

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.6247/Del/2016
(ASSESSMENT YEAR 2011-12)

Income Tax Officer (Exemption), Ward-Ghaziabad.	Vs.	M/s Sahyog Jan Kalyan Samiti, 122/619, Shastri Nagar, Kanpur. PAN-AABAS0743G
(Appellant)		(Respondent)

ITA No.6248/Del/2016
(ASSESSMENT YEAR 2012-13)

ITA No.2839/Del/2018
(ASSESSMENT YEAR 2013-14)

Dy. Commissioner of Income Tax (Exemption), Circle-Ghaziabad.	Vs.	M/s Sahyog Jan Kalyan Samiti, 122/619, Shastri Nagar, Kanpur. PAN-AABAS0743G
(Appellant)		(Respondent)

Assessee by	Advocate Ashish Jaiswal,
Department by	Shri Manish Gupta, Sr. DR
Date of Hearing	27/05/2025
Date of Pronouncement	08/08/2025

ORDER

PER MANISH AGARWAL, AM:

These are three appeals filed by the Revenue against the three separate orders as detailed below for Assessment Years 2011-12, 2012-13 and 2013-14 respectively. Since, some of the issues involved

in all these appeals are common, therefore, they are taken together and disposed off by common order. The details of the appeals are as under:

Appeal No.	Assessment Years	Date of CIT(A)'s order
6247/Del/2016	2011-12	29.02.2016
6248/Del/2016	2012-13	16.06.2016
2839/Del/2018	2013-14	31.01.2018

2. First we take up Revenue's appeal in **ITA No.6247/Del/2016** for Assessment Year 2011-12 wherein the Revenue has challenged the appellate order on the following grounds:

- "1. Ld. Commissioner of Income Tax (Appeals) has erred in law and facts in allowing the appeal of unexplained investment of Rs.3,33,53,024/- u/s 69 of the I. T. Act, 1961.*
- 2. The Order of the Ld. Commissioner of Income Tax (Appeals) be cancelled and the order of the A.O. be restored.*
- 3. Appellant craves leave to modify/amend or add any one or more grounds of appeal."*

3. Since all the grounds of appeal are related to one issue thus they are taken together for consideration.

4. Before us, ld. Sr. DR submits that for the determination of the investment in cost of construction of the buildings of the institutions run by the assessee for Assessment Years 2002-03 to 2009-10, reference was made to DVO and the additions made based on the valuation done by DVO and the matters for Assessment Years 2002-03 to 2006-07 were traveled up to ITAT, Lucknow who in ITA Nos.

568 to 572/Lkw/2013 vide order dated 07.01.2014, dismissed the appeal of the Revenue as the provisions of section 145(3) were not invoked before making reference to DVO. The Ld. Sr. DR further submits that for the impugned assessment year, the Ld. CIT(A) also deleted the disallowance by observing that the AO had not invoked the provisions of section 145(3) before making reference to DVO. It is further submitted by the Ld. Sr. DR that the Ld. CIT(A) has placed reliance on the judgment of Hon'ble Supreme Court in the case of *Sargam Cinema vs. ACIT reported in [2010] 328 ITR 513 (SC)*. The Ld. Sr. DR drew our attention to page-3 of the Assessment Order wherein in para 6, the AO in categorical terms observed that in terms of the order sheet dated 16.01.2014 the books of accounts were rejected and provisions of section 143(3) were invoked and assessee was further asked to show cause as to why the matter should not be sent to the DVO for estimation of the cost of construction. He thus submits that the order of the Ld. CIT(A) is based on wrong appreciation of the facts and deserves to be reversed.

5. On the other hand, the Ld. AR of the assessee supports the orders of the Ld. CIT(A) and submits that the AO has not pointed out any error in the books of accounts maintained by the assessee before invoking the provisions of section 145(3) and sole issue for rejection of books of accounts was that no separate details and vouchers were produced for block wise construction of buildings. He submits that assessee had furnished all the details and vouchers with respect to

the construction of the building and since simultaneous construction work was carried out for all the blocks, it is not possible to segregate the expenses incurred block wise such as steel, cement, grit etc. which were purchased in bulk and used in the construction of all the blocks. He thus, prayed for confirmation of the order of Ld. CIT(A) in this regard.

6. Heard both the parties and perused the materials available on record. From the perusal of the report of the DVO, it is seen that the DVO has estimated costs of constructions at Rs.11,62,78,000/- for the year under appeal as against the declared investment by the assessee at Rs.8,27,18,942/- and addition was made for the differential amount of Rs.3,35,59,058/-. From the order of Ld. CIT(A), it is seen that the Ld. CIT(A) has placed reliance on the judgment of Co-ordinate Bench of ITAT, Lucknow in the assessee's own case for previous years where the additions made on account of unexplained investment in construction were deleted for the reason that the books of accounts were not rejected before making reference to the DVO. It is further seen that the assessee has filed objections against the reference made to DVO for estimation of the valuation. The assessee also filed objections to the valuation report of the DVO after obtaining the same from approved valuer namely Mr. A.S. Agarwal which objections are reproduced at page 7 to 9 of the appellate order. It is further seen that these objections have not been disposed off. The Ld. CIT(A) allowed the appeal of the assessee on the pretext that the books of accounts were not rejected which is not correct as the AO

has invoked the provisions of section 145(3) before making reference to DVO and this fact is evident from the order of AO. However, the fact that the objections raised by the assessee to the DVO's report were not met out, more particularly objections with respect to the application of CPWD rate viz-a-viz state PWD rates, self-supervision etc. It is the settled proposition that state PWD rate should be considered and must be given preference as against CPWD rate as they are more close to the local circumstances and we order accordingly. Therefore, under these facts and circumstances of the case, we set aside the orders of the lower authorities and remand back the matter to the file of AO with the direction that the objections taken by the assessee against the DVO's report be disposed off in terms of the observations made herein above, and decide the issue afresh in accordance with law. With these directions, the appeal of the Revenue is partly allowed for the statistical purposes.

7. In the result, the ITA No.6247/Del/2016 is partly allowed.

8. Now coming to revenue's appeal in **ITA No.6248/Del/2017** for Assessment Year 2012-13.

9. In this appeal, the Revenue has raised the following grounds of appeal:

1. The Order of the Ld. Commissioner of Income Tax (Appeals) -11, Kanpur has erred in law and facts in allowing the appeal of the assessee on the disallowance of addition u/s 69 of Rs. 3,37,78,633/-

2. The Order of the Ld. Commissioner of Income Tax (Appeals) has erred in law and facts in allowing the appeal of the assessee on the

disallowance of unexplained investment in construction of property and on account of advertisement expenses of Rs. 2,92,21,682/-.

3. The Ld. Commissioner of Income Tax (Appeal) has erred in law and facts in allowing the appeal of the assessee on the disallowance of depreciation of Rs. 5,58,26,786/-.

4. The order of the Ld. Commissioner of Income Tax (Appeals) be cancelled and the order of the A.O be restored.”

10. Ground of Appeal No.1 is with regard to addition of Rs.3,37,78,633/- made u/s 69 towards unexplained investment in the construction of building based on the valuation report submitted by the DVO which was deleted by Ld. CIT(A). This issue has been discussed in length in the Revenue's appeal for Assessment Year 2011-12 in ITA No.6247/Del/2016 wherein we have set aside the orders of the lower authorities and remand back to the issue to the file of AO for fresh consideration with certain direction. Since in this year the addition is based on the same report of the DVO, thus, by following the said observations made by us, the issue is set aside to the file of AO with the same directions. Accordingly, the Ground of appeal No.1 of the assessee is partly allowed for statistical purposes.

11. Ground of appeal No.2 is with respect to the disallowance of Rs.2,92,21,682/- made out of advertisement expenses claimed by the assessee. The AO alleged that the assessee has not used the funds of the assessee society for educational purposes and misuse the funds on advertisement expenses and, therefore, disallowed the same. The Ld. CIT(A) deleted the same by observing that the expenditures were incurred for the education purposes so there was no misuse of funds.

12. Ld. Sr. DR vehemently supported the orders of the AO and requested for the restoration of the additions made.

13. On the other hand, the Ld. AR of the assessee submits that the expenses were incurred on regular basis and the same was incurred for highlighting the genuine activities of the educational institution run by the society so as to promote the education and giving better choice to students for selecting better institution. He further submitted that the assessee society has not violated the provisions of section 13(1)(c) of the Act. The AO has doubted the quantum incurrence of expenses, however, the expenses of similar nature and were allowed in the previous years where the assessments were completed u/s 143(3) of the Act. He thus submitted that the Ld. CIT(A) after considering these facts deleted the disallowance and thus, it was the prayer of the ld. AR of the assessee that the said order of ld. CIT(A) be confirmed on this issue.

14. Heard both the parties and perused the materials available on record. It is seen that the assessee has claimed advertisement expenses on regular basis since past so many years where these expenses were never doubted in the orders passed u/s 143(3) and for the first time in the year under appeal, the same has been disallowed. There is no changed in the activity of the assessee society nor there was any change in the nature of advertisement expenses incurred. The Ld. CIT(A) while deleting the disallowance has made following observations:

“I have carefully perused the assessment order, written submission furnished by Ld. A.R. for the assessee and other relevant material on record. The AO held that society is making misuse of funds collected from the students by spending the same on advertisement expenses and this expenditure has no relevance with the educational activity being pursued by the appellant, which is misuse of the funds collected from students. Therefore, the claim of expenses on account of advertisement were disallowed and added to the income of the assessee society on which no exemption was granted.

I have gone through the facts and the written submissions filed along with the details filed enclose therein. There is no dispute that the expenditure has been incurred for the purposes of educational activities. It is also an admitted fact that the accounts have been tax audited and the auditors have not given any adverse comments. AO has not pointed out any specific defects in the expenses showing that advertisement relates to advertising of the management personal or the payments have been made in to persons in violation of S. 13. It is seen that entire expenses incurred on advertisement through Paper / Electronic Media etc. are for the purpose of admission/recruitment of faculty for the institute. The AO has failed to bring any material on record to demonstrate that the expenses have not been incurred and are not verifiable. The publication of advertisement highlighting the achievements of the educational institutions runs by the society is an endeavor towards promoting education. Else it will be difficult for a common man in remote areas to find out about the existence of a genuine institution. There is no violation of provision of section 13(1)(c) of the Act by the assessee. Merely a fact that the assessee has incurred expenses on advertisement alone will not be sufficient to hold that activities of the trust are not being charitable. No disallowance can be made on mere conjecture and surmises.

The Hon'ble High Court of Andhra Pradesh in the case of New Noble Educational Society vs. Chief Commissioner of Income-tax [2011] 12 taxmann.com 267 (AP) held that Publication of journals, magazines, or other media for diffusion of useful knowledge for promotion of education is incidental and ancillary to the primary object of the society, i.e., to run an educational institution.

It was further brought to my notice that earlier year cases of appellant have been completed under scrutiny assessment and no disallowances on account of advertisement has been made by A.O for the assessment years 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12. It seems that AO has disallowed the expenses without bringing anything on records to show whether there is any violation of section 13(1)(c) or expenses are related to

personal benefit of the trustee's of the society accordingly addition made by A.O cannot be sustained and same is hereby deleted.

Thus grounds No- 4 & 5 raised in appeal are treated as allowed.”

15. Before us, the Revenue has failed to controvert the findings of the Ld. CIT(A), thus, by following the principle of consistency and also looking to the facts that the advertisement expenses were incurred for educational purposes only and for the betterment of the activities of the assessee society, we find no infirmity in the order of Ld. CIT(A) which is hereby upheld. Accordingly the Ground of Appeal No.2 of Revenue is dismissed.

16. Ground No. 3 of the Revenue is with regard to the deletion of disallowance of depreciation of Rs.5,58,26,786/- made by the AO. The AO has disallowed the depreciation by observing that w.e.f., 01.04.2015 an amendment has been made in section 11(6) of the Act, according to which once the application on the fixed assets is claimed out of the receipts, no further deduction or disallowance by way of depreciation or otherwise in respect of such assets is allowed. Accordingly, the AO has made the disallowance which stood deleted by Ld. CIT(A).

17. Before us, Ld. Sr. DR vehemently supports the order of Ld. AO and submits that the claim of depreciation on the fixed assets for which application has already been claimed, therefore, in view of the amendment provisions of section 11(6), no deprecation is allowable and he requested for the confirmation of the order of AO.

18. On the other hand, the Ld. AR submits that the amendment in section 11(6) of the Act was effective from 01.04.2015 and same is prospective. Therefore, the depreciation is to be allowed in the year under appeal which is prior to the amendment. He placed reliance on the judgment of the Supreme Court in the case of **Rajasthani & Gujrati Charitable Foundation Poona** reported in **[2018] 402 ITR 441 (SC)** wherein the Hon'ble Supreme Court has held that the amendment in section 11(6) of the Act is prospective and applicable from 01.04.2015.

19. Heard both the parties and perused the materials available on record. The solitary issue is whether the amendment made in section 11(6) of the Act has retrospective application or prospective in nature. We find that the Hon'ble Supreme Court in the case of Rajasthan & Gujrati Charitable Foundation Poona (supra) has settled this issue wherein the Hon'ble Apex court has held that the amendment in section 11(6) of the Act vide Finance Act No.2/2014 became effective from Assessment Year 2015-16 and onwards and the said amendment is prospective in nature. The Ld. CIT(A) is also deleted the disallowance by holding that amendment is prospective in nature by placing reliance on the aforesaid judgement of hon'ble Supreme court. Thus, we find no error in the order of Ld. CIT(A) and by respectfully following the judgment of the Hon'ble Supreme Court in the case of Rajasthan & Gujrati Charitable Foundation Poona

(supra), we upheld the order of Ld. CIT(A) in deleting the disallowance made on account of depreciation. Accordingly, the Ground of appeal No.3 of the Revenue is dismissed.

20. In the result, ITA No.6248/Del/2016 of the revenue is partly allowed.

ITA No.2839/Del/2018 (Assessment Year 2013-14)

21. In ITA No.2839/Del/2018, the Revenue has taken the following grounds of appeal:

“1. The Ld. CIT(A) has erred in law and facts in deleting the additions of Rs.5,02,21,040/- made in respect of difference between the ascertained cost of construction by the DVO and investment declared by the assessee.

2. The Ld. CIT(A) has erred in law and facts in deleting the addition of Rs. 2,71,97,972/- on account of expenditure on advertisement which were not explained during the assessment proceedings by the assessee.

3. The Ld. CIT(A) has erred in law and facts in deleting the addition of Rs. 6,66,84,423/- in respect of claim of depreciation on assets.

4. The order of Ld. CIT(A) be cancelled and the order of the AO be restored.”

22. Ground No.1 is with respect to the deletion of addition of Rs.5,02,21,040/- made by AO being the difference between cost of construction estimated by DVO and the investment in construction declared by the assessee.

23. At the outset, it is seen that the addition has been made on the basis of the report of the DVO obtained for determination of the cost incurred on the construction of buildings of the institutes run by the

assessee in various assessment years including Assessment Years 2011-12 and 2012-13. In Assessment Years 2011-12 in Revenue's appeal in ITA No.6247/Del/2016, we have decided this issue after details discussions and with certain directions remand back the matter to the file of the AO. Thus, following the observations made therein ITA No.6247/Del/2016 on the issue of additions on account of investment in construction based on the DVO report, the issue in this year is also remand back to the file of the AO to decide the same in terms of the same directions. Accordingly, the Ground of Appeal No.1 of the Revenue is partly allowed for statistical purposes.

24. In Ground of Appeal No .2, the Revenue challenged the deletion of disallowance of Rs.2,71,97,972/- out of advertisement expenses. The identical issue is discussed by us in Revenue's appeal for Assessment Year 2012-13 in ITA No.6248/Del/2016 wherein after considering the facts of the case and the activities of the assessee society, we allow the advertisement expenditure as incurred for the betterment of educational activities of the assessee society. Thus, by following the said observations made in ITA NO. 6248/Del/2016, the disallowance made in this year is hereby deleted. Accordingly, the ground of appeal No.2 of the revenue is dismissed.

25. In Ground No.3, the Revenue has challenged the deletion of disallowance of depreciation of Rs.6,66,84,423/- on the assets on which application has already been claimed. This issue has been decided in favour of the assessee in ITA No.6248/Del/2016 for

Assessment Year 2012-13 wherein by following the judgments of Hon'ble Supreme Court in the case of Rajasthan & Gujrati Charitable Foundation Poona (supra), we held that amendment made in section 11(6) of the Act is prospective in nature and, therefore, the assessee is entitled for the depreciation on the fixed assets on which application has been claimed out of receipts. Thus, by following the said observations, we hereby direct the AO to delete the disallowance made. Accordingly, Ground of Appeal No.3 of the Revenue is dismissed.

26. In the result, ITA No.2839/Del/2018 is partly allowed.

27. In the final result, all the three appeals of the Revenue in ITA No. 6247/Del/2016, ITA No. 6248/Del/2016 and ITA No. 2839/Del/2018 are partly allowed.

Order pronounced in the open court on 08.08.2025.

Sd/-
(SHRI YOGESH KUMAR U.S)
JUDICIAL MEMBER

Dated: 08.08.2025

PK/Sr. Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI