

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

(ITA No. **291/RPR/2023**)
(Assessment Year:**2016-17**)

Rastogi Education Society 31, Commercial Complex, M.L. Nehru Nagar (East), Bhilai-490020 (C.G.)	V s	Income Tax officer, Exemption Circle, Aayakar Bhawan, Civil Lines, Raipur-492001(C.G.)
PAN: AABTR1216J		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri S.R. Rao, Adv.
राजस्व की ओर से /Revenue by	:	Shri Ram Tiwari, Sr. DR
सुनवाई की तारीख/ Date of Hearing	:	22.11.2023
घोषणा की तारीख/ Date of Pronouncement	:	02.01.2024

आदेश / ORDER

Per Arun Khodpia, AM:

The Captioned appeal is filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals), Raipur, dated 05.07.2023 for the assessment year 2016-17, which in turn is arose from the order u/s 143(1) Income Tax Act, 1961 (herein referred to as "Act") by the Income Tax Officer, Exemption Circle, Raipur, dated 28.12.2018.

1. The Grounds of Appeal raised by the assessee are as under:
 1. In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) has erred in confirming addition of Rs.1,82,62,151/- by denying exemption claimed u/s 11 of the Income-tax Act, 1961.
 2. In the facts and circumstances of the case and in laws the Ld. Commissioner of Income-tax (Appeals) has erred in confirming action of the Ld. Assessing Officer denying exemption u/s.11 in the teeth of provisions of section 13(2)(a) of the Income-tax Act,

1961, which allows lending subject to adequate security and interest.

3. In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) has erred in confirming addition of Rs. 45,26,830/- on the ground of non-charging of interest on advance paid for purchase of property.
4. The impugned order is bad in law and on facts.
5. The appellant reserves the right to addition, after or omit all or any of the grounds of appeal in the interest of justice.

2. The Brief facts of the case and submissions of the assessee, as furnished by the Ld. AR in the form of synopsis are extracted as under:

- a) The appellant is a charitable institution set up for advancement of education and registered u/s.12A and u/s.80G of the IT Act, 1961.
- b) Return of income for A.Y. 2016-17 was filed on 15/10/2016, declaring total income at Rs. NIL after claiming exemption u/s.11.
- c) Assessment u/s 143(3) was completed on 28/12/2018 and total income was assessed at Rs.2,36,88,981/-.
- d) The enhancement relates to (i) Rs.1,82,62,151/- being surplus of income over expenditure made after denying exemption claimed u/s.11; (ii) Rs.45,26,830/- made as interest on outstanding advance to person specified in sec. 13(3) notionally calculated @12% p.a. and (iii) Rs.9,00,000/- made by disallowing consultancy expenses.
- e) In first appeal Id. CIT(A) confirmed the first two items and deleted the last one.
- f) Appellant paid aggregate amount of Rs.3,77,23,587/- [out of which Rs.2.10 crs. was paid in FY 2013-14] against total land price of Rs.15.50 crs, to specified person Shri Shashank Rastogi against

purchase of land as per agreement [PB- pg. 13-15] through banking channel.

- g) Ld. A.O. observed that appellant paid said amount without adequate security or interest hence violated provisions of sec. 13(1)(c) r.w.s. 13(2)(a) of the Act.
- h) Major part of advance was made in FY 2013-14 and regular assessment was completed for AY 2014-15 on 17/12/2016 and no adverse inference was drawn [PB- pg. 07-08] nor any proceedings were initiated in AY 2015-16 or in AY. 2017-18, i.e., preceding, and succeeding years.
- i) The registration of transfer could not be executed for want of sufficient funds with appellant.
- j) The transaction was commercial in nature hence no interest was charged, especially in the light of the fact that sale price was fixed hedging price rise.
- k) Subsequently, conveyance for transfer of part of the land was executed against the advance. [PB- pg. 24-85]
- l) The Id. CIT(E), Bhopal had initiated proceedings for withdrawal of registration u/s.12A on same grounds and said proceedings were dropped after accepting appellant's submissions. [PB- pg. 104-114]
- m) Hence, the action of Id. AO is against the position admitted by Id. CIT(E).
- n) The charging of interest @12% p.a. is notional - interest income on notional basis cannot be subjected to tax.
- o) Appellant relies on following cases:
 - (i) Satna Diocesan Society vs. ACIT- ITA No.124/Nag/2018 dt. 08/11/2019- when payment for land was accepted by the Revenue in earlier years and in

subsequent years, a different view in isolation is not called for- provisions of sec. 13(1)(d) cannot be invoked.

(ii) Radhasoami Satsang Saomi Bagh vs. CIT [1992] 193 ITR 321 (SC) this Court did not think it appropriate to allow the reconsideration of an issue for a subsequent assessment year if the same "fundamental aspect" permeates in different assessment years.

(iii) Highways Construction co. vs. CIT [199 ITR 702- (Gau)]- interest income on notional basis cannot be subjected to tax.



(iv) CIT vs. Shoorji Vallabhdas and co., [1962] 46 ITR 144 (SC)- income-tax cannot be levied on hypothetical income.

Accordingly, it is humbly prayed that the appeal may kindly be allowed in the interest of justice.

3. Grounds of appeal no. 1, 2 and 3 raised by the assessee, are inter linked, thus are discussed and deliberated commonly as follows:

4. At the outset on this issue, it was the submission of Ld. AR that the entire surplus i.e., excess of income over the expenditure of the assessee society has been treated as assessable income. Ld. Assessing Officer, on the basis of certain disallowances on arbitrary basis without considering the facts that the interest on outstanding advances was not charged by the assessee from the person specified u/s 13(3), thus, the same was notionally calculated @12% p.a. amounting to Rs. 45,26,830/-. It is the submission of Ld. AR

that whether the entire surplus of the Assessee's society can be charged to tax only on the basis of certain disallowances. Ld. AR further submitted that the issue pertaining to advances given for purchase of land in aggregate Rs. 3,77,23,587/- under head "other advances" in balance sheet was projected before the Ld. CIT(E), Bhopal, by the Ld AO, as a nongenuine transaction, with the recommendation that on this ground itself registration of the assessee society should be cancelled. Accordingly, a show cause notice dated 02.11.2020 was issued on the assessee, having placed at page no. 113-114 of Assessee's paper book, for the sake of clarity copy of the said notice, is extracted as under:

 GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT CIT EXEMPTION BHOPAL		
To, RASTOGI EDUCATION SOCIETY 31, 31, COMMERCIAL COMPLEX M.L. NEHRU NAGAR (EAST) 490020, Chhattiagarh India		
PAN: AABTR1216J	Dated: 02/11/2020	DIN & Letter No : ITBA/COM/F/17/2020-21/1028455959(1)
Sir/ Madam/ M/s, Subject: Proceedings for set aside assessment - Letter		
 INCOME TAX DEPARTMENT		
Sub: Show cause notice for Cancellation of Registration u/s 12AA of the Income Tax Act 1961 in the case of Rastogi Education Society, Bhilai-Reg		
Kindly refer to the above subject.		
<p>2. It has been reported that during the assessment proceedings in the case of the Society for A.Y. 2016-17, several discrepancies were noticed and found by the AO which are in contravention to the provisions for Registration u/s 12AA of the Act, the details there of are given in the Assessment order passed u/s 143(3) dt. 28/12/2018. In view of the above, it is directed to explain and necessary evidences be produced so as to why the Registration u/s 12AA may not be cancelled for the following grounds:</p>		
<p>3.1. Assessee had shown advances for land of Rs. 3,77,23,587/- under head "other advances" in Balance Sheet. Out of advances, one of the advances is for land agreement made between the assessee society and specified person Shri Shashank Rastogi covered u/s 13(3) of the Act on 04/11/2013 for purchasing of land from Shri Shanshank Rastogi for total sale consideration of Rs. 15,50,00,000/-. On asked, it was submitted that the society has given advance for purchase of land is of Rs. 3,77,23,587/- only. However, as per agreement it was found that assessee society had given land advance of r/s 2,10,56,000/- only to Shri Shashank Rastogi. The assessee has clearly violated the provision of section 13(4)(c) r.w.s 13(2)(a) of I.T Act 1961. The assessee has diverted its income in respect of</p>		
<small>Note: If digitally signed, the date of digital signature may be taken as date of document. ROOM NO:201, II Floor, REAC, BHOPAL, REAC, BHOPAL, BHOPAL, Madhya Pradesh, 462018 Email: BHOPAL.CIT.EXP@INCOMETAX.GOV.IN, Office Phone:07552426419</small>		

the person referred to in section 13(3) of the act within the meaning of section 13(1)(c) of the Act.

As per record, the advance of Rs. 2,10,56,000/- given for purchase of land which is not get registered till Dec. 2018 even after lapse of 4 years. The assessee Trust has diverted its income in respect of the person referred to in section 13(3) of the act within the meaning of section 13(1)(c) of the Act.

3.2 Also, it was found that the assessee society had paid consultancy charges to Smt. Pratibha Ballewar amounting to Rs. 9,00,000/- during the F.Y. 2015-16 deducting TDS u/s 194J of the Act. However, she had shown income u/s 44AD amounting to Rs. 6,10,000/- and consultancy income shown as NIL. Also smt. Patibha Ballewar not attended before the AO on issuing summon u/s 131. It was also unexplained what hostel maintenance facilities were provided by Pratibha Ballewar?

Thus the assessee society is found to be engaged in claiming of such type of bogus expenses to attain the 85% of application of income for claiming 100% exemption and divert the income of the society by way of showing bogus expenses for other than charitable activities.

4. You are also requested to submit your explanation on the contraventions of the provisions of the Act as mentioned in the enclosed order u/s 147 r.w.s 143(3) dt. 24/12/2018 by 06/11/2018 positively.



5. Please note that if you do not comply on the said date it will be presumed that you have nothing to say in the matter and case will be decided on merits on the basis of material available on records.

ABHAY KUMAR SINGH
CIT EXEMPTION BHOPAL

5. Ld AR further explained that, in response to the aforesaid notice for cancellation of registration u/s 12AA of the Income Tax Act, the assessee had submitted replies before the Ld. CIT(E), Bhopal, with a categorical mention about the agreement dated 04.11.2013 with Shri Shashank Rastogi (specified person u/s 13(3)) for purchase of land admeasuring 5.21 acres at Model Town, Bhilai for Rs. 15,50,00,000/- to be used for construction of college premises. The advances were made during FY 2013-14, also the regular Assessment of the said FY relevant to AY 2014-15 was completed u/s 143(3) on 17.12.2016. This fact was duly considered and accepted by the Ld CIT(E), Bhopal. Copies of replies of assessee are

placed at page no. 105 to 111 of the Assessee's paper book. Ld. AR further drew our attention to page no. 104 of the paper book showing order by Ld. CIT(E), Bhopal, wherein considering the merits in response by the assessee the proceedings for withdrawal of registration u/s 12AA of the Income Tax Act, 1961 in the case of assessee society has been dropped, copy of the said order of Ld. CIT(E), Bhopal is extracted as under:

DIN No. ITBA/COM/M/17/2020-21/1029403209(1)

भारत सरकार
 GOVERNMENT OF INDIA
 वित्त मंत्रालय (राजस्व विभाग)
 MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)
 कार्यालय आयकर आयुक्त (छूट)
 OFFICE OF THE COMMISSIONER OF INCOME TAX (EXEMPTION)
 कमरा नं. 201, द्वितीय तल, मेट्रो वॉक बिल्डिंग, ई-5, अरेरा कॉलोनी, बिट्टन मार्केट के पास, भोपाल
 ROOM NO. 201, 2ND FLOOR, METRO WALK BUILDING, NEAR BITTAN MARKET, E-5, ARERA COLONY, BHOPAL
 email: bhopal.cit.exmp@incometax.gov.in Phone/Fax No. (0755)-2426419

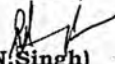
F.No. CIT (E)/BPL/Rastogi Education Society 12A cancellation/2020-21 Dated:28/12/2020
 To
 The Deputy Commissioner of Income Tax (Exemption),
 Bhopal

Madam,

Sub: Proposal for withdrawal of Registration u/s 12A of the Income Tax Act, 1961 in the case of Rastogi Education society, Bhilai (PAN AABTR1216J) - Reg.

Please refer to your letter dt. 28.06.2019 on the above subject.

In this regard, I am directed to state that the proposal has been considered and on the basis of facts, proceedings initiated for withdrawal of Registration u/s 12A of the Income Tax Act, 1961 in the case of Rastogi Education society, Bhilai (PAN AABTR1216J) is hereby dropped.

Yours faithfully,

(Dr. R.N. Singh)
 Income tax Officer (Hq.)
 for Commissioner of Income Tax (Exemption),
 Bhopal

Copy to:
 1. Rastogi Education society, 31, Commercial Complex, M.L. Nehru Nagar (East), Bhilai (PAN AABTR1216J) to inform that the proceedings of withdrawal of Registration u/s 12A is hereby dropped.

Income tax Officer (Hq.)
 for Commissioner of Income Tax (Exemption),
 Bhopal

6. It was the further submission of Ld. AR that, once the Ld. CIT(E), Bhopal, has rejected the proposal of department for cancellation of registration u/s 12AA of the I.T. Act in favour of the assessee, after considering the impugned transaction of advances to the specified person u/s 13(3) of the Act, by dropping the same, the dispute raised by the Ld. AO have no legs to stand on, that the amount advances was without adequate security or interest as well as in violation of the provisions of section 13(1)(c) r.w.s. 13(2)(a) of I.T. Act. thus, such observations of the Ld AO are rendered arbitrary, without basis and bereft of any substance, expressly when the transaction was authorized by Ld CIT(E), Bhopal as commercial in nature. In back drop of such facts, charging of interest on such transaction is out of question, moreover, the calculation of notional interest on such transaction and to bring the same in the ambit of assessable has income is extraneous, thus, not justified. In support of contention raised by the Ld. AR following case laws were relied upon.

- i. **Satna Diocesan Society vs. ACIT-** ITA No.124/Nag/2018 dt. 08/11/2019- when payment for land was accepted by the Revenue in earlier years and in subsequent years, a different view in isolation is not called for- provisions of sec. 13(1)(d) cannot be invoked. Relevant observations of the Tribunal in the said order was as under:

It is Assessee's contention that the advance for purchase of land was given in earlier years i.e., 2011-12, 2012-13 and 2013-14 and in the assessment framed u/s. 143(3) of the Act, the same has been accepted by the Revenue. It is further contention of assessee that for

subsequent years also, advance paid by the assessee towards purchase of land has been accepted. The aforesaid contention of assessee has not been controverted by Revenue. Further, before us, the Ld. AR has also relied on the decision cited here in above in support of the contention that the advance paid towards purchase of land cannot be considered within the purview of section 13(1)(d) of the Act. These contentions of Ld. AR have not been controverted by Revenue. Considering the totality of the aforesaid facts and more so, when the payment for land has been accepted by the Revenue in earlier years and in subsequent years, a different view in isolation is not called for. Following the principle of consistency, we are of the view that invocation of provisions of section 13(1)(d) of the Act is not called for. We therefore allow the ground No. 1 to 6 raised by assessee.

- ii. **Radhasoami Satsang Saomi Bagh vs. CIT** [1992] 193 ITR 321 (SC) this Court did not think it appropriate to allow the reconsideration of an issue for a subsequent assessment year if the same "fundamental aspect" permeates in different assessment years.
- iii. **Highways Construction co. vs. CIT** [199 ITR 702- (Gau)]- interest income on notional basis cannot be subjected to tax.
- iv. **CIT vs. Shoorji Vallabhdas and co.**, [1962] 46 ITR 144 (SC)- income-tax cannot be levied on hypothetical income.

7. In terms of aforesaid submissions, it was the prayer of Ld. AR that the addition made by the Ld. AO which has been sustained by Ld. CIT(A) denying the exemption u/s 11 of the Act was bad in law rather mis interpretation of the law. The advance extended were towards purchase of land, thus, commercial in nature duly accepted and approved by the Ld. CIT(E), Bhopal by accepting contentions of the assessee, resultantly dropping the proceedings initiated for withdrawal of registration u/s 12AA, this

itself supports the contentions of the assessee that, the addition of notional interest by treating the advance to specified person, as diversion of funds of the society, thus covered by the provisions of section 13(1)(c) r.w.s. 13(2)(a) was an error on the part of Ld AO, which further misconstrued and upheld by the Ld CIT(A). Ld. AR requested to vacate such addition made on account of notional interest, and also the addition of surplus of income over expenditure made by denying exemption claimed u/s 11 of the Act.

8. In rebuttal, Ld. Sr DR vehemently supported and relied upon the order of Ld. AO and Ld. CIT(A) in this respect.

9. We have considered the rival submission, perused the material available on record and case laws placed before us for our consideration. Under the facts and circumstances of the present case, wherein certain advances were extended by the Assessee's society to specified person covered u/s 13(3) of the Act for the purchase of land without any interest or security, which according to Ld. AO was in the nature of transaction attracting provisions of section 13(1)(c) r.w.s. 13(2)(a). It is also an admitted fact that the transaction of purchase has been accepted by the department in the earlier years when the advance was actually provide, for which no disallowances was imposed either in the earlier AYs or in the relevant AY. Only a notional amount of interest @12% has been computed on the outstanding advance and added to the Income of the assessee, which for the year under consideration was Rs. 45,26,830/-, considering the transaction in violation of provisions of section

13(1)(c) r.w.s. 13(2)(a) of the Act. Ld AO under his on belief have utilized, such so called violation of provisions of section 13(1)(c) r.w.s. 13(2)(a), as the foundation for denying exemption u/s 11 of the Act. On the contrary, on perusal of the order of Ld. CIT(E), Bhopal dated 28.12.2020 (supra) a/w replies of the assessee before the Ld. CIT(E), wherein it is evident that the impugned transactions pertaining to advances for purchase of land have been specifically examined and characterized as genuine by the Ld CIT(E), thereby dropping the proceedings for withdrawal of registration u/s 12AA. However, Ld. CIT(A) has confirmed the addition observing that the documents submitted by the appellant in the form of notarized agreement to sale and the recording of the land in the balance sheet of the balance sheet of the appellant serves no purpose, as the land remains in the name of Shri Shashank Rastogi the specified person even after passing for more then 10 years. As per Ld CIT(A), this fact became more scathing, as the specified person also manages and controls the appellant society, therefore, he concluded that the appellant has diverted the funds to specified person in violation of provisions of section 13(1)(c) r.w.s. 13(2)(a) of the Act, the observations of AO were accordingly held as correct, appeal of the assessee is thus, dismissed.

10. On a thoughtful consideration of the overall facts and circumstances, we are of the considered view that, the observations of Ld. CIT(A) and the findings cannot be concurred with for the reason that the impugned transaction of advances which were the sole basis of controversy, have been duly examined by the Ld. CIT(E) and the same was treated as genuine transactions, thus are

not recognized as a valid ground for cancelling the registration of the assessee society u/s 12AA.

11. In backdrop of aforesaid facts and observations, considering the overall circumstances of the case, since the advances extended to specified person, pertaining to transaction of purchase were accepted as genuine business deal, no adverse inference was drawn by the Ld. CIT(E) and proceedings for cancellation of 12AA were dropped, the same cannot be treated as a transaction in violation of sec. 13(1)(c). Regarding adequate security and interest as mandated by provisions of section 13(2)(a), since the transaction pertains to purchase of land on which the assessee society has proposed to conduct its educational activities, the same does not fall under the category of money lent to a specified person, the provisions of sec. 13(2)(a) thus cannot be triggered on such transactions.

12. We, in view and aforesaid observations, are thus of the considered view that in terms of facts and circumstances of the present case when the advances made towards purchase of land has been accepted by the revenue in earlier year and also in the relevant year and no addition *qua* the advances was proposed in the assessment in impugned orders. Impugned advances were further held as genuine and normal business transaction by the Ld CIT(E), Bhopal by dropping the proceedings of cancellation of registration u/s 12AA. Addition on account of notional interest is uncalled for, much less, on

the basis of such addition denial of exemption claimed u/s 11 is a farfetched application of mind which cannot be permitted under the law.

13. We, thus, in terms of aforesaid observations set aside the findings of Ld. CIT(A) on the issue and direct the AO to vacate the additions made. Consequently, the ground raised in the present appeal are decided in favor of the assessee.

14. In the result, appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 02/01/2024.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 02/01/2024

Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur