

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “D”, MUMBAI
BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 3511/MUM/2024 (A.Y: 2015-16)**

<p>Ravindra Shikshan Prasarak Vs. ITO Ward Exemption, Mandal, 5/8 Kartik Sadan Saverkar Road, Opp-Gopal Nagar, Dombivli, Maharashtra – 421 201 PAN: AABTR2696A</p>	<p>Thane Room No. 208, 2nd floor, Quereshi Mansion, Gokhale Road, Naupada, Thane (West), Near Teen Hath Naka, Thane, Maharashtra – 400 602</p>
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(Appellant)

(Respondent)

<p>Assessee Represented by</p>	<p>: Shri C. V. Deshpande, Ld. AR</p>
<p>Department Represented by</p>	<p>: Smt. Mahita Nair, Ld. DR</p>
<p>Date of conclusion of Hearing</p>	<p>: 27.08.2024</p>
<p>Date of Pronouncement</p>	<p>: 03.12.2024</p>

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order of Learned Commissioner of Income Tax (Appeals) /National Faceless



Appeal Centre, Delhi [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] dated 25.06.2024 for the A.Y. 2015-16, wherein the Ld. CIT(A) has dismissed the appeal of the assessee.

2. The brief facts of the case are that the assessee is a trust formed by MOU dated 28.02.2000, filed its return of income on 28.09.2015 declaring total income at Rs. NIL. The case of the assessee was selected for scrutiny under CASS and notice u/s 143(2) of the Act was issued upon the assessee. In response, assessee furnished the details as called for. During the scrutiny of documents and submissions made by the assessee, the AO noticed that trustee of the assessee has been given 6 times more salary than the principal and teachers. Further the AO noticed that an excess salary/remuneration of Rs. 2,29,500/- has been given to trustee Shri Omkar Karkare in violation of section 13(1)(c)(ii) of the Act. Thus, the AO made the addition of Rs. 18,58,500/- on account of salary /remuneration paid to the trustees. Accordingly, the AO denied the exemption claimed by the assessee u/s 11(1)(a) of the Act of Rs. 40,01,298/- and the same is treated as AOP and the income is taken at



Rs. 77,08,637 i.e. surplus as per income and expenditure account and also initiated penalty proceedings.

3. Aggrieved by the order of AO, the assessee filed the appeal before Ld. CIT (A) and vide his letter dated 22nd April 2024 has submitted that the additional evidence alongwith written submissions, as per Income Tax Department, has been acknowledged. He filed the additional evidence, ITR of Ajit Karkare for AY 2015-16 alongwith additional evidence and clarifications. It is alleged by the assessee that the said additional evidence has not been considered by Ld. CIT (A) and the impugned order has been passed in violation of the natural justice and the appeal has been dismissed on merits. Accordingly the assessee has raised the following grounds of appeal:-

1. On the facts and the circumstances of the case and in law, lower authorities erred in passing the order. without additional considering evidence submitted by the appellant and disregarding it in its entirety without any whisper about the additional evidence submitted by the appellant and erred in deciding the issue on merit and only on the basis of assessment order this action is being violative of principal of natural justice. Your appellant prays for granting opportunity of hearing before the Assessing Officer. Without prejudice to the above ground the appellant would like to raise the following grounds.



2. *On the facts and in the Rs 12,69,607/- circumstances of the case and in law the learned Commissioner Appeals gravely erred in not considering the submission made by the appellant along with necessary documentary evidences substantiating the say of appellant. The CIT(A) sustained the addition of Rs 42,32,024/- by denying the exemption under section 11(1)(a) of the IT Act 1961 which may kindly be deleted.*

3. *On the facts and in the circumstances of the case and in law the learned Commissioner Appeals gravely erred in not considering the submission made by the appellant along with necessary documentary evidences substantiating the say of appellant. The CIT(A) sustained the addition of Rs 18,74,084/-denying the Salary paid to the trustees which may kindly be deleted in the interest of natural Justice.*

4. *On the facts and in the circumstances of the case and in law the learned Commissioner Appeals gravely erred in not adjudicating the issue in the light of submission made along with necessary documentary evidences submitted by the appellant in support of the say of the appellant and incorrectly invoking provisions of section 13(1)(c) read with section 13(2)(c) and working out interest on interest free advances given to trustees 4,43,557/- Rs which may kindly be deleted in the interest of natural*

5. *On the facts and in the circumstances of the case and in law the learned Commissioner Appeals gravely erred in not adjudicating the issue in the light of submission made along with necessary documentary evidences submitted by the appellant in support of the say of the appellant and incorrectly making the addition of Rs 22,10,000/- on account of financial assistance provided to the trustees for education of the trustees by treating it to be a scholarship by invoking provisions of section 13(1)(c) (ii) and 13(2) (c) which may kindly be deleted.*



6. *The appellant would like to Rs Nil leave, add, alter, amend, modify, delete, above grounds of appeal before or during the course of hearing in the interest of natural justice.*
4. It was argued on behalf of the appellant/assessee that in the impugned order there is no even a whisper about the additional evidence was submitted and the said additional evidence should have been considered under Rule 46A of Income Tax Rule 1962 by the Ld. CIT(A). On the other hand, Ld. DR objected to the arguments and relied on the orders of lower authorities.
5. We have considered the rival submissions and perused the orders passed by the lower authorities. It is noted that the assessee has submitted the additional evidence before the Ld CIT(A) duly acknowledged by the Income Tax Department and on perusal of the impugned order at para 4.1, it is observed as under:-

4.1 During the appellate the appellant has submitted its written submission which has been carefully examined and marshaled. The ground-wide discussion and decision are as under-

4.2.1 Ground No-1: On the facts and in circumstances of the case and in law, the learned Assessing Officer has erred in adding Rs. 42,32,024/- by disallowing the exemption available to the assessee under section 11(1)(a) by



incorrectly invoking provisions of section 13(1)(c)(ii) and Section 13(2)(c) without appreciating the facts and submissions made by the assessee.

Ground No-2: On the facts and in circumstances of the case and in law, the learned Assessing Officer has erred in adding Rs. 18,74,084/- by disallowing the salary paid to the trustees by treating the salary paid to be excessive by incorrectly invoking provisions of section 13(1)(c)(ii) and Section 13(1)(c) without appreciating the facts and submissions made by the assessee.

4.2.2 I have carefully considered the submission of the appellant and facts of the case. It is fact that during the year under consideration total salary of Rs. 61,01,857/- has been incurred by the appellant trust. It has been further observed that 27 non-trustee staff has been paid salary of Rs. 34,36,357/- whereas, salary of Rs. 26,54,500/- has been paid to three trustees which is 43% of total salary paid by the appellant trust. From these facts it is clear that trust has been making excess payment to the trustees. The excess payment of salaries to the trustees are clear cut violation of provision of section 13(1)(c) and 13(2)(c)(ii) of the Act. In its submission the appellant trustee has submitted that both the trustees has filed their income tax return at Rs. 11,00,000/- hence, there cannot be no excess expense claimed by the assessee trust. It is also fact that without proper and suitable education the trustees have been paid excess payment on account of salary. However, the principal and other teaching staff other than trustees have been paid very less amount of salary. Therefore, it can be easily concluded that trustees are misusing the fund of charitable trust by benefiting them by paying excess and unreasonable salary. The assessing officer has calculated the excess payment of 18,58,500/-. Accordingly, the excess payment of Rs. 18,58,500/- has been disallowed by the Assessing officer. I am of the considered view that the assessing officer has taken correct view by disallowing the excess payment on account of salary. Therefore, these grounds of appeal are dismissed.



6. It is thus evident from the order of Ld. CIT(A) as extracted above that he has not considered the request of the assessee regarding the additional evidence under Rule 46A of Income Tax Rules 1962 which was submitted vide acknowledgement dated 22nd April 2024 wherein request was made to consider the additional evidence in the form of ITR of Ajit Karkare for AY 2015-16, additional evidence of Gauri Karkare for AY 2015-16, letter for request of accepting additional evidence by the Ld. CIT(A), submission in appeal for AY 2015-16 (written submission), additional evidence of qualification of Ajit Karkare alongwith qualification of Gauri Karkare, etc.

7. Since the Ld. CIT(A) has not considered the submissions of the assessee regarding request to consider the additional evidence as mentioned above, therefore the impugned order is in violation of Rule 46A of the Income Tax Rules 1962 and the principle of natural justice. Therefore, the impugned order is set aside. For these reasons, we are of the considered opinion that matter needs to be restored to the file of the Ld. CIT (A) for giving effective hearing to the assessee who shall present its case before the Ld. CIT(A) within 60 days. The Ld. CIT (A) shall consider the admission of the additional evidence as per Rule 46A of Income Tax



Rules 1962 after following the provisions of the said Rule as mentioned above. The impugned order is accordingly set aside and appeal filed by the assessee is allowed in above terms.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 03.12.2024

Sd/-

**(B R BASKARAN)
(ACCOUNTANT MEMBER)**

Mumbai / Dated 03.12.2024
Dhananjay, Sr.PS

Sd/-

**(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)**

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

**(Asstt. Registrar)
ITAT, Mumbai**