

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "B" JAIPUR

डा0 एस. सीतालक्ष्मी,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No.296& 297 /JP/2024
निर्धारणवर्ष / AssessmentYear : 2017-18& 2018-19

Global Institute of Technology Society D-91,Ambabari Jaipur	बनाम Vs.	The DCIT Circle-Exemption Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAATG 3217 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकरअपील सं./ITA No. 606 & 607/JP/2024
निर्धारणवर्ष / AssessmentYear : 2017-18& 2018-19

The ACIT (E) Circle Jaipur	बनाम Vs.	Global Institute of Technology Society, D-91,Ambabari Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAATG 3217 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri S.L. Poddar, Advocate
राजस्व की ओरसे / Revenue by: Shri Anup Singh, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 13/11/2024
उदघोषणा की तारीख / Date of Pronouncement: 11 /12/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These above mentioned four Appeals are the Cross Appeals filed against two different orders of the Id. CIT(A) dated 06-03-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for

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the assessment year 2017-18& 2018-19 wherein the assessee and the
Department has raised the following grounds of appeal.

ITA No. 296/JP/2024 - Assessee

"1. In the facts and in the circumstances of the case the Id. CIT(A) has erred in sustaining the addition of Rs.10,80,000/- out of Rs.21,00,000/- made by the AO on account of salary paid to the specified persons u/s 13(3) of the Income Tax Act.

2. In the facts and in the circumstances of the case the Id. CIT(A) has erred in confirming the addition of Rs.52,74,027/- made by the AO on account of registration, examination, fees, book bank fees and other receipts by treating the same as revenue receipts.

ITA No. 606/JP/2024 - Department

a. Order of the lid. CIT(A) is bad in law and needs to be quashed

b. Whether order passed by the Ld. CIT(A) is justified, ignoring the facts and circumstances of the present case and without applying the correct preposition of law.

c. Whether Ld. CIT(A) is justified in restricting disallowance of salary paid to specified persons ignoring the fact that details of service rendered and details of attendance have not been submitted during the assessment proceedings and there is substantial hike in salary.

d. Whether Id. CIT(A) is justified in deleting of addition on account of excessive interest paid to persons covered u/s 13(3) res. u/s 13(1)(c) of the Income-tax Act, ignoring the fact that there was no proper justification about obtaining of loan on such higher rates.

e. Whether LA CIT(A) is justified in deleting disallowance of interest on interest free advances to persons covered u/s 13(3) rw.s. u/s 13(1)(c) of the Income-tax Act, ignoring the fact trust money was used by the trustees for long duration without paying any interest on it and assessee is also taking huge loans from 13(3) persons at exorbitant interest rates.

f. Whether Id. CIT(A) is justified treating development fee as capital in nature ignoring the facts that there was no voluntary element in the development fee and it is recurring fee like other fee receipts.

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g. Whether Id. CIT(A) is justified in allowing exemption u/s 11 & 12 ignoring the fact that assessee violated the provision of section 13(1)(c) r.w.s. 13(2)(a)/(b)/(c)/(h) by paying excessive salary and interest to specified persons and also providing interest free loans.

h. Whether Id. CIT(A) is justified in deciding the issues on the basis of order of the Hon'ble ITAT dated 05.11.2018 in ITA No. 1066/JP/2018 which had already been challenged by the department before the Hon'ble High Court."

ITA No. 297/JP/2024 - Assessee

"1. In the facts and in the circumstances of the case the Id. CIT(A) has erred in sustaining the addition of Rs.20,10,280/- out of Rs.21,98,4800/- made by the AO on account of salary paid to the specified persons u/s 13(3) of the Income Tax Act.

2. In the facts and in the circumstances of the case the Id. CIT(A) has erred in confirming the addition of Rs.87,52,958/- made by the AO on account of registration, examination, fees, book bank fees and other receipts by treating the same as revenue receipts.

ITA No. 607/JP/2024 - Department

a. Order of the lid. CIT(A) is bad in law and needs to be quashed

b. Whether order passed by the Ld. CIT(A) is justified, ignoring the facts and circumstances of the present case and without applying the correct preposition of law.

c. Whether Ld. CIT(A) is justified in restricting disallowance of salary paid to specified persons ignoring the fact that details of service rendered and details of attendance have not been submitted during the assessment proceedings and there is substantial hike in salary.

d. Whether Id. CIT(A) is justified in deleting of addition on account of excessive interest paid to persons covered u/s 13(3) res. u/s 13(1)(c) of the Income-tax Act, ignoring the fact that there was no proper justification about obtaining of loan on such higher rates.

e. Whether LA CIT(A) is justified in treating development fee as capital in nature ignoring the facts that there was no voluntary element in the development fee and it is recurring fee like other fee receipts.

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f. Whether Id. CIT(A) is justified in allowing exemption u/s 11 & 12 ignoring the fact that assessee violated the provision of section 13(1)(c) r.w.s. 13(2)(a)/(b)/(c)/(h) by paying excessive salary and interest to specified persons and also providing interest free loans.

g. Whether Id. CIT(A) is justified in deciding the issues on the basis of order of the Hon'ble ITAT dated 05.11.2018 in ITA No. 1066/JP/2018 which had already been challenged by the department before the Hon'ble High Court.”

2.0 First of all, we take up the appeal of the assessee and Department for the assessment year 2017-18 for adjudication as under:-

2.1 During the course of hearing, the Id. AR of the assessee has not pressed the Ground No.2. Hence, the Ground No. 2 is dismissed being not pressed.

3.1 Apropos Ground No. 1, the facts as emerges from the order of the Id.CIT(A) who has sustained the addition to the extent of Rs.10,80,000/- by observing at para 5.2 to 5.3 of his order as under:-

“5.2 Ground No. 1 which relates to addition of Rs.21,00,000/-on account of salary paid to the specified persons u/s 13(3) of the Income Tax Act, 1961. It is an undisputed fact that the appellant society is registered as a society under the Registration of Societies Act, 1958 and also registered under section 12AA of the IT Act, 1961 vide letter No. CIT/Recovery/S. 12A(a)/23/5/2000-2001/459 dated 22.05.2005 issued by CIT, Jaipur The object of the society/trust is to establish educational institution, Social, Economic & Educational Development of Backward Classes, Women Empowerment etc. It is observed from the assessment order that the Id AO after considering all relevant facts and submission of the assessee disallowed Rs.21,00,000/- on account of salary paid to the specified persons being unreasonable, u/s 13(3) of the Act. The appellant on the other hand has demonstrated that salary paid to the specified person u/s 13(3) was for the running

GLOBAL INSTITUTE OF TECHNOLOGY SOCIETY, JAIPUR VS DCIT-CIRCLE (EXEMPTION), JAIPUR of the institution and they have requisite qualification. The appellant also submitted that in the assessment year 2015-16 disallowance out of salary was made by the learned AO. The learned CIT(A) has deleted the addition made on this account by holding that the AO has not brought any comparable case for holding that the salary paid to these persons is excessive.

5.3 Having considered the observation of the Id AO, I find that there is only one person named Shri M.L.Kandoi, working as manager is having educational qualification of Matriculation and others are well qualified to hold the post. The salary paid to Shri M.L.Kandoi is Rs. 13,80,000/- which I consider at higher side. The appellant is running an educational institution and a manager in the said institution must possess requisite qualification to manage the affairs of the institution. The salary or post of Manager awarded to Shri M.L.Kandoi in my considerate opinion is only because he is one of the member of the society and hence covered uls 13(3) of the Act. Regarding other five members of the society, I find they have requisite qualification and salary paid to them are reasonable. Looking at the qualification of Shri M.L.Kandol which is Matriculation, I consider Rs.25,000/- per month is reasonable and hence Rs.3,00,000/- is allowed. The estimated disallowance of salary in my considerate opinion is does not hold good and unjustified. As regarding decision of the CIT(A) taken for the AY 2015-16, I respectfully differ with the said decision on the ground that the Id CIT(A)-3 Jaipur, in my considerate has omitted to consider the qualification of Shri M.L.Kandoi who has passed matriculation. Therefore, in view of the discussion made above, Rs. 10,80,000/- is sustained. The appellant gets relief of Rs. 10,20,000/-. The ground No.1 of appeal is, thus, partly allowed.

3.2 During the course of hearing, the Id.AR of the assessee submitted that the Id.CIT(A) is not justified in sustaining the addition to the extent of Rs.10,80,000/-. He submitted that no addition was sustained by the

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Id.CIT(A) on account of salary payment to Shri M.L.Kandoi or others and he took reference to the Id. CIT(A) Appeal No. 3/1056/2017-18 dated 4-09-2018 which is available at pages 59-67 of the paper book filed.

3.3 On the other hand, the Id. DR opposed the relief granted to the assessee and filed decision of Id. CIT (E), Jaipur with following observations as to the appeal of the assessee.

“National Faceless Appeal Centre (NFAC) order dated 06.03.2024 in CIT(A), Jaipur- 3/11250/2019-20 for A.Y. 2017-18 in the case of M/s Global Institute of Technology Society. (PAN - AAATG3217H). D-91, Ambabari, Jalpur (Raj.)-302012-reg.

Decision by the CIT on the Scrutiny Report

A. Issue wise decision of the CIT, as to whether appeal is to be filed or not, may be recorded with reasons, keeping in view the line of argument the DR is expected to take before ITAT at the time of hearing:

Brief Facts of the case: -

At the time of assessment proceedings, assessee was registered under Registration of Societies Act 1958 and assessee was also registered u/s 12AA of the Income-tax Act from 22-05-2005. In this case, assessment u/s 143(3) was completed on 28.12.2019 at Rs.3.16.98.660/-.

Aggrieved against the order, the assessee filed an appeal before the Id.CIT(A)

Followings grounds/additions were decided by the CIT(A).

Issue 1:-Disallowance of salary to persons specified u/s 13(3) of the I.T. Act, 1961.

AO has made addition of Rs. 21.00.000/- on account of salary paid to the persons specified u/s 13(3) of income tax Act.

Decision of Ld. CIT(A).

Out of addition of Rs. 21,00,000/- on account of salary paid to persons specified u/s 13(3) of the Act, the CIT(A) has allowed relief of Rs. 10.20.000/- The CIT(A) has considered the salaries given to Sh. M L Kandoi to the tune of Rs. 25000/- per

GLOBAL INSTITUTE OF TECHNOLOGY SOCIETY, JAIPUR VS DCIT-CIRCLE (EXEMPTION), JAIPUR month and full salaries of other 4 persons specified u/s 13(3) as Justifiable in view of their qualifications.

Comments of AO on decision of Ld. CIT(A)

The CIT(A) has erred in deleting addition of Rs. 10,20,000/- made on account of excess salary paid to the persons specified u/s 13(3) of the Act. It is to be noted that the AO had already allowed a hike of 20% in salaries paid to the specified persons as compared to AY 2015-16. Even than the hike in salaries are exorbitant and beyond reasoning. Therefore, the order of the Ld. CIT (A) is not acceptable on this ground.

Comments of Addl. CIT on decision of Ld. CIT(A):-

Ld. CIT (A) partly allowed salary by saying that person other than Shri M.L Kandol have specific qualifications. However, Ld.CIT(A) has ignored the following-

-Details of work and service rendered by specified persons had not been submitted during the assessment proceedings.

-No attendance register was submitted.

-Self-certified certificates are not sufficient to prove work performed by the specified persons.

-Details of person wise salary had not been provided by the assessee for comparing the payment to salary to other staff.

Hence, salary paid to trustee is not reasonable and decision of Ld.CIT(A) is not acceptable on the issue.

Issue 2: Addition of Rs.9,87,023 on account of Interest paid to persons specified u/s 13(3) of the Act at higher rates.

Addition of Rs. 9,87,023/- on account of Interest paid to persons specified u/s 13(3) of the Act- The CIT(A) has been deleted by the Id. CIT(A) relied upon the decision in earlier years wherein interest rate of 18% has been held reasonable.

Comments of AO on decision of Ld.CIT(A)

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The CIT(A) has erred in justifying the rate of interest at 18%. In this regard the reasoning of the AO in the assessment order for the AY 2015-16 holds well for the same issue involved in the AY 2017-18 as well. Relevant portion of the same is reproduced hereunder:

During the assessment proceedings the assessee has attempted to justify the rate of interest paid to specified persons by combining the amount of brokerage paid with the rate of interest. It is pertinent to mention here that the rate of interest and the brokerage or commission are two different components of expenditure and are received by two different persons altogether. The two can not be appropriated together for the sake of justifying the rate of interest paid to the related parties.

The reasons given by the assessee society for low rate of interest of market loans being their short term availability and necessity of advance payment of Interest to other parties is contradictory to the fundamental principles of economy. This is because as per the basic market principle, greater the risk, higher the rate of interest. This is the reason why unsecured loans carry a higher rate of interest as compared to secured loans. No other loan can be more secured than the one which is received from the persons specified of the assessee society. Moreover, the assessee itself pointed out that there is no urgency of payment of interest nor compulsion of payment within any specified time. There is also no broker in between and the availability of funds is more convenient to the assessee. the lender being its own specified person. In fact, the specified concerns and family members would claim a lower rate of interest as compared to the other parties as the money being advanced is secured for a longer period and is essentially not payable on demand.

Moreover, the assessee is a tax exempted entity, established with a social purpose of providing educational facilities and promoting education. It is not a business concern aimed at earning profits. From the financials of the assessee, it is clearly visible that it is burdened with huge secured as well as unsecured loans. The assessee had claimed a net deficit of Rs. 1,63,26.895/- during the year. As such, any prudent trust or society will not divert its surplus funds towards huge interest payments to its own specified persons at a rate higher than the conventional market rate.

Therefore, the order of the Ld. CIT(A) is not acceptable on this ground.

Comments of Addl. CIT on decision of Ld. CIT(A):-

Ld. CIT(A) allowed the interest paid to specified person covered u/s 13(3) by referring earlier orders. However, Ld. CIT(A) ignored that assessee could not justify the accepting loans on such higher rate from specified persons.

Issue 3:- Disallowance of interest in relation Interest free advances to trustees.

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Addition of Rs. 60,60,000/- was made by the AO on account of violation
of section 13(1)(c) r.w.s. 13(2)(b)/(g) of the Act-

Decision of Ld. CIT(A)

The Id. CIT(A) has followed the decision of ITAT, Jaipur in the case of the assessee for the AY 2015-16 in ITA no. 1066/JP/2018 and deleted the addition of Rs. 60,60,000/ made on account of violation of section 13(1)(c) r.w.s. 13(2)(b)/(g) of the Act.

Comments of AO on decision of Ld. CIT(A):-

The CIT(A) has erred in deleting the addition of Rs. 60.60.000/- on account of interest free advance given by the assessee society in violation of section 13(1)(c) r.w.s. 13(2)(b)/(g) of the Act. The CIT(A) has relied upon the decision of the Hon'ble ITAT in the assessee case for the AY 2015-16 in ITA 1066/JP/2018 and merely stated that the decision of the Hon'ble ITAT is binding upon them. The Id. CIT(A) has not appreciated that fact that despite a lapse of almost 7 years the assessee has not made any progress on the said deal of land and has kept the money advanced without any interest being charged. Clearly, the founder trustees Sh. Anand Singhal and Sh. Rajkumar Kandoi are benefitted from the trust money/property as the same remains with them for more than seven years without charging of any interest and also there is a breach of sale agreement. Also, the order of the Hon'ble ITAT in ITA 1066/JP/2018 has not been accepted by the revenue and further appeal has been filed before the Hon'ble Rajasthan High Court. Therefore, the order of the Ld. CIT(A) is not acceptable on this ground.

Comments of Addl. CIT on decision of Ld.CIT(A)::

Ld.CIT(A) allowed the disallowance of interest at 12% on advance to specified persons for purchase of property by referring earlier year order However, Id. CIT(A) ignored the following facts

-That agreement was made on 27-08-2012 however, no progress had been made till end of FY 2016-17, it shows that trustee Shri Anand Singhal and trustee Shri Rajkumar Kandoi benefitted from the trust money.

-Trust money remain with trustee for more than 7 years without charging of interest.

-Therefore, it is clear cut violation of section 13(1)(c) rw.s 13(2)(b)(g) of the Income-tax Act.

-Funds were not used for the trust.

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Therefore, decision of Id. CIT(A) is not acceptable. Besides, departmental appeal is pending before Hon ble high court on the similar issue for AY 2015-16.

Issue 4- Issue related to development fee

The AO has made an addition of Rs. 3.36.04.500/- on account of development fee treating the same as revenue receipts which was claimed by the assessee as capital receipts.

Decision of Ld. CIT(A)

The CIT(A) has followed the decision of ITAT, Jaipur in the case of the assessee for the AY 2015-16 in ITA no. 1066/JP/2018 & deleted the disallowance made on account of development fee.

Comments of AO on Ground no. 4 & 5 on decision of Ld.CIT(A)

The CIT(A) has erred in deleting the addition of Rs. 3,36.04,500/- made on account of disallowance of treatment of development receipt as capital in nature. The AO has amply justified the addition made on this account. The reasoning of the AO is very well qualified to be reproduced here:

Reply has been considered. However, the above-mentioned development receipts cannot be treated capital receipts on account of following reasons

(a). The development fees is a recurring income receipt like the other fee receipts which is charged from the students along with the tuition fees. While the tuition fees is regarded as revenue receipt by the trust, the development fees is regarded as capital receipt for no specific reason: (b). As per the ledger of Development Reserve, there are no amounts debited against the reserves, which shows that the entire development fee receipts are treated separately only for the purposes of claiming the same as capital receipts and not for expenditure purposes. The capital expenditure incurred for infrastructure development and on fixed assets is not debited to the Development reserve account which shows that the assessee has itself not utilized the amount in the development reserve for the development purposes as claimed.

(c). Further, this also shows that on one hand, the assessee intends to claim depreciation as well as investment/purchase of fixed assets towards application of fund as allowed u/s 11, however, at the same time the assessee intends to immune the funds received as development fees from the tax liability by directly taking them to the balance sheet in the form of development reserve.

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(d). The assessee claims that such funds were not utilized for operational purposes but only for the development of the institution. However, the books of the assessee tell a different story altogether. Nowhere from the books, it is seen that the assessee has spent this amount towards the development of the institution. The assessee has itself not quantified in its records as to how much of the amount from this development reserve was utilized towards development of the institution. Though, the assessee has spent on infrastructure projects during the year but at the same time the assessee has not claimed any expenditure from the development reserve towards this purpose. Hence, the contention of the assessee is not acceptable.

Further, the order of the Hon'ble ITAT in ITA 1066/JP/2018 has not been accepted by the revenue and further appeal has been filed before the Hon'ble Rajasthan High Court. Therefore, the order of the Ld. CIT(A) is not acceptable on this ground.

Comments of Addl, CIT on decision of Ld. CIT(A)::

Ld.CIT(A) allowed the development fee as capital receipts by referring earlier orders. However, Ld. CIT(A) ignored the following facts

-Development fee is recurring income like other fee receipts.

-Capital expenditure was not incurred from development fee

-If fee is taken as per the govt, then it loses its voluntary element.

-Ld. CIT(A) has not discussed anything in order about voluntary nature of development fee. Therefore, applicability of section 11(1)(d) is not justifiable.

Therefore, decision of Ld. CIT (A) is not acceptable

Issue 5: Issue of set off of losses:-

While computing the total income set off of losses of earlier years was not allowed.

Decision of Ld. CIT(A)

The CIT(A) has observed that the issue has not been dealt with in the assessment order and has directed to allow set off of losses as per the Act.

Comments of AO on decision of Ld. CIT(A)

Issue of set off of losses has not been dealt with in the assessment order and is a matter of computation of income. The same is acceptable as per the act.

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Comments of the Addl. CIT E) on decision of Ld. CIT(A)

Issue of set off of losses has not been dealt with in the assessment order and is a matter of computation of income. The same is acceptable as per the act.

Issue 6:- Issue related to Exemption u/s 11&12

The AO has denied the benefit of Exemption u/s 11 & 12 of the Act on basis of certain additions and disallowances.

Decision of Ld. CIT(A)

The CIT(A), following the order of the ITAT in ITA no. 1066/JP/2018, held that denial of exemption u/s 11 & 12 of the Act is not justified except to the extent where specific part of the income or property is found to be used or applied for the benefit of the specified persons.

Comments of AO on decision of Ld. CIT(A):-

The Id. CIT(A) erred in allowing the benefit of exemption u/s 11/12 of the Act to the assessee except to the extent where specific part of the income or property is found to be used or applied for the benefit of the specified persons. The case of the assessee is squarely cleared the provisions of section 13(1)(c) read with section

Comments of Addl. CIT on decision of Ld. CIT(A):-

Ld.CIT(A) allowed the exemption u/s 11 &12 by referring earlier orders. However. Id. CIT(A) ignored the following facts-

-Assessee violated the provision of section 13(1)(c) r.w.s. 13(2)(a)(b)(c)(h) by paying excessive salary and interest to specified persons Besides, assessee gave interest fee advances to specified persons.

-Further, section 13 says that in case of violation of section 13, benefit of section 11 & 12 would not be available to assessee.

Therefore, decision of Id. CIT(A) is not acceptable.

Further, The AO & Addl. CIT (E), reported that the tax effect involved in the case le. Rs. 1,48,07,975/- is above monetary limit specified by the CBDT vide circular no. 5/2024 dated 15.03.2024 for filing further appeal before the ITAT.

Comments of CIT(E), Jaipur:-

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I have thoroughly reviewed the Assessment order and CIT(A)'s order regarding the assessment of M/s Global Institute of Technology society for the A.Y. 2017-18 as well as facts mentioned in Central Scrutiny Report, the decision of Ld. CIT (A) is not acceptable in allowing exemption u/s 11/12 of the I.T. Act. 1961 as the order of Hon'ble ITAT dated 05.11.2018 in ITA no 1066/JP/2018 based on which relief has been granted by the Id. CIT(A) was challenged by the department before the Hon'ble Rajasthan High Court, Jaipur bench and decision is pending.

The Id. CIT(A) was also not justified in restricting the disallowance out of salary to the tune of Rs.10.80.000/- as against total disallowance of Rs. 21.00.000/- on account of excess salary, deleting the interest amounting to Rs. 9.87.0.23/- paid to the persons covered u/s 13(3), deleting the addition of Rs. 60.60.000/- made on account of interest free advances to the persons covered u/s 13(3) and deleting the addition of Rs. 3.36.04,500/- made on account of development fee as discussed above.

The tax effect involved in the matter is Rs.1.48,07.975/- which is also above the monetary limit prescribed by the Board's Circular No. 05/2024 dated 15.03.2024, Therefore, I am in view of that filing a further appeal before the Hon'ble ITAT to uphold the order of the AO and contest the decision of the CIT(A).

2. In view of the facts discussed above, the order of Ld. CIT (A) is not acceptable on merits and filing of appeal before ITAT is recommended.

Aggregate tax effect on issues proposed to be contested in the ITAT	Rs.1.48,07.975/-
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B. Grounds of appeal to be raised before the ITAT may be framed in respect of the issues not acceptable by the CIT.

As per authorization

C. In the case of a combined order or order in a group case, involving more than one assessee falling under jurisdiction of different CIT, the CIT shall communicate the stand taken on common issues to the CIT having jurisdiction over other case.

N.A.

Categorization of final decision by CIT

D. The Appeal is not filed.

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1. As the order is acceptable on merits or

No

Even though the order is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the limit prescribed in CBDT'S Instruction on monetary limits.

N.A.

E. Appeal is to be filed on the grounds of appeal framed above.

1. As the order is not acceptable on merits

Yes

II. Though tax effect is below the prescribed limit, the case falls under the exceptions (to be specified) of the instruction of CBDT on monetary limits.

N.A.

Authorization under section 253(2) of the I.T. Act is issued separately. Appeal to be filed accordingly.

Dated: 26-04-2024

Place: Jaipur

Sd/-

(Anil Kumar Bhardwaj)

Commissioner of Income-tax(Exemption), Jaipur

3.4 We have heard both the parties and perused the materials available on record. In this case, it is noted that the AO had disallowed the salary of Rs.21.00 lacs out of total claim of Rs.82.20 lacs. However, in first appeal, the additions in respect of all employees were deleted except that of Shri M.L. Kandoi. It is noted that Shri M.L. Kandoi was working as Manager with the assessee and it was narrated that during the period relevant to

A.Y. 2017-18, Shri M.L. Kandoi was the senior most person working with the institute. Although his educational qualification was only matriculation yet he had long and vast experience at his back. It is common knowledge that experience counts heavier than mere educational qualification. The salary paid to Shri M.L. Kandoi during the year under consideration is Rs. 13,80,000/-. The AO has disallowed a sum of Rs. 6,60,000/- and allowed the salary of Rs. 7,20,000/- being reasonable. However, the Learned CIT(A) has disallowed salary to the extent of Rs. 10,80,000/-. According to the view of the Learned CIT(A), salary @Rs. 25,000 per month was quite reasonable and, thus, he has allowed Rs. 3,00,000/- salary as against claim of Rs. 13,80,000/-. Thus, out of salary payment to Shri M.L. Kandoi, a sum of Rs. 10,80,000/- has been disallowed. We note from the records that the salary allowed in preceding year was more i.e. to say that in A.Y. 2015-16, the claim of salary in the name of Shri M.L. Kandoi was of Rs.10,80,000/- and the AO had allowed salary of Rs. 6,00,000/- and thus, disallowance was made of Rs. 4,80,000/-. In first appeal, the Id. CIT(A) deleted the addition and allowed the claim of salary of Rs. 10,80,000/- in entirety. Thus, no addition was sustained by the Ld CIT(A) on account of salary payment to Shri M.L. Kandoi or others. A copy of the order of the Learned CIT(A) in Appeal No. 3/10506/2017-18 dated 04/09/2018 is

GLOBAL INSTITUTE OF TECHNOLOGY SOCIETY, JAIPUR VS DCIT-CIRCLE (EXEMPTION), JAIPUR available on Paper Book Page No. 59-67. The submission of the assessee is that when salary of Rs. 10,80,000 was found quite reasonable in A.Y. 2015-16 then the claim of salary of Rs. 13,80,000/- in A.Y. 2017-18 is quite reasonable, having only an increase of Rs. 3,00,000/- in two years. He submitted that normal increase of salary is around 15% to 20% per year. In the case of the assessee, the increase works out to less than 15% per annum. The Id. AR of the assessee submitted that considering all these facts, the addition sustained by the Learned CIT(A) deserves to be deleted. The Id. AR of the assessee submitted that Enhancement in disallowance of salary has been done without issuing any notice u/s 251(2) of the IT Act, 1961 and further submitted that in the case of the assessee, the addition made by the AO on account of disallowance of salary was of Rs. 6,60,000/- only whereas the Learned CIT(A) has increased the addition to Rs.10,80,000/-. The Id. AR of the assessee submitted that this enhancement has been made by the Ld CIT(A) without providing reasonable opportunity to the assessee as statutorily required u/s 251(2) of the Act. The provisions of Sec.251(2) are quoted below :-

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Powers of the [Joint Commissioner (Appeals) or the] Commissioner (Appeals).

251. (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers-

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;

(aa) in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(c) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The [Joint Commissioner (Appeals) or the] Commissioner (Appeals) [as the case may be,] shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

The Bench has taken into consideration the order of the Id.CIT(A) (supra) for the assessment year 2015-16 wherein the similar claim was allowed in the case of Shri M.L. Kandoi. In this view of the matter and considering the legal position as narrated above, we do not concur with the findings of the Id. CIT(A) as to sustenance of addition under the head of salary amounting to Rs.10.80 lacs in the case of Shri M.L. Kandoi. Thus the Ground No. 1 of the assessee is allowed.

4.0 In the result the appeal of the assessee in ITA no. 296/JP/2024 stands partly allowed.

5.1 Now we take up the appeal of the revenue wherein ground no. 1 & 2 raised by the revenue being general no specific arguments were placed on record and therefore, the same are dismissed. Ground no. 3 & 7 is dismissed as we have allowed the claim of the salary in appeal filed by the assessee herein above. On the Ground no. 4 and 5 raised by the revenue we note that same does not emanate from the order of the Id. CIT(A) and no specific grievance of the revenue argued before us and therefore, the same are dismissed.

5.2 Apropos to the Ground no. 6 & 8 raised by the revenue the relevant finding of the Id. CIT(A) is as under :-

“I have perused the assessment order, appellant’s submission, order of the Id. CIT(A)-Jaipur and the order of the ITAT in the appellant’s own case for the A. Y. 2015-16 and the find Hon’ble ITAT decided the issue in favour of the appellant considering the development as capital receipt against the AO’s decision. The decision of the jurisdictional ITAT is binding upon me even though the department may have filed further appeal before the Hon’ble High Court of Rajasthan. Thus, relying on the order of the Hon’ble ITAT in the appellant’s own case for A. Y. 2015-16, I decide the issue in favour of the appellant and addition of Rs. 3,36,04,500/- is deleted. The ground no 5 of appeal is thus allowed.”

5.3 Before us the Id. DR did not present any stay of the order of the ITAT or any contrary decision and therefore, since the issue is already decided

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by the co-ordinate bench in the case of the assessee we do not find any merits in these ground no. 6 & 8 raised by the revenue and therefore, the same are dismissed.

6.0 Ground no. 9 being general in nature and does not require our adjudication.

7.0 Thus the appeal of the Revenue in ITA No. 606/JP/2024 is dismissed.

8.0 In the result the appeal of the assessee is partly allowed and that of the Revenue is dismissed.

9. Now we take up the appeal of the assessee and Department for the assessment year 2018-19 in ITA no. 297/JP/2024 (assessee) and ITA no. 607/JP/2024 (Revenue) for adjudication whose grounds of appeal are mentioned (supra).

10. During the course of hearing, the Id. AR of the assessee has not pressed the Ground No.2. Hence, the Ground No. 2 is dismissed being not pressed.

11.1 Apropos Ground No. 1, the facts as emerges from the order of the Id.CIT(A) who has sustained the addition to the extent of Rs.20,10,480/- by observing at para 5.2 of his order as under:-

“5.2 Ground No. 1 which relates to addition of Rs.21,98,40/- on account of salary paid to the specified persons u/s 13(3) of the Income Tax Act, 1961. It is an undisputed fact that the appellant society is registered as a society under the

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Registration of Societies Act, 1958 and also registered under section 12AA of the
IT Act, 1961 vide letter No. CIT/Recovery/S. 12A(a)/23/5/2000-2001/459 dated
22.05.2005 issued by CIT, Jaipur. The object of the society/trust is to establish
educational institution, Social, Economic & Educational Development of Backward
Classes, Women Empowerment etc. It is observed from the assessment order that
during the year under consideration salary to two more member of the trustee or
their relative was paid salary viz. Shri R.K. Kandoi and Ms. Pallvita Kandoi who
were appointed as treasures and assistance treasure respectively during the year.
Shri R.K. Kandoi is aged about 60 years were appointed as treasure of the society
which are handling cores of rupees transaction as claimed by the appellant and to
assist him the engaged Ms. Pallvita Kandoi. Regarding qualification of the two
specified person there is no dispute but it is observed from the assessment order
that the Id AO asked the appellant to provide details about the post held by these
two individuals, but the same was not provided. It was submitted before the Id AO
that Shri R.K. Kandoi is a long time Trustee, but has paid salary of Rs. 17,40,000/-
from AY 2018-19 but no explanation about the same was provided as to why he
was appointed at the age of 60 years and also who was looking after the job prior
to appointing them to look after the affairs of the school or it was for name shake to
draw salary. No evidence of his service could be furnished before the AO or before
me. Similarly, for Ms. Pallvita Kandoi who was paid salary of Rs.2,70,480/-, no
evidence of giving service could be furnished before the AO or before me. Mere
declaring the salary in the return of income cannot be a condition to justify such
payment. Thus, for want of any cogent evidence of providing service to the
institution by Shri R.K. Kandoi and Ms. Pallvita Kandoi the Ld AO disallowed salary
received by these two new recipients. I have considered the submission of the
appellant but of the view that the qualification alone does not satisfy giving the
salary to any person. The appellant has failed to demonstrate that who were
looking after the job these two person were and why they were engaged now and
also they actually rendered services on regular basis like other staff or faculties of
the institution and not in casual manner. Thus, I find no infirmity in the action of the
Id AO on disallowing Rs.20,10,480/- and confirm the same. However, regarding

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balance disallowance of Rs.1,88,000/-, I allow the same considering my
observation made in the appellant's own case for the A.Y 2017-18 as reasonable.
Thus, the ground No.1 of appeal is partly allowed.”

11.2 During the course of hearing, the Id.AR of the assessee submitted that the Id.CIT(A) is not justified in sustaining the addition to the extent of Rs.20,10,480/-. To this effect, the Id. AR has filed the following written submission that the Id.CIT(A) was not justified in sustaining the above addition:

“During the course of appellate proceedings before the Learned CIT(A), the assessee had made a detailed submission, which is quoted as under :-

“During the year under consideration, the assessee society has incurred expenditure on salary of Rs.8,91,60,673/-. Out of this expenditure, a sum of Rs. 71,70,480/- has been paid to specified persons u/s 40A(2)(b). The payment to specified persons is less than 10% of the total salary. Even then, out of this payment of salary of Rs. 71,70,480/-, the Id. AO has disallowed a sum of Rs. 21,98,480/-, treating the same as excessive. However, the Id. AO has not stipulated the yardstick of salary being excessive. The details of salary paid and disallowed are as under :-

S.No	Name	AY 2016-17	AY 2017-18	YoY increase between AY 2017-18 & 2018-19	Number of months worked in AY 2018-19	Justified salary @ 10% increase in AY 2018-19	Paid AY 2018-19 (Rs)	Amount of disallowance
1	Aditya Singhal	1545000	1740000	14%	5	797500	825000	27500
2	Chetanya Singhal	1545000	1740000	13%	3	478500	495000	16500
3	N K Kandoi	1665000	1860000	12%	12	2046000	2100000	54000
4	Naman Kandoi	1305000	1500000	15%	12	1650000	1740000	90000
5	Pallavita Kandoi	-	-	-	12	-	270480	270480
6	RK Kandoi	-	-	-	12	-	1740000	1740000
	TOTAL						7170480	2198480

It is submitted that disallowance of salary in the case of persons at S.No. 1, 2, 3 & 4 is very nominal. Such disallowances stand deleted in earlier years. In this regard, attention is drawn to the order of the Hon'ble ITAT in

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the case of the assessee for AY 2015-16, wherein the Hon'ble ITAT has mentioned that payment of salary found excessive by the Id. AO stands deleted by the Id. CIT(A). The Id. CIT(A) held that payment of salary was reasonable. In view of this, it is submitted that the disallowances in respect of all these persons, which comes to Rs.1,88,000/- (27500+16500+54000+90000) deserves to be deleted.

The salary paid during the year to fresh persons is as under.

1. Pallavita Kandoi :	Rs. 2,70,480/-
2. R.K. Kandoi	<u>Rs.17,40,000/-</u>
Total	Rs. 20,10,480/-

It is submitted that the Id. AO has not only held the payment of salary to the above persons as excessive, rather he has disallowed the entire salary. The Id. AO has not given any ground for total disallowance of salary to the aforesaid two persons. The Id. AO did not appreciate the reply submitted by the assessee under letter dated 26/6/2021. A copy of the same is available on Paper Book Page No. 1 to 3. The justification of salary to the aforesaid two persons is as under :-

1. Pallavita Kandoi : Rs.2,70,480/-

The average salary per months in the case of Smt. Pallavita Kandoi is Rs.22500/-. The qualification of Pallavita is BA (Hons)(Economics) and M.Sc in applied Economics (Quantitative Finance). She has studies in University of Delhi, from where she got her bachelors degree. The Masters degree was got from Indira Gandhi National Open University. It is submitted that she was handling the post of Treasurer. It is submitted that in the case of the assessee, the receipts are to the tune of Rs.21,98,75,147/- and the expenditure claimed in the Income & Exp. account is Rs.25,63,50,120/-. This shows that the Institute was handling financial matters running into crores and it required efficient Treasurer for the purpose. It is further submitted that now-a-days, it is common that persons handling financial matters normally indulge in bungling and frauds. Therefore, post of Treasurer requires not only a knowledgeable person, but a trust-worthy person. Pallavita fulfilled both these conditions. Further, she has been paid a meagre salary of Rs. 22,500/- and hence the same cannot be termed as excessive in any way. The salary was paid of Rs. 22,500/- keeping in view the fact that this was the first year of her service. Otherwise, she deserved much more. Keeping all these facts in view, the salary paid to Pallavita deserves to be allowed. Needless to mention that in her return of income, she had already disclosed the receipt of salary of Rs.2,70,480/-, which

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stands accepted by the Department. Copy of IT return, certificate from University of Delhi and Indira Gandhi Open University are available on Paper Book Page No. 4 to 7.

(ii) *R.K. Kandoi : Rs.17,40,000/-*

Shri Raj Kumar Kandoi was during the year of the age of 60 years. Thus, he had at his back long experience of managing business affairs. As the affairs of the Society were growing, it was felt that a senior person should be made Incharge of the financial matters. Keeping this fact in view, Shri R.K. Kandoi was given the job of Treasurer and along with him, Smt. Pallavita Kandoi was also put as his junior. This was all done to avoid any sort of financial bungling and fraud. It is submitted that the financial affairs of the society were running into crores. As mentioned above, the receipts of the Society are to the tune of Rs.21,98,75,147/- and the expenditure claimed in the Income & Exp. account is Rs.25,63,50,120/-. This shows that the Institute was handling financial matters running into crores and it required efficient senior Treasurer having long experience at his back and also of trustworthy nature. Shri R.K. Kandoi has been founding member of the Society and has contributed a lot to the growth of the society. Keeping these facts in view, he was inducted in the Society as Treasurer. It is further submitted that the Society during the year under consideration has paid enormous amount of salary to the tune of Rs.8.91 crores. For handling these huge financial transactions, payment of salary of Rs.17,40,000/- is not at all excessive. It is hardly 2% of the salary paid by the Society. In view of this, it is submitted that disallowance of salary was not at all justified, particularly the entire disallowance of salary is most uncalled for. The addition may kindly be deleted. "

However, the Learned CIT(A) has confirmed the addition on account of salary paid to Pallavita Kandoi (Rs. 270480) and salary paid to Shri R.K. Kandoi (Rs.17,40,000). The only ground on which salary has been disallowed is that both of them, viz. R.K/ Kandoi and Pallavita Kandoi, have been paid salary for the first time for the work relating to treasury. It is the case of the Learned CIT(A) that the assessee has not been able to furnish as who was earlier functioning as Treasurer. All these details were furnished as quoted above in the submission made before the Learned CIT(A), but these have remained unconsidered. The same are briefly reiterated.

a. Shri R.K. Kandoi (Salary paid Rs.17,40,000)

It is submitted that Shri R.K. Kandoi is a very senior person, having vast experience at his disposal. He is one of the founding member of the Society and has been receiving full trust from the Society. It is submitted

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that in the past also, he was performing as a Treasurer, but was not being paid salary. As an evidence of his performing job as Treasurer, relevant copy of audited accounts for the earlier assessment year 2017-18 is available on **Paper Book Page No.32-34**, in which Shri R.K. Kandoi had put his signature as in the capacity of Treasurer. Copy of return filed by Shri R.K. Kandoi with computation of total income is available on **Paper Book Page No. 35-38**.

Shri R.K. Kandoi was not accepting any salary whereas he was working as a Treasurer on the ground that he was already getting salary from sister concern M/s Kandoi Metal Powder Mfg. Co. Pvt. Ltd. Secondly, he did not want to create a burden of his salary on the Society. During the year, keeping his services, salary was paid of Rs. 17,40,000/-. It is submitted that the work of a Treasurer is of vital importance. Only a person of deep trust is required to perform the job. Day in and day out in the present day society, financial bungling are noticed, but nothing of this sort has happened in the case of the assessee but for the services of Shri R.K. Kandoi. In view of this, both the Learned Assessing Officer and the Learned CIT(A) failed to appreciate the nature of services rendered by Shri R.K. Kandoi. It is submitted that the salary paid to Shri R.K. Kandoi was, in fact, on lower side. Looking to the volume of work of the society, the number of employees is required to be supervised and the vast accounts, which also need to be supervised, the payment of salary to Shri R.K. Kandoi is most justified.

b. Pallavita Kandoi (Salary Paid Rs. 2,70,480)

It is submitted that Smt. Pallavita Kandoi is a young person. She just finished her graduation from University of Delhi in 2012 and received degree in Economics in first division. She also got a degree of Master of Sciences in Applied Economics from the Indira Gandhi National Open University. Looking to her qualifications, she was considered fit to assist and help Shri R.K. Kandoi in discharging duties as treasurer. In view of this, services of Pallavita Kandoi were used and utilized for looking after the work related to finance and treasury for which she was most suitable. The salary paid is meagre amount of Rs.2,70,480/- only, which needed to be allowed in toto.

It is further submitted that the work related to finance and treasury is of utmost importance and requires trust-worthy persons for the job. In view of this, the senior most member, Shri RK Kandoi and a well qualified person, Pallavita Kandoi, both were jointly entrusted the job of treasury. Shri RK Kandoi was performing this job earlier also, but to assist him, services of Pallavita Kandoi were put at his disposal as she was young, well-educated and duly qualified. Keeping these facts in view, the salary

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paid to both the persons deserves to be allowed. In fact, the Learned CIT(A) did not consider the facts submitted before him, otherwise the assessee had a fool-proof case before him. The Hon'ble Tribunal is now requested to delete the addition sustained by the Learned CIT(A). The assessee is submitting copy of degree received from University of Delhi and Indira Gandhi National Open University by Pallavita Kandoi and copy of submissions made before the Learned CIT(A), which are available on **Paper Book Page No.39-58.**

11.3 On the other hand, the Id. DR opposed the relief granted to the assessee and filed decision of Id. CIT (E), Jaipur with following observations as to the appeal of the assessee.

“National Faceless Appeal Centre (NFAC) order dated 06.03.2024 in CIT(A), Jalpur-. In appeal NO.NFAC/2017-18/10041047 for A.Y. 2018-19 in the case of M/s Global Institute of Technology Society. (PAN - AAATG3217H). D-91, Ambabari, Jalpur (Raj.)-302012-reg.

Decision by the CIT on the Scrutiny Report

A. Issue wise decision of the CIT, as to whether appeal is to be filed or not, may be recorded with reasons, keeping in view the line of argument the DR is expected to take before ITAT at the time of hearing:

Brief Facts of the case: -

At the time of assessment proceedings, assessee was registered under Registration of Societies Act 1958 and assessee was also registered u/s 12AA of the Income-tax Act from 22-05-2005. In this case, assessment u/s 143(3) was completed on 31.03.2021 at Rs.86,25,875/-.

Aggrieved against the order, the assessee filed an appeal before the Id. CIT(A)

Followings grounds/additions were decided by the CIT(A).

Issue 1:-Disallowance of salary to persons specified u/s 13(3) of the I.T. Act, 1961.

AO has made addition of Rs. 21,98,480/- on account of salary paid to the persons specified u/s 13(3) of income tax Act.

Decision of Ld. CIT(A).

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Out of addition of Rs. . 21,98.480/- on account of salary paid to persons specified u/s 13(3) of the Act, the CIT(A) has allowed relief of Rs.1,88,000/-following their own decision in the case of the assessee for the A.Y. 2017-18

Comments of AO on decision of Ld. CIT(A)

The CIT(A) has relied upon its own decision in the case of the assessee for the A.Y.2017-18. Therefore, the order of the Ld. CIT (A) is not acceptable on this ground.

Comments of Addl. CIT on decision of Ld. CIT(A):-

Ld. CIT (A) partly allowed salary by saying that person other than Shri M.L Kandol have specific qualifications. However, Ld.CIT(A) has ignored the following-

-Details of work and service rendered by specified persons had not been submitted during the assessment proceedings.

-No attendance register was submitted.

-Self-certified certificates are not sufficient to prove work performed by the specified persons.

-Details of person wise salary had not been provided by the assessee for comparing the payment to salary to other staff.

Hence, salary paid to trustee is not reasonable and decision of Ld.CIT(A) is not acceptable on the issue.

Issue 2: Addition of Rs.26,25,803 on account of Interest paid to persons specified u/s 13(3) of the Act at higher rates.

Addition of Rs. 26,25,803/- on account of Interest paid to persons specified u/s 13(3) of the Act- The CIT(A) has been deleted by the Id. CIT(A) relied upon the decision in earlier years and its own decision in the case of the assessee for the A.Y. 2017-18 wherein interest rate of 18% has been held reasonable.

Comments of AO on decision of Ld.CIT(A)

The CIT(A) has erred in justifying the rate of interest at 18%. In this regard the reasoning of the AO in the assessment order for the AY 2015-16 holds well for the

GLOBAL INSTITUTE OF TECHNOLOGY SOCIETY, JAIPUR VS DCIT-CIRCLE (EXEMPTION), JAIPUR same issue involved in the AY 2017-18 & 2018-19 as well. Relevant portion of the same is reproduced hereunder:

During the assessment proceedings the assessee has attempted to justify the rate of interest paid to specified persons by combining the amount of brokerage paid with the rate of interest. It is pertinent to mention here that the rate of interest and the brokerage or commission are two different components of expenditure and are received by two different persons altogether. The two can not be appropriated together for the sake of justifying the rate of interest paid to the related parties.

The reasons given by the assessee society for low rate of interest of market loans being their short term availability and necessity of advance payment of interest to other parties is contradictory to the fundamental principles of economy. This is because as per the basic market principle, greater the risk, higher the rate of interest. This is the reason why unsecured loans carry a higher rate of interest as compared to secured loans. No other loan can be more secured than the one which is received from the persons specified of the assessee society. Moreover, the assessee itself pointed out that there is no urgency of payment of interest nor compulsion of payment within any specified time. There is also no broker in between and the availability of funds is more convenient to the assessee. The lender being its own specified person. In fact, the specified concerns and family members would claim a lower rate of interest as compared to the other parties as the money being advanced is secured for a longer period and is essentially not payable on demand.

Moreover, the assessee is a tax exempted entity, established with a social purpose of providing educational facilities and promoting education. It is not a business concern aimed at earning profits. From the financials of the assessee, it is clearly visible that it is burdened with huge secured as well as unsecured loans. The assessee had claimed a net deficit of Rs. 1,63,26.895/- during the year. As such, any prudent trust or society will not divert its surplus funds towards huge interest payments to its own specified persons at a rate higher than the conventional market rate.

Therefore, the order of the Ld. CIT(A) is not acceptable on this ground.

Comments of Addl. CIT on decision of Ld. CIT(A):-

Ld. CIT(A) allowed the interest paid to specified person covered u/s 13(3) by referring earlier orders. However, Ld. CIT(A) ignored that assessee could not justify the accepting loans on such higher rate from specified persons.

Issue 3:- Addition of Rs.2,27,70m650/- on account of development fees treating it as revenue receipts.

Decision of Ld. CIT(A)

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The Id. CIT(A) has followed the decision of ITAT, Jaipur in the case of the assessee for the AY 2015-16 in ITA no. 1066/JP/2018 and deleted the addition of Rs.2,27,70,650/-

Comments of AO on decision of Ld. CIT(A):-

The order the Hon'ble ITAT in ITA 1066/JP/2018 has not been accepted by the Revenue and further appeal has been filed before the Hon'ble Rajasthan High Court . Therefore, the order of the Id. CIT(A) is not acceptable on this ground.

Comments of Addl. CIT on decision of Ld.CIT(A)::

Ld.CIT(A) allowed the disallowed the Development fee as capital receipt by referring earlier year orders. However, Id. CIT(A) ignored the following facts

- Development fee is recurring income like other fee receipts.
- Capital expenditure was not incurred from development fee.
- If fee is taken as per the Govt. then it losses its voluntary element.
- The Id. CIT(A) has not discussed anything in order about voluntary nature of development fee. Therefore, applicability of Section 11(1)(d) is not acceptable.

Issue 4- Set off of loses

The issue of set off loses has not been dealt with in the assessment order and is a matter of computation of income. The is same is acceptable as per the Act.

Decision of Ld. CIT(A)

The CIT(A) has observed that the issue has not been dealt with in the assessment order and has directed to allow set off of losses as per the Act.

Comments of AO on decision of Id. CIT(A)

The issue of set off of has not been dealt with in the assessment order and is a matter of computation of income. The same is acceptable as per the Act.

Comments of Addl.CIT(E) and decision of Id. CIT(A)

Issue of set off of losses has not been dealt with in the assessment order and is a matter of computation of income. The same is acceptable as per the Act.

Issue 5:- Issue relates to exemption u/s 11 & 12

Denial of benefit of Exemption u/s 11 & 12 of the Act on basis of certain additions and disallowances.

Decision of Id. CIT(A)

The CIT(A), following the order of the ITAT in ITA No. 1066/JP/2018 held that denial of exemption u/s 11 & 12 of the Act is not justified except to the extent where specific part of the income or property is found to be used or applied or the benefit of the specified person.

Comments of AO on decision of Id. CIT(A):-

The Id. CIT(A) erred in allowing the benefit of exemption u/s 11/12 of the Act to the assessee except to the extent where specific part of the income or property is found to be used or applied for the benefit of the specified persons. The case is squarely cleared the provision of Section 13(1)(c) read with section 13(2)(a)/(b)/(c)/h of the Act as such the assessee is not eligible for claiming exemption u/s 11 & 12 of the Act. Also, the order of Hon'ble ITAT in ITA 1066/JP/2018 has not been accepted by the revenue and further appeal has been filed before the Hon'ble Rajasthan High Court. Therefore, the order of the Id.CIT(A) is not acceptable on this ground.

Comments of Addl. CIT on decision of Ld. CIT(A)::

Ld.CIT(A) allowed the exemption u/s 11 & 12 by referring earlier orders. However, the Id. CIT(A) ignored the following facts.

-Assessee violated the provision of Section 13(1)© r.w.s. 13(2)(a)/(b)/(c)/(h) by paying excessive salary and interest to specified persons. Besides, assessee gave interest free advances to specified persons.

-Furtehr Section 13 says that in case of violation of Section 13, benefit of section 11 & 12 wouldnot be available to assessee.

Therefore, decision of Id. CIT(A) is not acceptable.

Further, the AO & Addl CIT(E) reported that tax effect involved in the case i.e. Rs.,79,05,596/- is above monetary limit specified by the CBDT vide Circular No.5/2024 date 15-03-2024 for filing further appeal before the ITAT.

Comments of CIT(E), Jaipur:-

I have thoroughly reviewed the Assessment order and CIT(A)'s order regarding the assessment of M/s Global Institute of Technology society for the A.Y. 2018-19 as

GLOBAL INSTITUTE OF TECHNOLOGY SOCIETY, JAIPUR VS DCIT-CIRCLE (EXEMPTION), JAIPUR well as facts mentioned in Central Scrutiny Report, the decision of Ld. CIT (A) is not acceptable in allowing exemption u/s 11/12 of the I.T. Act. 1961 as the order of Hon'ble ITAT dated 05.11.2018 in ITA no 1066/JP/2018 based on which relief has been granted by the Id. CIT(A) was challenged by the department before the Hon'ble Rajasthan High Court, Jaipur bench and decision is pending.

The Id. CIT(A) was also not justified in restricting the disallowance out of salary to persons specified u/s 13(3) on account of excess salary, deleting the interest amounting to Rs.26,25,803/- paid to the persons covered u/s 13(3) and deleting on account of development fee as discussed above.

The tax effect involved in the matter is Rs.79,05,596/- which is also above the monetary limit prescribed by the Board's Circular No. 05/2024 dated 15.03.2024, Therefore, I am in view of that filing a further appeal before the Hon'ble ITAT to uphold the order of the AO and contest the decision of the CIT(A).

2. In view of the facts discussed above, the order of Ld. CIT (A) is not acceptable on merits and filling of appeal before ITAT is recommended.

Aggregate tax effect on issues proposed to be contested in the ITAT	Rs.79,05,596/-
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B. Grounds of appeal to be raised before the ITAT may be framed in respect of the issues not acceptable by the CIT.

As per authorization

C. In the case of a combined order or order in a group case, involving more than one assessee falling under jurisdiction of different CIT, the CIT shall communicate the stand taken on common issues to the CIT having jurisdiction over other case.

N.A.

Categorization of final decision by CIT

D. The Appeal is not filed.

1. As the order is acceptable on merits or

No

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Even though the order is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the limit prescribed in CBDT'S Instruction on monetary limits.

N.A.

E. Appeal is to be filed on the grounds of appeal framed above.

1. As the order is not acceptable on merits

Yes

II. Though tax effect is below the prescribed limit, the case falls under the exceptions (to be specified) of the instruction of CBDT on monetary limits.

N.A.

Authorization under section 253(2) of the I.T. Act is issued separately. Appeal to be filed accordingly.

Dated: 26-04-2024

Place: Jaipur

Sd/-

(Anil Kumar Bhardwaj)

Commissioner of Income-tax(Exemption), Jaipur

11.4 We have heard both the parties and perused the materials available on record. In this case, it is noted that the AO made an addition of Rs.21,98,480/- on account of salary paid to the specified persons u/s 13(3) of the Act. In first appeal, the Id. CIT(A) has sustained the addition to the extent of Rs.20,10,480/- giving break up that a sum of Rs.2,70,480/- had been paid salary to Smt. Pallavita Kandoi and Rs.17,40,000/- paid salary to Shri R.K.Kandoi. From the records, it is noted that Smt. Pallavita Kandoi

had been working as salaried employee by the Institute and looking after the work relating to finance and treasury. She has passed out Graduation Degree from Delhi University in 2012 acquiring degree in Economics with First Division and she was also awarded Degree of Master of Science in Applied economic in 2013 from Indira Gandhi National Open University whose certificates are also produced by the Id.AR of the assessee having PB Page No.39 & 40. Having considered the education qualification and nature of work executed by Pallavita Kanodi the per month salary of Rs. 22,500/- cannot be considered as excess. The Id. AO noted that the salary paid is on higher side and ultimately out of total claim of salary to related party for an amount of Rs. 71,70,480/-, Rs 21,98,480/- was disallowed out of salary paid to six persons. The Id. CIT(A) has sustained the addition for an amount of 20,10,480/- being the amount paid to Pallavita Kandoi and Shri R. K. Kandoi for an amount of Rs. 2,70,480/- and Rs. 17,40,000/- respectively. While doing so Id. CIT(A) noted that the assessee has not placed on record the details of the services rendered by them and they being new recipient of the salary and since the assessee failed to demonstrate that who were looking after the job these two persons were and why they were engaged now and they actually rendered services on regular basis like other staff or faculties of the institution and not in casual

manner. Therefore, the additions were made for the salaries paid to these persons. The bench noted after the submission filed by the assessee the Id. AO noted that the salary paid to those specified persons are excessive. No opportunity whatsoever was given to the assessee so far as it appears from the records contending that why the salary paid to these two persons are not allowable. The assessee has given details of educational qualification and the nature of work done by each one looking to the nature of work handled and the educational qualification of Ms. Pallvita Kandoi cannot be considered as exorbitant where she has paid to Rs. 22,500/- per month only. So far as regards the salary paid to Shri R. K. Kandoi it is not disputed by the Id. AO that he was long time trustee but has started taking the salary for the year under only and therefore, considering that his past long tenure and treasurer of the trust salary paid to him for an amount of Rs. 1,45,000/- only wherein she manages the income to the tune of Rs. 21,98,75,147/- as treasure and at the same time monitor the expenditure to the tune of Rs. 25,63,50,120/-. Both these persons are regularly assessed to tax and have offered the salary as their income in their respective income tax returns also. The assessee has filed the copy of earlier assessment year 2017-18 at PB pages 32-34 and he has also filed the return of R.K.Kandoi with computation of total income at PB Pages 25 to

58. It is noted that Shri Kandoi was not accepting any salary whereas he was working as a treasurer on the ground that he was already getting salary from sister concern/s. Kandoi Metal Powder Mfg. Co. Ltd. It is further noted that the society for the services rendered by Shri R.K. Kandoi as treasurer had paid a salary of Rs.17.40, lacs during the year year as he was required to supervise the vast accounts work. Thus above mentioned both the persons were working in the interest of the society as the trust worthy persons for the acceleration of the society work. Hence, the Bench considers the arguments of the Id. AR of the assessee as justified and thus addition so sustained by the Id. CIT(A) is directed to be deleted. Thus the Ground No. 1 of the assessee is allowed.

12 In the result the appeal of the assessee in ITA no. 297/JP/2024 stands partly allowed.

13.0 Now we take up the appeal of the Department in ITA No, 607/JP/2024 wherein it is noted that similar type of grounds was raised by the Department in the appeal of the Department bearing ITA NO.606/JP/2024 and this appeal of the department was dismissed having following observations.

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"4.1 Now we take up the appeal of the revenue wherein ground no. 1 & 2 raised by the revenue being general no specific arguments were placed on record and therefore, the same are dismissed. Ground no. 3 & 7 is dismissed as we have allowed the claim of the salary in appeal filed by the assessee herein above. On the Ground no. 4 and 5 raised by the revenue we note that same does not emanate from the order of the Id. CIT(A) and no specific grievance of the revenue argued before us and therefore, the same are dismissed.

Apropos to the Ground no. 6 & 8 raised by the revenue the relevant finding of the Id. CIT(A) is as under :

"I have perused the assessment order, appellant's submission, order of the Id. CIT(A)-Jaipur and the order of the ITAT in the appellant's own case for the A. Y. 2015-16 and the find Hon'ble ITAT decided the issue in favour of the appellant considering the development as capital receipt against the AO's decision. The decision of the jurisdictional ITAT is binding upon me even though the department may have filed further appeal before the Hon'ble High Court of Rajasthan. Thus, relying on the order of the Hon'ble ITAT in the appellant's own case for A. Y. 2015-16, I decide the issue in favour of the appellant and addition of Rs. 3,36,04,500/- is deleted. The ground no 5 of appeal is thus allowed."

Before us the Id. DR did not present any stay of the order of the ITAT or any contrary decision and therefore, since the issue is already decided by the co-ordinate bench in the case of the assessee we do not find any merits in these ground no. 6 & 8 raised by the revenue and therefore, the same are dismissed.

Ground no. 9 being general in nature and does not require our adjudication.

In the result the appeal of the revenue in ITA no. 606/JP/2024 stands dismissed."

13.1 Being almost similar issues, the Bench feels that the decision taken in ITA No.606/JP/2024 shall apply mutatis mutandis in the Departmental IT Appeal No.607/JP/2024. Thus, the appeal of the Department is dismissed.

14.0 In the results, the appeals of the assessee are partly allowed and that of the Department are dismissed.

Order pronounced in the open Court on 11-12-2024

Sd/-

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 11 /12/2024

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. Global Institute of Technology Society, Jaipur
2. प्रत्यर्थी / The Respondent-The DCIT, Circle (E), Jaipur
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.296/JP/2024)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar