

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'DB' BENCH,
NEW DELHI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

CO NO. 57/DEL/2014
(A/o ITA No. 3926/DEL/2012 [A.Y 2007-08])

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CO NO. 58/DEL/2014
(A/o ITA No. 3927/DEL/2012 [A.Y 2008-09])

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ITA No. 4207/DEL/2010 [A.Y 2006-07]

Institute of Clinical Research
[India] Society, 77, Karanpur
Dehradun

Vs.

The A.C.IT
Circle -2
Dehradun

PAN: AGWPJ 0118 N

ITA No. 3927/DEL/2012 [A.Y 2008-09]

The Dy. C.IT
Circle -2
Dehradun

Vs.

Institute of Clinical Research
[India] Society, 77, Karanpur
Dehradun

PAN: AGWPJ 0118 N

(Applicant)

(Respondent)

Assessee By : Dr. Rakesh Gupta, Adv
Shri Somil Aggarwal, Adv

Department By : Shri A.S. Rana, Sr. DR

Date of Hearing : 08.01.2025

Date of Pronouncement : 15.01.2025

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

The above captioned appeals and cross objections of the assessee are directed against the order of the Id. CIT(A)-1, Dehradun for A.Ys 2006-07, 2007-08 and 2008-09 respectively. The Revenue has filed an appeal for A.Y 2008-09.

2. Since the appeals and cross objections were heard together and pertain to same assessee, these are being disposed of by this common order for the sake of convenience and brevity.

3. At the very outset, the Id. AR Shri Rakesh Gupta stated that under instructions, he is withdrawing the appeal for AY 2006-07 and the two cross objections filed by the assessee for AY 2007-08 and AY 2008-09. On such concession, the appeal and the cross objections of the assessee are dismissed as withdrawn.

4. The only appeal that remains to be adjudicated is the Revenue appeal preferred against the order of the Id. CIT(A)-1, Dehradun dated 30.03.2012 pertaining to A.Y 2008-09.

ITA No. 3927/DEL/2012 [Revenue's appeal]

5. The Revenue has raised the following grounds of appeal:

"1. The Id. CIT(A) has erred in law and on facts by holding that he case did not warrant invocation of provisions of section 13 of the Act by following the decision for the A.Y 2006-07 without appreciating the facts brought on record for the instant year.

2. The Id. CIT(A) has erred in law and on facts by deleting the addition made on account of disallowance u/s 40A(2) without appreciating the facts brought on record for the instant year.

3. The Id. CIT(A) has erred in law and on facts by deleting the addition made on account of disallowance u/s 36(1)(iii) without appreciating the facts brought on record for the instant year.

4. The Id. CIT(A) has erred in law and on facts by deleting the addition made on account of unexplained cash credit inspite of the facts that the assessee did not fully discharged its onus u/s 68 of the Act."

6. At the very outset, the ld. counsel for the assessee fairly conceded that Ground No. 1 relating to invocation of provisions of section 13 of the Income-tax Act, 1961 [the Act for short] is to be allowed in favour of the Revenue as the ld CIT(A) upheld the Assessing Officer's stand that the assessee is not eligible for exemption u/s 11 of the Act. In view of the concession from the ld AR, the ground no 1 is allowed.

7. Ground No. 2 pertains to the deletion of disallowance u/s 40A(2) of the Act.

8. Briefs facts relating to this issue are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee has made payment of Rs. 21,22,99,500/- to ICRI Research P Ltd, a party covered u/s 40A(2)(b) of the Act, for the purpose of providing infrastructural facility/services for providing education for clinical research, as the assessee was not having any wherewithal for the said purpose. The AO disallowed 10% of service charges, amounting to Rs. 2,12,29,950/-, paid to the related party by holding that the payments made were excessive and unreasonable.

9. The assessee went in appeal before the CIT(A) who deleted the addition, following the CIT(A)'s decision in AY 2006-07.

10. Aggrieved, the Revenue is before us.

11. The ld DR objected strongly against the deletion stating that the payment made to the sister concern is unreasonable and excessive.

12. Per contra, the ld. counsel for the assessee submitted that the society did not have the requisite infrastructure for imparting education by itself and therefore it hired the services of the sister concern through an agreement. The ld AR stated that the payment of 70% of fees collected was fixed keeping in view the quotations obtained in the A.Y 2006-07 wherein the lowest quotation was for 75% of the fees for services. Therefore, the ld. counsel for the assessee submitted that 70% of the fee collected paid as service charges was not excessive. The ld. counsel for the assessee relied upon the decision of the Hon'ble Delhi High Court in the case of Siddhomal & Sons 122 ITR 839.

13. We have heard the rival submissions and have perused the relevant material on record. We find that the Id. CIT(A) deleted the addition by relying upon similar deletion of disallowance in A.Y 2006-07 by the Id. CIT(A) vide order dated 25.06.2010 who held that the payment was reasonable. We find that the question of commercial expediency of any expenditure is entirely left to the judgment of the assessee and no wild estimate can be made for disallowance of such claim of expenses without justifying the same. We are therefore of the considered view that the Id. CIT(A) was justified in deleting the addition so made by the Assessing Officer. Ground No. 2 accordingly stands dismissed.

14. Facts relating to Ground No. 3 pertaining to disallowance u/s 36(1)(iii) are that the Assessing Officer noticed that the assessee has taken unsecured loans from various parties and had paid interest of Rs. 19,98,542/- @ 1.6% per month during the year under consideration. The AO also noted that the assessee, at the same time had advanced loans to persons covered u/s 13(3) @ 1% interest per month. The Assessing Officer finally disallowed a proportionate interest @ 12% per annum on amount of Rs. 1 crore holding that the interest bearing funds have been diverted for non-business purpose invoking the provisions of section 36(1)(iii) of the Act.

15. When the aggrieved assessee went in appeal before the ld. CIT(A), the ld. CIT(A) deleted the addition following the CIT(A) decision of A.Y 2006-07.

16. Now the aggrieved Revenue is in appeal before us.

15. The ld DR vehemently argued that the assessee has diverted its interest bearing borrowed fund for non- business purposes, hence the disallowance should be upheld.

16. Per contra, the ld AR of the assessee submitted that the deposit of Rs 1 crore made to ICRI Research P Ltd was not an 'investment' but a 'security deposit' kept with the said company in the course of undertaking the activity of education and was incidental to the contractual arrangement between the two parties and was thus very much for the purpose of aims and objects of the society.

17. We have heard the rival submissions and have perused the relevant material on record. We find that the amount of Rs. 1 crore was given by the assessee to its sister concern ICRI Research [P] Ltd as a interest free 'security deposit' as per the contractual arrangements between the two

parties. We find that the Assessing Officer has not substantiated that the fund deposited are interest bearing funds and the deposit made with ICRI Research [P] Ltd is for non-business purpose. We are therefore of the considered view that the ld. CIT(A), relying upon similar disallowance cancelled in A.Y 2006-07, correctly came to the conclusion that the transaction did not amount to diversion of borrowed funds for non-business purposes. Accordingly, we dismiss the Ground No. 3 raised by the Revenue.

18. Ground No. 4 relates to the deletion of addition made on account of unexplained cash credit u/s 68 of the Act. Facts in brief are that the assessee credited an amount of Rs. 36 lakhs in its account as loan from six parties. On being asked to substantiate the genuineness of the said loan, the assessee submitted confirmation letters from the persons who lent the money. The Assessing Officer not being satisfied held that the assessee failed to prove the creditworthiness of the parties who have given the loan and considered the transaction as unexplained and added the same to the income of the assessee u/s 68 of the Act.

19. The assessee went in appeal before the ld. CIT(A.) who deleted the addition.

20. Now the Revenue is in appeal before us against this deletion of addition by the ld. CIT(A).

21. The ld DR vehemently argued that the assessee has not satisfactorily proved the genuineness of the transaction and creditworthiness of the loan giver and hence the addition should be upheld.

22. Per contra, the ld AR of the assessee submitted that the confirmation letters submitted by the assessee contained the names and addresses of the lenders along with their PANs. Moreover, the assessee had paid interest and deducted tax at source on the same. It is the say of the ld AR that the AO examined the TDS documents and verified that tax had been deducted properly. The ld AR argued that the amounts had been received by cheques whose nos. were mentioned in the confirmation letters which matched with the same appearing in the assessee's bank account. The ld AR stated that in spite of these facts, if the AO wanted to verify the genuineness of the loans, she should have issued notices to the lenders and satisfied herself.

23. We have heard the rival submissions and have perused the relevant material on record. We find that the confirmation letters filed by the assessee contained the names and address of the lenders along with PAN. Moreover, the assessee has paid interest and deducted tax at source on the same. The Id DR has neither controverted the fact that there is a finding of fact that TDS had been deducted properly nor he has dislodged the averment that the amount was received in cheques and the cheque nos. mentioned in the confirmation letters matched with the same appearing in assessee's bank account. We are therefore of the considered view that in the instant facts of the case, the assessee has discharged its initial onus to establish the identity of the lender as well as the genuineness of the transaction by furnishing confirmation letters of lenders along with their PANs. We also are of the opinion that once the assessee has discharged its initial onus regarding identity and genuineness of the transaction, the onus shifted to the AO to make further enquiries/investigation if she wanted to verify the capacity of the lender and genuineness of the transaction. We, therefore, find no reason to interfere with the findings of the Id. CIT(A) and direct the AO to delete the addition. Ground No. 4 is dismissed.

24. The appeal of the Revenue for A.Y 2008-09 is thus partly allowed.

25. To sum up, in the result, the appeal filed by the assessee in ITA No. 4207/DEL/2010, CO Nos. 57 and 58/DEL/2014 stand dismissed. Appeal of the Revenue in ITA No. 3927/DEL/2012 is partly allowed.

The order is pronounced in the open court on 15.01.2025.

Sd/-

**[SATBEER SINGH GODARA]
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 15th JANUARY, 2025.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Sl No.	PARTICULARS	DATES
1.	<i>Date of dictation of Tribunal Order...</i>	
2.	<i>Date on which the typed draft Tribunal Order is placed before the Dictation Member</i>	
3.	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i>	
4.	<i>Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.</i>	
5.	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i>	
6.	<i>Date on which the signed order comes back to the Sr. P.S./P.S</i>	
7.	<i>Date on which the final Tribunal Order is uploaded by the Sr. P.S./P.S. on official website</i>	
8.	<i>Date on which the file goes to the Bench Clerk alongwith Tribunal Order</i>	
9.	<i>Date of killing off the disposed of files on the judiSIS portal of ITAT by the Bench Clerks</i>	
10.	<i>Date on which the file goes to the Supervisor (Judicial</i>	
11.	<i>The date on which the file goes to the Assistant Registrar for endorsement of the order</i>	
12.	<i>Date of Despatch of the Order</i>	