

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA Nos.1327 & 1328/Bang/2024
Assessment years : 2020-21 & 2021-22

The Assistant Commissioner of Income Tax (Exemptions), Circle 1, Bengaluru.	Vs.	K J Foundation, 58/1, Thurbarahalli, Behind Sriram Samruthi Apartments, Whitefield Road, Bengalure – 560 067. PAN: AABTK 1178N
APPELLANT		RESPONDENT

Appellant by	:	Smt. Praveena S., CIT (DR)(ITAT), Bengaluru.
Respondent by	:	S/Shri Satish Mody, Advocate & Kunjan Gandhi, CA

Date of hearing	:	04.06.2025
Date of Pronouncement	:	09.06.2025

ORDER

Per Prashant Maharishi, Vice President

1. These two appeals are filed by ACIT (Exemptions), Circle 1, Bengaluru against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [Id. CIT(A)] for AYs 2020-21 & 2021-22 dated 15.5.2024 & 16.5.2024 respectively wherein the appeals filed

by the assessee against the assessment orders were allowed. Therefore, revenue is aggrieved and preferred both these appeals.

2. As the facts of the case are identical in both the years, the grounds of appeal for AY 2020-21 are as under:-

- “1. The Order of Ld.CIT(A) is opposed to facts and circumstances of the case;
2. The Ld.CIT(A) has erred in observing that during the F.Y.2019-20, the assessee had paid lease rent of Rs.9,51,36,000/- only to Eduspark International Pvt. Ltd. which was a related person u/s.13(3) of the Income Tax Act, 1961 while in Form No.10B filed for the A.Y.2020-21, it was mentioned that the assessee had paid lease rent of Rs.11,22,60,480/- and Security Deposit of Rs.8,37,92,000/- to Eduspark International Pvt. Ltd. under the category 'application or use of income or property' for the benefit of persons referred to in section 13(3) of the Income Tax Act, 1961;
3. The Ld.CIT(A) has erred in observing that there was no diversion of funds by the assessee trust to the trustee, Mr Rustom Kerawala. The AO has clearly brought out in the Assessment Order that Eduspark International Pvt. Ltd is the related person wherein the trustee, Mr Rustom Kerawala was holding 99.99% of the shares and acting as a Director of the Company and Mr Rustom Kerawalla had drawn huge sum of money as remuneration, which was about 20% of the total employee benefit expense of the company during the F.Y.2019-20. It was rightly held that the trust was diverting trust money to the company Eduspark International Pvt. Ltd and from company, it was diverted in the form of remuneration to the trustee, Mr Rustom Kerawala for his benefit in terms of Sections 13(2)© and 13(2)(g) of the Income Tax Act, 1961;
4. The Ld.CIT(A) has erred in ignoring the crucial fact which was brought on record by the AO that while EIPL had given fixed amount of refundable interest-free security deposits to the actual owners of the properties at the time of lease agreement, on the

other hand, the assessee had designed a pattern where the assessee trust would increase the refundable interest free security deposit payable to the company almost every year without any basis and that there was an excess of Rs.1,31,53,869/- in security deposit paid by the assessee to EIPL.

5. The Ld.CIT(A) has erred in rejecting the AO's conclusion that the assessee had paid excess rent to EIPL on the basis that the AO had taken the fair market rent of commercial properties, whereas, in the Assessment Order, the AO had compared the lease rent rates of similar properties prevailing in the locality and came to the conclusion that the assessee was clearly paying much higher lease rent to the school premises than even the lease rent applicable to commercial properties in that area during the period and in the Assessment Order, the AO had taken the fair market rent of a residential property also into consideration while determining the fair market rent;
6. The Ld.CIT(A) has erred in holding that the valuation report submitted by the assessee cannot be rejected by ignoring the observation of the AO that the valuation report submitted by the assessee was 'defective' on the ground that the valuation report of the assessee was based on inspection done in March 2017 and as such, the valuation was not strictly comparable with the valuation of fair market rent for A.Y.2020-21 and that the method of valuation adopted in the valuation report was 'return of investment method' which is not applicable in the assessee's case because the company EIPL was not the owner of the properties in question, instead they were taken on rent.
7. The Ld.CIT(A) has erred in ignoring the fact that a reference was made to the DVO by the AO but due to non-cooperation of the assessee by not producing the requisite documents, the DVO could not arrive at the fair market rent for the purpose of assessment and submit the valuation report and intimated accordingly to the AO vide letter dated 09.01.2023. The CIT(A) ought to have called for and examined the valuation report by the DVO through the AO by calling for a Remand Report under Rule 46A of the I.T.Rules, 1962;

8. The Ld.CIT(A) has erred in holding that the lease rent paid by the assessee to Eduspark International Pvt Ltd. was at market price as determined by the approved valuer relying on the valuation report submitted by the assessee while the AO rejected the valuation report as defective on the ground that the valuation report of the assessee was based on inspection done in March 2017 and as such, the valuation was not strictly comparable with the valuation of fair market rent for A.Y.2020-21 and that the method of valuation adopted in the valuation report was 'return of investment method' which is not applicable in the assessee's case because the company EIPL was not the owner of the properties in question, instead they were taken on rent.
 9. The Ld.CIT(A) has erred in observing that it cannot be said that there is a diversion of income by the assessee in paying lease rent to Eduspark International Pvt. Ltd. on the ground that Eduspark International Pvt Ltd. had duly accounted the transaction in its books of accounts and taxed at maximum marginal rate while it is not stipulated in the Act that an undue benefit conferred by the assessee trust to a specified person would be out of the purview of section 13 provided the recipient of such benefit had offered the same for taxation;
 10. The Ld.CIT(A) has erred in not following the judgment delivered by the Hon'ble supreme Court in the case of Sole Trustee of Lok Shikshana Trust 1976 SCR (1) 461 wherein it was held that "the action which flows from charitable thinking is not directed towards benefitting one's self. It is always directed at benefitting others". In the instant case, the assessee trust was only interested in benefitting the director of Eduspark International Pvt. Ltd who is its own trustee.
 11. The appellant craves leave to add, alter or amend all or any of the Grounds of Appeal before or at the time of the hearing of the appeal.
 12. The Order of the Ld.CIT(A), NFAC may be set-aside and the Order of the AO may be confirmed.”
3. The brief facts of the case for AY 2020-21 show that assessee is trust carrying on educational activity by establishing school, filed its return

of income on 31.12.2020. The return was picked up for scrutiny and reason for selection was alleged violation of provisions of section 13(2) of the Income-tax Act, 1961 [the Act].

4. During the assessment proceedings, it was found that with respect to two properties, the assessee has paid lease rent of Rs. 11,22,60,480/- to one, M/s. Eduspark International Pvt. Ltd. [EIPL]. These properties have been taken on rent by EIPL from Mr. Muni Reddy and Sundeep Muni Reddy and others for Rs.7,97,33,064/-. According to assessee, Mr. Rustom P. Kerawalla is the Director of EIPL and holds 99.99% of shares of that company. Mr. Rustom P. Kerawalla is also a trustee of the assessee. Therefore, this transaction comes into the category of 'specified person' u/s. 13(3)(e) of the Act. Thus, according to the AO, there is a 'benefit' in terms of provisions of section 13(2) which would result automatically in denial of its entitlement of exemption u/s. 11. The AO issued a show-cause notice. The AO also noted that the matter was referred to DVO and the DVO has informed that assessee is non-cooperative in valuation proceedings. However, as the matter was barring by limitation, the AO could not have waited for the report of the DVO and issued the show-cause notice. The AO stated that there is an excess rent paid by the assessee to EIPL for Rs.3,25,27,416.
5. The assessee submitted that the actual difference between rent paid to the landlord by EIPL and rent paid by assessee to EIPL is only Rs.1,54,02,936. Difference worked out by the ld AO also included GST. This difference is also because of expenditure incurred by EIPL

on improvements, alteration, renovation, furniture & fixture, sports ground, etc. The assessee enclosed the details of assets provided by that company and therefore the rent is reasonable and no benefit accrues to EIPL. The assessee submitted that complete details are submitted to the DVO and such copies were also submitted to the AO. The assessee also explained that if EIPL took the property on rent from the landlord, school was constructed with complete amenities and along with sports area and therefore higher rent was charged by that company over and above the rent paid by EIPL to the landlord. The assessee also submitted the details of the market rent of the said property which is higher than lease rent paid to that company.

6. The ld. AO rejected the contention of the assessee and held that assessee is clearly paying much higher lease rent than the commercial property rates in the same area and therefore there is a clear-cut violation of section 13(1)(c) of the Act. Therefore, he held that there is an application of income for the benefit of the 'specified person' and therefore total income of the assessee was denied benefit of section 11 & 12 of the Act. Accordingly assessment order u/s. 143(3) r.w.s. 144B of the Act was passed determining the total income of assessee at Rs. 28,09,74,986 by assessment order dated 26.5.2023.
7. The assessee challenged the assessment order before the ld. CIT(Appeals). The ld. CIT(A) on this issue allowed the appeal holding that for the AY 2017-18, the CIT(A) has deleted the addition with identical facts and circumstances wherein it has been held that there is

no violation of the provisions of section 13(1)(c) and 13(2)(g) of the Act. The Id. CIT(A) further noted that the lease rent paid by the assessee to the same party on similar facts and circumstances from AY 2012-13 to 2016-17 was accepted by the Id. AO, even while passing the assessment order u/s. 143(3) of the Act after he examined this issue. Tehrefore, on the principle of consistency, relying upon the decision of Hon'ble Supreme Court in the case of *Radha Saomi Satsang, 193 ITR 321*, the Id. CIT(A) deleted the addition. Thus, the appellate order passed on 15.5.2024 is under challenge by the Id. AO.

8. The Id. CIT(DR) vehemently supported the order of the Id. AO. It was submitted that the Id. AO has referred the matter for determining the fair market value of rent to the Id. DVO, but assessee was non-cooperative and not submitted any details. It was further stated that the report of the fair market value of rent submitted by the assessee suffers from severe infirmities which have been referred to by the Id. AO and conveniently ignored by the Id. CIT(A) clearly shows that there is a definite benefit u/s. 13(1)(c) of the Act and the trust has made payment of rent for the benefit of 'specified person'. She further referred to various findings of the AO and stated that the Id. CIT(A) has erred in holding that there is no violation of section 13 and no benefit accrues to the 'specified person', when there is a specific finding that EIPL has taken a property on rent from third party and which is given on rent to the assessee trust with huge difference between rent paid and rent received for the same properties. She submitted that there is a clear-cut benefit between the difference of two rents to the same party.

Accordingly she submitted that the order of the Id. CIT(A) is not sustainable.

9. The Id. AR submitted that the Id. CIT(A) has allowed the appeal of the assessee following the decision of the CIT(A) for AY 2017-18. This appellate order was carried by the AO in appeal before the ITAT. The ITAT in ITA No.1105/Bang/2023 for AY 2017-18 dated 19.6.2024 has upheld the order of the Id. CIT(A) and therefore now the issue is squarely covered in favour of the assessee in its own case. He further submitted that identical arrangement was in existence since AY 2012-13 and precisely for AY 2016-17. This issue was examined in scrutiny assessment and the Id. AO did not take any adverse view. Therefore it was submitted that the appeal of the revenue may be dismissed.
10. We have carefully considered the rival contentions and perused the orders of Id. AO. We find that the identical issue was considered by the Coordinate Bench in assessee's own case for AY 017-18 wherein in para 7 to 9, the Coordinate Bench has held that there is no violation of provisions of section 13 in this case and assessee is entitled to exemption u/s. 11 of the Act as under:-

“7. We have gone through the above findings of the learned CIT(A) and found that the Id. CIT(A) had elaborately discussed each and every facts of the case and gave findings. The Id CIT(A) in paragraph 5.11 of his order had observed that the lease rent paid to the company was never disputed by the AO in respect of the assessment years 2012-13 to 2016-17. We have also considered the argument of the Id AR, that the very same valuation report given by the approved valuer was accepted by the Id AO for other years whereas the Id AO not accepted the same for the year in

question, without any reasons. This approach of the Id AO has been find fault by the CIT(A) which in our considered view is absolutely correct. Further the Id. AO has no other materials to find fault with the fair market value of the leased out property and also no records were produced before us to prove that the rent paid is excessive and not at arm's length price. In fact the Id AO has not taken any steps to find out the Arm's length price. We have also gone through the assessment order issued u/s 143(3) for the A/Y 2016-17 dated 27.12.2018 in which the Id AO had accepted the income returned by the trust. These facts were considered by the Id CIT(A) and correctly arrived the conclusion that the denial of exemption u/s 11 is not correct.

8. In so far as the ground raised by the Revenue that the Id CIT(A) ought to have obtained a remand report from the AO to ascertain the fair rental value, we are of the view that the valuation report of the approved valuer has been accepted by the Id AO in respect of the A/Y 2016-17 and further there is no compulsion under the provisions of the Act to get the same when there is a valuation report available with the authorities. The Id DR has also not placed any specific reasons for raising this ground at this point of time. We therefore not accepted the ground now raised before us.
9. Further we have also gone through the various documents filed by the assessee and found that no documentary evidence available with the Id AO in support of his allegation that there is a diversion of funds warranting to invoke sec 13(2)(c) and 13(2)(g) of the Act. We find that the allegation of the Id AO that the rent paid to the company is excessive or not at arm's length price has no supportive materials and therefore we affirm the findings of the Id CIT(A), that the assessee trust has not diverted its funds during the year in question, in favour of the persons referred in sec 13(3) of the Act and therefore the exemption u/s 11 of the Act could not be denied. Further we found that the receipt of the remuneration by the assessee's trustee from the company as Director was also not doubted by the assessing officer of the company and hence in these circumstances the denial of the claim of exemption u/s 11 of the Act is not correct. Eventhough each assessment year is a separate one, we are convinced that in respect of the current year there is no change in circumstance and also the authorities have not placed any material evidences before

us, to take a different view. We, therefore, affirmed the order of the learned CIT(A) for the disputed year by dismissing the appeal filed by the Department.”

11. On careful consideration of the orders of the AO, the Id. CIT(A) and the order of the Coordinate Bench of the Tribunal for AY 2017-18, we find that this issue is squarely covered in favour of the assessee. Admittedly, the revenue has challenged the order of the Coordinate Bench before the Hon'ble High Court. But, as admitted by both the parties, at present the issue is covered in favour of the assessee. Therefore, we dismiss the appeal of the Revenue, respectfully following the decision of the Coordinate Bench in assessee's own case.
12. The facts for AY 2021-22 are also stated to be identical by both the parties and therefore the appeal for AY 2021-22 for the reasons given by us for AY 2020-21 is also dismissed.
13. In the result, both the appeals filed by the Revenue for these two assessment years are dismissed.

Pronounced in the open court on this 9th day of June, 2025.

Sd/-

(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Bangalore,
Dated, the 9th June, 2025.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.