

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH ‘A’, CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य  
BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1135/CHD/2017

निर्धारण वर्ष / Assessment Year : 2014-15

The Dy.CIT, Circle-1 (Exemptions), Chandigarh.	बनाम	M/s C.T. Educational Society, Greater Kailash Maqsudam, Jalandhar.
स्थायी लेखा सं./PAN NO: AAATC4867F		

आयकर अपील सं./ ITA No. 700/CHD/2019

निर्धारण वर्ष / Assessment Year : 2015-16

The Dy.CIT, Circle-1 (Exemptions), Chandigarh.	बनाम	M/s C.T. Educational Society, Maqsudam, Greater Kailash Jalandhar.
स्थायी लेखा सं./PAN NO: AAATC4867F		

राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT  
निर्धारिती की ओर से/Assessee by : Shri Ashray Sarna, C.A.

सुनवाई की तारीख/Date of Hearing : 26.08.2021

उदघोषणा की तारीख/Date of Pronouncement : 04.10.2021

**VIRTUAL HEARING**

आदेश/Order

**Per Sanjay Garg, Judicial Member :**

The present appeals have been preferred by the revenue against the order dated 24.04.2017 and 15.02.2019 passed u/s 250(6) of the Income Tax Act, 1961 ( in short ‘the Act’) of

the Commissioner of Income Tax-2, Jalandhar (hereinafter referred to as CIT(A) respectively for the assessment year 2014-15 and 2015-16.

2. Since the facts and circumstances in both the appeals are identical, therefore, both the appeals are being taken up together for the sake of convenience.

**ITA 1135/CHD/2017 ( a.y. 2014-15**

3. The Revenue in this appeal has taken the following modified Grounds of appeal :

1. *That the Ld. CIT(A)-2, Jalandhar has erred in law as the findings recorded are perverse and contrary to the evidence/material available on record & facts of the case and duly considered by the Assessing Officer.*

2. *That the Ld. CIT(A)-2, Jalandhar has erred in law while allowing the benefit under section 11 of the Act without appreciating that there was a clear violation of section 13 of the Income Tax Act, 1961.*

3. *That the Ld. GT(A)-2 Jalandhar has erred in law in treating income of Rs. 37,31,000/- as exempt under section 11 of the Income Tax Act, 1961 despite the assessee trust having contravened the provisions of section 13(2)(c) of the Income Tax Act, 1961.*

4. *That the Ld. CIT(A)-2 Jalandhar has erred in law in while deleting the addition of Rs. 1,98,48,600/- made on account of interest @12% p.a. on advances paid to members of the society without appreciating that these advances are not covered u/s 13(1)(c) & 13(1)(d) r.w. 13(3).*

5. *That the Ld. CIT(A)-2 Jalandhar has erred in law in appreciating the fact that salary paid to the persons covered u/s 13 is a mere 2.5% of the total quantum is flawed in light of the 29% increase shown in these case and directly intended to benefit these persons and additionally corroborated by the objects and the increase thereof are not corroborated by the objects clause of society.*

6. *That the Id. CIT(A) Jalandhar has erred in law in ignoring that advances paid to members of society amounts to misutilization of receipts of the school in the shape of transfer for property and as per scheme that doesn't reflect altruism on part of the members selling land to their own society.*

7. *That the Id. CIT(A)-2 Jalandhar has erred in law in deleting interest amount even when the advances paid were made to members of the society, much prior to execution of sale with two members in AY 2015-16 and whatsoever none with third member even till AY 2016-17, for purchase of land that was additionally not evidenced to be in pursuance of the society's objects*

4. A perusal of the above grounds of appeal reveal that the revenue is aggrieved by the action of the CIT(A) in allowing exemption u/s 11 of the Income Tax Act,1961 ( in short 'the Act') to the assessee society on two grounds. Firstly that the assessee society had made the interest free advances to its Members which transaction was covered under the provisions of Section 13(1)(c) and 13(1)(d) read with Section 13(3) of the Act and further that the assessee Society had paid excessive salary to its Members having contravened the provisions of Section 13(2)(c) of the Act. The Id. Assessing Officer (in short 'AO') made the addition of Rs. 1,98,48,600/- on account of notional interest @ 12% P.A. on the interest free advances paid to its Members by the Society and further disallowed a sum of Rs. 46,75,933/- paid to members towards salary. However, the Id. CIT(A) deleted the disallowance so made by the AO.

5. In respect of interest free advances given to its Members, it was explained by the Society that the same were infact not interest free advances, rather the same was towards payment/consideration for the purchase of land from the Members of the society. The land, infact was given by the

Members to the Society for construction of building for educational activity of the Society. However, the payment of construction was spread over a period as per availability of the funds and finally the Sale Deed of the land was executed by the Members in favour of the assessee. That the sale consideration was fixed at arms length price/Collector rate and there is no allegation that any excessive payment was made by the Society for the purchase of the aforesaid land. The Id. CIT(A) considering the submissions of the assessee deleted the additions so made by the AO, observing as under :

*4.4 I have gone through the assessment order passed by the AO as well as detailed submissions made by the appellant including judicial citations given therein and find that an addition of Rs. 1,98,48,600 has been made by the AO on the ground that interest free advances amounting to Rs. 16,54,05,000 have been made by the society to the persons, who are members of the society. It is stated by the AO that interest at the rate of 12% per annum has to be charged on these advances based on the market rate of interest.*

*4.5 It is further held by the AO that amount paid to the members of the society as advances are covered under section 13(l)(c) and 13(l)(d) r.w.s. 13(3) of the IT Act and therefore, cannot be treated as an application of income. It is also stated that these advances paid are not as per the modes specified in the provisions of sub section 5 of section 11 of the IT Act. Therefore, interest at the rate of 12% P. A. on the total amount of interest free advances amounting to Rs.16,54,05,000, which comes to Rs. 1,98,48,600 has been added to the income of the society.*

*4.6 The appellant has stated that advances of Rs. 16,54,05,000 have been given to 3 persons namely- Sh. Harpreet Singh, Smt. Parminder Kaur and Sh. Manbir Singh. A copy of account of the three persons explaining the nature of transactions and purpose of the same has been filed in the course of assessment proceedings. It is stated that amount has been paid by the society as advance purchase of land for the purposes of society. The society is engaged in educational activities and therefore, funds have been paid over a period of time to these persons and details of payments made over a period of 4 years, is as under:-*

Name	A.Y. 2012-13	A.Y. 2013-14	A.Y. 2014-15	A.Y. 2015-16
Harpreet Singh	2,20,00,000/-	6,20,00,000/-	6,86,80,000/-	9,60,00,000/-
Parminder Kaur	1,10,00,000/-	5,50,00,000/-	6,40,00,000/-	7,05,15,000.-
Manbir Singh	2,20,00,000/-	2,20,00,000/-	3,27,25,000/-	4,62,00,000--
Total	5,50,00,000/-	13,90,00,000/-,	16,54,05,000/-	21,27,15,000 -

4.7 The appellant has further stated that no un-due benefit has been taken by these persons as the sale of land has been executed by Sh. Harpreet Singh for Rs. 9.60 crores and by Sh. Manbir Singh for Rs. 4.62 crores in the name of the society. The land is situated at Greater Kailash, Maqsudan, Jalandhar and tax was deducted @ 1% on the total amount of sale consideration. The capital gain earned by these persons has also been declared in their income tax returns and a copy of the same has also been filed on record. It is further stated that Smt. Parminder Kaur has been paid an advance of Rs. 7,05,15,000 for purchase of land and the sale deed is to be executed in the year 2016-17. A copy of the account along with confirmation and copy of bank statement, has been placed on record and was also filed in the course of assessment proceedings.

4.8 The appellant has submitted that these members of the society have in the initial years contributed their property consisting of land to the cause education by gifting this land free of cost to the society. It is stated that no benefit has been taken by the members on account of sale of this land to the society as the transaction has been executed at the prevailing market rate which is in accordance with the value determined by the Stamp Valuation Authority. It is also stated that capital gains tax has also been paid by these persons on the gains earned on sale of land to the society and a copy of the ITRs filed by these persons has also been placed on record to support its contentions.

4.9 I have carefully considered the detailed submissions made in this regard and find that it is an accepted fact that in the initial phase of the society, land has been contributed as free of cost by these members to the society. Further, it is not disputed that these transactions for purchase of land has been executed by the society at arms length i.e. at the prices fixed by the Stamp Valuation Authority. However, as regards the payment of purchase consideration is concerned the only issue is that payment of this consideration has been made in a phased manner spread over a period of 3-4 years. Now, the issue for consideration is whether it amounts to giving un-due benefit to the members of the society?

4.10 In this case, the payment has been made by the society over a period of 3-4 years based on the availability of funds in their hands. The other alternative before the society could have been to make the payment in year 1 itself- by contributing the amount which has been given as advance to the members in year from own resources and borrowing the balance funds from the bank/market. This would have meant making the re-payment of loan to the bank/market of an amount which has been paid as advance in year 2, year 3 and year 4 along with an element of interest cost.

4.11 Thus, in view of the above mentioned facts, I find that it is the other way round as it is the members who have sold the land to the society have lost out on the interest component which they would have earned had the sale price been paid in one instalment. Therefore, this transaction amounts to suiting the convenience of the buyer of the property as the sale price has been paid over a period of time as and when the funds were available in their hands. Further, I find that these transactions have been accepted by the AO in the preceding three years. Accordingly, I do not find any justification in the action of the AO in charging notional interest @12% per annum on the amount of advances given by the society to the members against purchase of land.

4.12 In the course of appellate proceedings, the AR of the appellant was asked vide note sheet entry dated 23.03.2017 as to whether any TDS under the provisions of section 194-IA was made by the society on part payment of sale consideration to Smt. Parminder Kaur, in whose case the sale deed has not yet been executed. The appellant has in response to this in the written reply filed stated that TDS will be deducted at the time of full payment and registration as was done in the other two cases as well. The appellant is under a bonafide belief that TDS is to be made at the time of execution of sale deed payment.

4.13 It would be relevant at this stage to examine the provisions of Section 194IA of the IT Act, which for the sake of convenience are reproduced as under :-

194-I.A. (1) Any person, being a transferee, responsible for paying (other person referred to in section 194LA) to a resident transferor any sum consideration for transfer of any immovable property (other than agricultural land) shall, at the time of credit of such sum to the account of the transferor or at payment of such sum in cash or by issue of a cheque or draft or by any other mode (whichever is earlier, deduct an amount equal to one per cent of such sum as tax thereon.

(2) No deduction under sub-section (1) shall be made where the consideration for transfer of an immovable property is less than fifty lakh rupees.

(3) The provisions of section 203A shall not apply to a person required to deduct in accordance with the provisions of this section.

Explanation.— For the purposes of this section,—

(a) "agricultural land" means agricultural land in India, not being a land situate in an area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;

(b) "immovable property" means any land (other than agricultural land) building or part of a building.]

4.14 Thus, it may be seen from the above that this section has been inserted in the Finance Act 2013, w.e.f. 01.06.2013 and it applies to any person who is responsible for making a payment to a transferor any sum by way of consideration for transfer of any immovable property shall at the time of credit of such sum to the account of the transferor or payment of

*such sum i cash or cheque or draft, whichever is earlier, deduct an amount equal to 1% such sum as income tax thereon. Therefore, I find that appellant has failed to comply with the provisions of section 194-IA of the IT Act and is therefore liable for penal provisions under the provisions of IT Act- person liable for making deduction of tax failed to do so.*

*4.15 Accordingly, a copy of this order is being forwarded to the Commissioner -TDS, having jurisdiction over the case of the case of the appellant being the buyer(who is responsible for deduction of tax source, while making part payment to the seller) for necessary action required under the provisions of the Act.*

*4.16 To sum up, an addition of Rs. 1,98,48,600 made by the AO on account of notional interest charged on the amount of advance paid by the society is deleted.”*

6. Before us, the ld. DR has submitted that the alleged Agreement to Sell executed by the members was unregistered and further that the payment was made over the years and that the same were infact interest free advances and further that the TDS was not effected on the payments and thus, the assessee society had violated the provisions of Section 194I(a) of the Act.

7. On the other hand the ld. counsel for the assessee has submitted that the TDS was duly deducted in respect of payments made by the Society to the sellers. However, in case of Smt. Parminder Kaur, whose Sale Deed was yet to be executed, the TDS was not deducted as the Society had deducted TDS at the time of full payment and registration of the Sale Deed.

That the ld. CIT(A) taking note of the above fact has already denied relief in case of the payment made to Smt. Parminder Kayur as discussed in para 4.13 to 4.15 of the impugned order. He has further submitted that because of any technical lapse, it cannot be said that the transaction was not bonafide and that the ld. CIT(A) taking into overall facts and circumstances of the case, has rightly deleted the additions made by the AO on this issue.

9. We have considered the submissions and gone through the record. In our view, it is not a case of any undue favour by the assessee to its members. In this case, the ld. CIT(A) has discussed that the Members of the Society had already offered their land for the construction of building for technical activities of the assessee Society. The assessee Society, as per its convenience, paid the sale consideration in installments, which were spread over a period and ultimately the Sale Deeds have been executed at the Collector rate. We, therefore, do not find any infirmity in the order of the ld. CIT(A) on this issue.

10. The ld. DR, however, has relied upon the following decisions of the Hon'ble High Courts :

1. CIT Vs Sadhu Singh Hamdard Trust (2014) 49 taxmann.com 317 (P&H)
2. Kanahya Lal Punj Charitable Trust V DIT (Exemption) (2008) 171 taxman 134 (Delhi)



3. CIT Vs V.G.P. Foundation (2004) 134 Taxman 663 (Madras)

11. We have gone through the aforesaid decisions relied upon by the ld. DR. We find that the aforesaid case laws are not applicable to the facts and circumstances of the present case. In the case of CIT Vs V.G.P. Foundation (2004) 134 Taxman 663 (Madras), the assessee Trust had advanced certain amount to its sister concern, a Private Limited Company of which the Trustees of the assessee Society were also Directors and the money had remained lying with the company for the whole of the year without having spent. In these circumstances, the Hon'ble High Court held that it cannot be said that the money had been applied by the assessee for charitable purposes in the relevant assessment year.

12. In the case of Kanahya Lal Punj Charitable Trust Vs DIT (Exemption) (supra), the assessee Trust had advanced huge amounts to a company which had substantial interest in Trust without any security and adequate interest. In the case of CIT Vs Sadhu Singh Hamdard Trust (supra), the payments were made to trustees by the assessee society without any justification. The facts in this case, as such are quite distinguishable. In all these case laws, the assessee society could not justify the payments made by the assessee trust to

its members. However, in the case in hand, it is duly proved on the file that the payments were made to the members for the purchase of land and such payments were made at arms length price. Therefore, in view of the above, we do not find any infirmity in the order of the CIT(A) and the same is upheld on this issue.

13. So far as the second issue of payment of salary to certain members of the society is concerned, we find that it is not the case of the Department that the salary has been paid in excess of what may be reasonably paid for such services. The only objection by the AO was that the payment during the year was increased to large extent as compared to the payments made in earlier years. The ld. counsel for the assessee has submitted that merely because in earlier years the Members for their services had accepted lower payments as compared to the payments reasonably paid for such services, does not mean that any excess payment has been made by the assessee society in this year towards salary of the Members who had rendered their expert/professional services to the Society. We find that the said issue has been discussed by the ld. CIT(A) in para 5.4 onwards of the impugned order. Relevant part is reproduced as under :

*5.4 I have gone through the assessment order passed by the AO as well as submissions made by the appellant including judicial citations given therein and find that an*

*addition of Rs.46,75,933 has been made by the AO on account of disallowance of salary, interest paid to the specified persons who are members of the society. The disallowance has been made by the AO on the ground that excessive payments have been made to these persons which are not reasonable & permissible under section 13(l)(c) of the IT act. These persons are covered under the provisions of section 13(3) of the IT act. AO has also stated in the order that these persons are having their own independent sources of income and are therefore not exclusively engaged in providing their services to the society. It is stated that all these members have been paid salaries which are unreasonable given the facts and circumstances of the case.*

*5.5 The appellant has stated that AO has failed to appreciate that these persons have been providing their services to the society and payments have been made to them in the preceding few years which were accepted by the department even in the orders passed under section 143(3) of the IT Act. It is submitted that payments made to these persons are in accordance with the norms laid down by the UGC and other persons working in the society have been paid much higher amounts than these persons. The appellant has also submitted that salaries paid to specified persons constitute 0.90% of the total expenditure and therefore cannot be stated as under reasonable. It is stated that principle of consistency has to be applied by the AO.*

*5.6 The appellant has also stated that interest has been paid to a specified person, which is a company and under the provisions of the Companies Act loans and advances cannot be given interest-free to the related parties. It is stated that interest has been paid to this party in the preceding two years as well, which was accepted by the department.*

*5.7 I have gone through the detailed submissions made in this regard and find that AO has held that these payments made by the society on account of salary and interest as unreasonable mainly on account of the fact that these persons are engaged in other activities and have their other sources of income. I find that the total percentage of expenses incurred by the society on account of payments made to these persons constitute less than 1% of the total expenses incurred by the society. Further the total payments made by the society on account of salaries to these persons are less than 2.5% of the total expenditure incurred on account of salaries.*

*5.8 Thus, I find that these facts and figures have not been considered by the AO before making the disallowance. Also, I find that no adverse material has been brought on record by the AO to hold that services have not been rendered by these persons and payments made to these specified persons are excessive and unreasonable. In view of these facts, I hold that there is no justification in the action of the AO for making a disallowance under this head. Accordingly, this ground of appeal is allowed.”*

14. After considering the rival contentions of both the parties on this issue, we do not find any infirmity in the order of the ld. CIT(A) on this issue also.

15. In view of the above, we do not find any merit in the appeal of the Revenue and the same is, accordingly, dismissed.

16. Since the facts, issues and circumstances are identical in both the appeals, therefore, our findings given in ITA 1135/CHD/2017 ( assessment year 2014-15) would mutatis-mutandis apply to the revenue's appeal in ITA 700/CHD/2019 ( assessment year 2015-16) also. In view of this, this appeal of the Revenue is also dismissed.

17. In the result, both the appeals of the Revenue are dismissed.

Order pronounced on 4th October, 2021.

Sd/-

(अन्नपूर्णा गुप्ता)

**(ANNAPURNA GUPTA)**

**लेखा सदस्य/ Accountant Member**

Sd/-

(संजय गर्ग)

**(SANJAY GARG)**

**न्यायिक सदस्य/ Judicial Member**

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File