers thus calls for harmonious and schematic interpretation. On facts, the appeal in the instant case was filed on 09.01.2018 whereas the CIT(A) has adjudicated the appeal beyond the time limit set up under Section 250(6A) of the Act without assigning any reasons for delay and the first appellate order was passed on 28.02.2020. In such a scenario, balance must be struck and the power of enhancement should be read down unless the CIT(A) discloses the reason as to why it was not plausible for him to comply with the provisions of Section 250(6A) of the Act. The assessee thus, essentially contends that the powers of enhancement should not be kept open for exercise for indefinite period.

(c) The CIT(A) has wrongfully enhanced the income of the assessee trust on those issues which were not subject matter of assessment. A reference has been made to the Full bench judgment of the Hon'ble Delhi High Court in the case of *CIT Vs. Sardari Lal & Co. (2002) 120 Taxman 595 (Del.)* and *CIT Vs. Union Tyres (1999) 240 ITR 556 (Del)* and host of other judgments.

14. In terms of Section 251(1) of the Act, the CIT(A) has been given a very wide latitude in discharge of its appellate functions. The CIT(A) is *inter alia* vested with the powers of enhance the assessment to protect the interest of the Revenue. This extra-ordinary power of enhancement is not merely confined to subject matter of appeal alone but extends to subject matter of assessment.

14.1 The extent of powers available to CIT(A) towards enhancement has been elucidated in long line of judicial precedents. The Hon'ble Delhi High Court in the case of *Union Tyres (supra)* had an occasion to deal with the powers of enhancement.

After considering the plurality of opinion on the subject, the Hon'ble Delhi High Court observed that the powers of enhancement are not unqualified. It was held that it is not open to the CIT(A) to introduce a new source of income for assessment i.e such source which was not considered by the AO. The assessment has to be confined to those items of income which were subject matter of original assessment. In the context of facts of that case, the Hon'ble Delhi High Court observed that where only matter dealt with by the AO in assessment order was estimation of profits and gains of business of the assessee, it was not open to the first appellate authority to direct the AO to conduct enquiry about source of investment by assessee. The Hon'ble Delhi High Court noted the decision rendered in the case of Shapoorji Pallonji Mistry, Rai Bahadur Hardutroy Motilal chamaria, Jute Corporation of India Ltd., Nirbheram Deluram and other decisions rendered by the Hon'ble Supreme Court to hold that while the first appellate authority is invested with wide powers under Section 250(1)(a) of the Act and his competence is not restricted to examine only those aspects of the assessment about which the assessee made a grievance but ranges over the whole assessment to correct the AO not only with regard to matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the AO and determined in the course of assessment. However, there is significant limitation to the power of enhancement i.e. it is not open to the CIT(A) to introduce in the assessment, a new source of income and the assessment has to be confined to only those items of income which were subject matter of original assessment. Applying the principle of law noted above, the Hon'ble High Court observed that any addition on account of unexplained investment which was not subject matter of assessment would constitute a new source of income. The enhancement action of the CIT(A) was thus not approved.

14.2 The larger bench of Hon'ble Delhi High Court in *Sardari Lal and Co.* endorsed the view expressed in *Union Tyres*. The Hon'ble Delhi High Court yet again

observed that the taxability of new source of income in appropriate cases may be dealt with under Section 147/148 of the Act and under Section 263, if requisite conditions are fulfilled. The Hon'ble Delhi High Court in Sardari Lal & Co. thus observed that decision in Union Tyres case expressed the correct view and does not need reconsideration.

14.3 Having regard to the exposition of law by way of binding precedents governing the field, we are of the view that CIT(A) has traveled beyond the bandwidth provided in respect of enhancement powers in as much as it has the effect of directing the AO to make assessment on an entirely new footing resulting in assessment based on new source of income. The competence vested by way of enhancement being somewhat restrictive, do not permit the CIT(A) to do so.

14.4 Notwithstanding, the enhancement of chargeable income towards receipts in building funds and amalgamation funds is not permissible on facts of the case. The assessee has demonstrated on facts that the assessee herein has applied more than 85% of its receipts for charitable objects. Receipts in aggregate including receipts in funds stands at Rs. 4.33 Cr. whereas corresponding application of income stands at Rs.4.58 Cr. Hence, conditions for claiming exemption under s. 11 stands satisfied. The CIT(A) for the purposes of enhancement, has only looked at the receipt of funds and overlooked the corresponding application thereof and thus fell in error.

15. The exercise of power of enhancement to make enhancement to the tune of Rs.58,84,070/- thus requires to be set aside and quashed.

16. Having so concluded, we do not consider it expedient to address ourselves on other facets of arguments placed on behalf of the assessee such as prior existence of base additions; exercise of enhancement powers beyond the recommendatory time lines provided in Section 250(6A) etc.

17. The ground nos. 3, 4 & 5 are thus allowed.
18. In the result, appeal of the assessee is allowed.

ITA No. 1368/Del/2020: A.Y. 2015-16 – Children Welfare Society

19. The captioned appeal has been filed by the assessee society against the First Appellate Order of the Ld. Commissioner of Income Tax (Appeals), Faridabad dated 28.02.2020 arising from the Assessment Order dated 29.12.2017 passed by the Assessing Officer (hereinafter referred to as 'AO') under Section 143(3) of the Income Tax Act, 1961 (the Act) for Assessment Year 2015-16.

20. The grounds of appeal raised by the assessee reads as under:

“1) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in denying the benefit of exemption u/s 11 & 12 and bringing to tax of Rs. 65,30,315/- being the amount of excess of income over expenditure.

2) That in any view of the matter and in any case action of Ld. CIT(A) in denial the benefit of exemption u/s 11 & 12 is bad in law and against the facts and circumstances of the case.

3) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in making enhancement of income of an aggregate amount of Rs.61,68,381/- on account of amalgamation fund and building fund received during the year claimed as capital receipts and more so when such power could not be exercised by him in the facts and circumstances of the present case.

4) That in any view of the matter and in any case action of Ld. CIT(A) in making enhancement of income of Rs. 61,68,381/- is bad in law and against the facts and circumstances of the case.

5) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in enhancing the income u/s 251(1)(a) of the Act, denial the benefit of exemption u/s 11 & 12 and making the addition on account of excess of income over expenditure and on account of amalgamation

fund and building fund received during the year under new source of income contrary to law settled in this regard.

6) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in passing the impugned order without giving adequate opportunity of being heard and without observing the principle of natural justice.”

21. Briefly stated, the assessee society was registered with the Registrar of Society on 11.04.1969 and was also registered under Section 12AA of the Act vide order dated 22.01.2001 for attaining its charitable objects. The assessee society was later subsumed under 'Children Welfare Trust' (supra) and all the assets and liabilities along with schools run by the society were taken over by the Trust with the same set up trustees. For the assessment year 2015-16 in question, the assessee filed return of income at *Nil* taxable income. The case of the assessee trust was selected for scrutiny assessment under Section 143(3) of the Act wherein income was assessed at Rs.2,48,68,427/- by making certain additions.

22. The assessee society preferred an appeal against the Assessment Order before the CIT(A). The CIT(A) vide order dated 28.02.2020 deleted the additions so made by the AO. However, the CIT(A) enhanced the income of the assessee society at Rs.1,26,98,696/- in exercise of powers conferred under Section 251(1)(a) of the Act. The enhancements were made on the following counts:

- Denial of benefit of exemption under Section 11/12 of the Act and thereby treating excess of income over expenditure of Rs.65,30,315/- as taxable profit as against surplus treated as exempt by the assessee and also agreed by the AO.
- Amount received towards Building Fund, Rs.57,96,381/- and Amalgamation Fund Rs.3,72,000/- aggregating to Rs.61,68,381/-.
- The CIT(A), as per para 23 of the First Appellate Order, also advised the AO to consider the facts relating to A.Y. 2015-16 in question and invoked suitable

measures, if required, for A.Y. 2013-14 and A.Y. 2014-15 *albeit* after application of mind and considering the facts of the case independently.

23. Aggrieved by the enhancement action carried out under Section 251(1) of the Act and observations made in relation to A.Y. 2013-14 and A.Y. 2014-15, the assessee preferred appeal before the Tribunal.

24. As pointed out on behalf of the assessee, denial of exemption under Section 11/12 of the Act and thereby treating excess of income over expenditure of Rs.65,30,315/- as taxable income was made on allegedly on the premise that the assessee has acted in infringement of Section 13 of the Act is devoid of any legally sound basis. For the purposes of such enhancement, the CIT(A) noted that the assessee society had advanced a total sum of Rs.3,00,00,000/- to one Sh. Navin Sood and Sh. Pradeep Sood for purchase of purchase of certain land parcels at Ballabhgarh, Faridabad for construction of school on the said land during A.Y. 2013-14 and A.Y. 2014-15. Out of the said sum of Rs.3,00,00,000/-, Rs.90,00,000/- were returned back, leaving a balance of Rs.2,10,00,000/- outstanding as on 29.10.2014 under the head advance plot of land purchases. The CIT(A) treated the said advance for purchase of land as infringement of Section 13 of the Act by treating Sh. Navin Sood and Sh. Pradeep Sood as persons specified for the purposes of Section 13(3) of the Act as they are spouses of Smt. Renu Sood (Principal of Geeta Bal Niketan School run by society) and Smt. Anita Sood (Administrator of Geeta Bal Niketan School) respectively. The CIT(A) thus, treated such action of payments of advance to the spouses of Principal and Administrator of Schools run by the Society, as infringement of Section 13 of the Act resulting in denial of exemption u/s 11 of the Act.

25. The assessee contends that neither the transactions relate to the Assessment Year 2015-16 in question nor the payment made to Sh. Navin Sood and Sh. Pradeep Sood has resulted in any infringement of Section 13(3) of the Act. The assessee

contends the the CIT(A) has misinterpreted the facts and misconstrued the position of law. As contended, the Principal or Administrator carries out substantive duty in the school and are also not forming part of the trusteeship or governing body of the society. Besides the independent employment capacity of the spouses of recipient of the advance, the assessee society has duly complied with the relevant provision of the Act. Furthermore, the exercise of enhancement powers on such altogether new issue is not available.

26. We find that identical issue has been raised in ITA No. 1369/Del/2020 has been addressed in favour of the assessee as per para 11 of this order. Hence, the enhancement of income by treating excess of income over expenditure of Rs.65,30,315/- is set aside and deleted.

27. The Second issue by way of enhancement relates to taxability of amount received towards building fund and amalgamation fund aggregating to Rs.61,68,381/- as revenue receipts instead of 'capital receipt treated by the Assessee. Identical additions were made in the hands of Trust Assessee in ITA No. 1369/Del/2020 (supra). The issue has been adjudicated in favour of the assessee as per para 13, 14 & 15 (supra). The observations made in the case of the trust shall apply *mutatis mutandis* to the assessee society herein. Consequently, enhancement made to the tune of Rs.61,68,381/- is set aside and quashed.

28. We now advert to third limb of objection raised on behalf of the assessee on account of advise made to the Assessing Officer which led to enhancement of income for unrelated A.Y. 2013-14 and A.Y. 2014-15 which were not subject matter of appeal before the CIT(A). While we look into the impugned objection, it may be pertinent to reproduce the so called advise given by the CIT(A) in first appellate order:

“23. It is further noted that the facts of the case of the appellant are similar for the assessment years 2013-14 and 2014-15 to the facts of the case of the appellant for assessment year 2015-16 with the following particulars:

<i>Assessment Year</i>	<i>Excess of income over expenditure (Rs.)</i>	<i>Building fund received during the year (Rs.)</i>	<i>Amalgamation fund received during the year (Rs.)</i>
<i>2013-14</i>	<i>68,47,049</i>	<i>69,86,278/-</i>	<i>6,75,200/-</i>
<i>2014-15</i>	<i>62,64,353/-</i>	<i>80,96,999/-</i>	<i>8,59,800/-</i>

Therefore, the AO is advised to consider the above facts and decide suitable measures, if required, for assessment years 2013-14 and 2014-15 after application of mind and considering the facts of the case independently.”

29. On perusal, we notice a few facts. The figures taken in A.Y. 2013-14 and A.Y. 2014-15 towards 'income over expenditure', 'building fund' and 'amalgamation fund' relates to those respective years. The CIT(A) merely seeks to advise the Assessing Officer to reconsider the adjustments in the returned income in those years purportedly based on the observations made in the appellate order for A.Y. 2015-16. As can be seen, the observations made are neither in the league of 'finding' nor 'directions' as contemplated under Section 150 of the Act. Therefore, such 'advise' given to the Assessing Officer has no statutory effect. Notwithstanding, advise offered by the CIT(A) is not sync with powers conferred under Section 250(1)(a) of the Act. The advise has been given in relation to other Assessment Years based on their own set up facts. Such observations are beyond the statutory contemplation available under the Act. The advise provided in para 23 of the First Appellate Order clearly amounts to over reach statutory powers and are thus vitiated in law. Hence such observations made in relation to other assessemnt years based on different facts of those years are liable to be set aside and expunged.

30. In the light of delineations made above, the enhancement made by the CIT(A) is unsustainable in law.

31. In the result, the appeal of the assessee is allowed.

32. In the combined result, both the appeals captioned above are allowed.

Order was pronounced in the open Court on 29/10/2024.

Sd/-

**(YOGESH KUMAR US)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Dated: 29/10/2024

*Subodh Kumar/Kavita Arora, Sr. PS

Copy forwarded to:

- Appellant
- Respondent
- CIT(A)
- CIT
- DR

Assistant Registrar
ITAT, New Delhi