

**IN THE INCOME TAX APPELLATE TRIBUNAL "PATNA BENCH" PATNA**

**SHRI SONJOY SARMA, JUDICIAL MEMBER  
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 296/Pat/2024  
Assessment Year: 2020-21  
&  
I.T.A. No. 297/Pat/2024  
Assessment Year: 2018-19**

**Assistant Commissioner of Income Tax,  
Patna,**

Lok Nayak Jai Prakash Bhawan,  
Dak Bungalow Chauraha,  
Patna – 800001

..... **Appellant**

**vs.**

**Bijendra Memorial Society, Patna,**

404 Shyam Centre Exhibition Road,  
Patna - 800001

[PAN: AABTB1511G]

..... **Respondent**

**Appearances by:**

Assessee represented by : Saumitra Choudhury, Advocate  
Department represented by : Rinku Singh, CIT-DR

Date of concluding the hearing : 16.12.2024

Date of pronouncing the order : 19.12.2024

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. This is a batch of two appeals preferred by the Revenue emanating from the order of the Ld. Commissioner of Income Tax (Exemption), Patna (in short 'the Ld. CIT(E)'), passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") for Assessment Years 2018-19 and 2020-21. In both these appeals common issue is involved for adjudication. Accordingly, both these appeals are being disposed of through a common order. For the sake of convenience, the lead case will be taken as ITA No. 297/Pat/2024 pertaining to AY 2018-19.

2. Brief facts of the case are that the assessee society is engaged in educational activities under the name and style of Bijendra Public School at Purnea in the state of Bihar. A trust was registered u/s 12AA of the Act vide No. 65/2007-2008 dated 30.11.2007. During the course of scrutiny, the Ld. AO noted that the appellant had made payment of salary to certain persons specified u/s 13(3) of the Act. The two persons covered here were Mr. Bhanu Bhaskar and Mr. Shani Kumar, who were paid and yearly salary of Rs. 49,98,000/- each. The Ld. AO was not satisfied with the response of the assessee regarding the services rendered by these two persons to justify the quantum of salary under consideration. The Ld. CIT(A) has followed his own decision of earlier years and also the decision of Hon'ble ITAT in the assessee's own case pertaining to AY 2015-16 through which the addition made by the Ld. AO was deleted. In this regard, the findings of the Ld. CIT(A) may be reproduced as under:

*"6.2 In this connection, it is brought to notice that assessment u/s 143 for A.Y. 2017- 18 was done on 17/12/2019 vide order no. ITBA/AST/S/143(3)/2019-20/1022547830(1) and addition was made on the ground of payments made to the specified person. The Ld. CIT(A)-1, Patna has decided the appeal in favour of assessee and deleted the addition made by the AO vide its DIN & Order no. ITBA/APL/S/250/2020-21/1027845518(1) on 28/08/2020. Although the decision was not accepted by the Department, since tax effect (Rs. 38,01,061/-) for the A.Y. 2017- 18 was below the limit prescribed for filing appeal, department has not filed second appeal. For A.Y. 2015-16, the assessment u/s 143(3) was made on 17/11/2017 and addition was made on the ground of payments made to the specified person. The Ld. CIT(A)-1, Patna, had decided appeal in favour of assessee and deleted the addition made by the AO. The decision was not accepted by the Department and the tax- effect was above the prescribed limit. Hence, department has filed second appeal before Hon'ble ITAT, Patna on 11/12/2020, which is still pending before the Hon'ble ITAT, Patna."*

*"In view of the above discussions & respectfully following the decision of Jurisdictional ITAT in appellant's own case for the AY 2015-16, I am inclined to accept the contention of the appellant that remuneration / salary paid to the persons by the society was reasonable and thus the disallowance of Rs.99,96,000/- is hereby deleted.*

*It is to be noted that the AO denied the exemption u/s 11 & 12 of the Act on the basis of misapplication of income of the trust by giving undue benefit to the specified persons in the form of unreasonable salary But as the addition on account of disallowance of salary payment made to the specified persons was deleted as discussed above, the denial of exemption u/s 11 & 12 of the Act to the appellant trust which is registered u/s 12AA of the Act does not have legs to stand. The AO*

*is therefore directed to allow the claim of exemption u/s 118 12 of the Act. Accordingly, Ground No. 3 to 9 are allowed.”*

3. Aggrieved with the action of the Ld. CIT(A) the department is in appeal before the ITAT through the following grounds:

*“1. The Ld. CIT(A) erred in law in holding that the amount of salaries paid to the specified persons is reasonable ignoring the fact there was no evidence or details regarding services rendered by the specified persons on record.*

*2. The Ld. CIT(A) erred in law while borrowing support of the decision of Hon’ble ITAT, Patna delivered for the Assessment Year 2015-16 ignoring the fact that the facts and circumstances of this year were entirely different from Assessment Year 2015-16 and the Hon’ble ITAT had not pronounced any proposition of law in that year.”*

3.1 Before us, the Ld. DR supported the order of the Ld. AO whereas the Ld. AR placed before us the order of ITAT in assessee’s own case for AY 2015-16 [ITA No. 3/Pat/2021]. The Ld. AR pointed out the relevant passages from the ITAT’s order in his support as under:

*“3. The brief facts of the case are that the assessee-trust is registered u/s 12A of the Act. The assessee-trust runs a school in the name of Bijendra Public School at Purnea. During the assessment proceedings, the Assessing Officer noted that the salary paid to Shir Bhanu Bhaskar, Secretary of the Trust, of Rs.17,40,000/- and Shri Shani Kumar, Treasurer of the Trust, of Rs.12,60,000/- was excessive. Since the above named persons were covered under the provisions of section 13(3) of the Act and the amount of salary paid was in excess of what may be reasonably paid for their services, therefore, he disallowed the payment of salary to the aforesaid persons and did not treat the aforesaid payment as application of income and thereby denied the exemption to the assessee-trust in respect of salary paid to the aforesaid persons. service without taking any compensation for a number of years. Thereafter, during the financial year 2010-11, the trust resolved to start payment of salary to the aforesaid two persons who were rendering full time services to the trust.*

*4. In appeal, the ld. CIT(A), however, deleted the disallowance so made by the Assessing Officer in respect of salary paid to the specified persons namely Shir Bhanu Bhaskar, Secretary of the Trust and Shri Shani Kumar, Treasurer of the Trust. The ld. CIT(A) observed that the aforesaid amount was not excessive and that the Assessing Officer has failed to demonstrate that the aforesaid amount of salary was not reasonable. Even he has observed that the aforesaid persons were rendering full time services to the trust, earlier they were rendering service without taking any compensation for a number of years. Thereafter, during the financial year 2010-11, the trust resolved to start payment of salary to the aforesaid two persons who were rendering full time services to the trust.*

*5. After hearing both the parties, we do not find any reason to interfere with the above findings of the CIT(A) and the same is upheld.*

*6. Even otherwise, at this stage, the ld. AR of the assessee has submitted that even otherwise, the disputed tax amount involved in this appeal was less than the monetary limit prescribed by the Department for filing the appeal before the Tribunal. The ld. DR even could not rebut the aforesaid contention of the ld. AR. In view of this, we do not find any merit in this appeal of the Revenue and the same is accordingly dismissed.*

3.2 Additionally, the Ld. AR also advanced an alternative argument that the tax effect was significantly below the limit prescribed for filing the second appeal. The Ld. DR was not able to point out any infirmity in the said claim but offered to check from the Ld. AO and report back.

4. We have carefully considered the rival submissions and also gone through the documents before us. It is clear that the assessee's case is covered in his favour by the findings given in ITA No. 3/Pat/2021 (supra). Accordingly, it deserves to be held that the findings of the Ld. CIT(A) are correct and worthy of being upheld. Since the assessee has succeeded in this appeal as against the revenue, we do not deem it necessary to adjudicate on the issue of whether this appeal was filed in contravention of CBDT's latest circular No. 09/2024 dated 17.09.2024 or not. Accordingly, the revenue's appeal is dismissed.

5. The findings in ITA No. 297/Pat/2024 will apply mutatis mutandis to ITA No. 296/Pat/2024 also where the facts are same in as much as there also the very same two persons have been treated for the purposes of section 13(3) of the Act. Accordingly, ITA No. 296/Pat/2024 is also dismissed.

6. In the result, both the appeals filed by the revenue are dismissed.

Order pronounced in the court on 19.12.2024

Sd/-  
**[Sonjoy Sarma]**  
**Judicial Member**

Sd/-  
**[Sanjay Awasthi]**  
**Accountant Member**

Dated: 19.12.2024.

AK, PS

*Copy of the order forwarded to:*

1. Bijendra Memorial Society, Patna
2. Assistant Commissioner of Income Tax, Patna
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches