

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**Before Sh. N. K. Saini, AM And Sh. Kuldip Singh, JM**

**ITA No. 761/Del/2013 : Asstt. Year : 2009-10**

Anand Education Society, 30, Community Centre, Ashok Vihar, Phase-I, New Delhi-110052	Vs	Asstt. Director of Income Tax(E) Trust Circle-II, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

**ITA No. 1005/Del/2013 : Asstt. Year : 2009-10**

Asstt. Director of Income Tax(E) Trust Circle-II, New Delhi	Vs	Anand Education Society, 30, Community Centre, Ashok Vihar, Phase-I, New Delhi-110052
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAAAA0239L</b>		

**Assessee by : Sh. Ved Jain, Adv. & Ashish Chadha, CA  
Revenue by : Sh. K. K. Jaiswal, DR**

<b>Date of Hearing : 19.04.2016</b>	<b>Date of Pronouncement : 15.07.2016</b>
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**ORDER**

**Per N. K. Saini, AM:**

These cross appeals by the assessee and the department are directed against the order dated 30.11.2012 of Id. CIT(A)-XXI, New Delhi.

2. First we will deal with the appeal of the assessee in ITA No. 761/Del/2013. Following grounds have been raised in this appeal:

*“1. Because the impugned order passed by the Ld. CIT(A) is bad in law, contrary to the facts and circumstances of the case, material/evidence on the record as well as passed without application of mind and is liable to be set aside.*

*2. Because the impugned order of the Ld. CIT(A), in mechanically upholding / endorsing the order of Assessment dated 30.03.2012, is bad in law and liable to be set aside.*

*3. Because the Ld. CIT(A) in the impugned order has erred in not appreciating that the appellant was not provided with the "reasons for reopening of assessment", despite having been requested to supply the same to the assessee, as a result of which the entire re-assessment proceedings were null and void.*

*4. Without prejudice to the above, and in addition thereto, the Ld. CIT(A) has failed to appreciate that there were "no reasons for reopening" recorded by the assessing officer, which is a condition precedent for invoking the provisions of section 147/148 of the I.T. Act, which rendered the entire proceedings null and void.*

*5. Without prejudice to the above and in addition thereto, the Ld. CIT(A) in the impugned order has erred in upholding the reopening of assessment u/s 147 of the IT Act by the AO, when in the present case, there were no "reasons to believe" and / or a rational nexus between the material on record and the reasons for reopening, and therefore the re-assessment is bad in law.*

*6. Because the Id. CIT (A) has erred in facts and law in upholding the action of the AO, in invoking section 13(3) of the IT Act, wrongly denying exemption u/s*

*11, when there was no such violation of section 13(3) on any count whatsoever, in the present case.*

*7. Because the Ld. CIT(A) has erred in facts and law in upholding the action of the AO holding the assessee to have violated the provisions of section 13(3) of the Act, when there was no undue benefit to specified persons as alleged, nor any huge financial losses were caused to the society there was nor any in transparency in the functioning of society.*

*8. Because the Id. CIT(A) has erred in facts and law in upholding the action of the assessing officer holding the assessee to have violated the provisions of section 13(3) of the Act, without appreciating the Regulations / Directions / Circulars issued by the Directorate of Education.*

*9. Because the Ld. CIT(A) has erred in facts and law in upholding the order of assessment without appreciating the various contentions / submissions / evidences and replies filed by the assessee before it or appreciating the record.*

*10. Because the authorities below have erred in facts and law in passing their orders on surmises and conjectures, on mere pretense and apprehension without any support from the material on the record.*

*11. Because the Ld. CIT(A) has erred in facts and law in failing to appreciate / ignore the assessment status of the appellant society as a society registered under section 12A(a) of the IT Act, as such the entitled to claim exempt income.”*

3. The department has raised the following grounds in its appeal in ITA No. 1005/Del/2013:

*“1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in allowing double deduction. No double deduction is allowable as the value of assets has been claimed as application of income.*

*2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in placing reliance on the judgment of Hon’ble Supreme Court in the case of Radha Swami Satsang, 193 ITR 321, as the facts of this case are completely different.*

*3. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

4. Vide Ground Nos. 1 to 5, the grievance of the assessee relates to the validity of reopening u/s 147/148 of the Income Tax Act, 1961 (hereinafter referred to as the Act) and Ground Nos. 6 to 11 relate to the upholding of the action of the AO in invoking the provisions of Section 13(3) of the Act and denying the exemption u/s 11 of the Act.

5. From the aforesaid grounds raised by the department it would be clear that the main grievance of the department in this appeal relates to action of the ld. CIT(A) allowing the deduction on account of depreciation on the value of the assets which had been claimed as application of income.

6. Facts of the case in brief are that the assessee filed the return of income on 29.09.2009. A survey & inspection was

carried out on the premises of the assessee u/s 133A of the Income Tax Act, 1961 (hereinafter referred to as the Act). During the course of survey, it was noticed that a sum of Rs.1,16,57,941/- being development charges were not shown as income in the income and expenditure statement for the year ending on 31.03.2009. The AO was of the view that there was an escapement of income of Rs.1,16,57,941/- and that the assessee had employed specified persons as per Section 13(3) of the Act in the School run by the Society on various capacities. On the basis of aforesaid reasons, the AO recorded the reasons to believe for issuing the notice u/s 148 of the Act on 08.02.2011. In the mean time, the assessee approached the Hon~~o~~ble Delhi High Court wherein vide order dated 20.11.2011 in W.P.(C) 5467/2010, the AO was barred from passing the final assessment order. However, on 02.02.2012, the Hon~~o~~ble High Court directed the AO to proceed in accordance with law. The AO made the addition of Rs.1,16,57,941/- out of the development fund by observing that the assessee violated the provisions of Section 13(3) of the Act by giving undue benefit to the family members of the specified persons and the action of the management had duly caused huge financial losses to the assessee~~s~~ society. He also disallowed the depreciation on the assets which were purchased in the preceding years

by observing that capital expenditure for earlier years had already been allowed as application of income. Accordingly, the AO allowed the depreciation of Rs.52,25,727/- in respect of the assets purchased during the year under consideration instead of the depreciation claimed at Rs.93,82,255/-. The AO also added a sum of Rs.36,14,585/- by observing that the assets of the said value were disposed off which were claimed as application of the income in the earlier years. Another addition of Rs.31,541/- was made on account of excessive mobile expenses. The AO also added provisions of Gratuity & Leave Encashment amounting to Rs.55,36,794/- and did not accept the loss sale of assets amounting to Rs.33,91,384/-. Accordingly, income was determined at Rs.2,91,19,688/- in the following manner:

<b><i>Head of Income</i></b>	<b><i>Rs.</i></b>
<i>Excess of Expenditure over income</i>	<i>-97,20,538</i>
<i>Add: Development Fund</i>	<i>1,16,57,941</i>
<i>Add: Depreciation disallowed (Computer, dep., vehicle)</i>	<i>93,82,255</i>
<i>Add: Deletion in assets during the year (para 8.1 above)</i>	<i>36,14,584</i>
<i>Add: Provisions of Gratuity &amp; Leave Encashment disallowed as their expenses allowed only on actual payment basis (As given by assessee in revised computation sheet, actual PF Contribution Rs.28,98,229/- only and no actual leave encashment)</i>	<i>55,36,794</i>
<i>Add: Excessive Mobile expenses (Para 4(2))</i>	<i>31,541</i>

<i>Add: Loss on Sale of Assets</i>	<i>33,91,384</i>
<i>Less: Depreciation allowed on assets purchased during current year (depreciation on earlier year asset purchases not allowed because those assets have been claimed as application of income in earlier years)</i>	<i>52,25,727</i>
<i>Net Taxable Income</i>	<i>2,91,19,688</i>
<i>Rounded Off</i>	<i>2,91,19,690</i>

7. Thereafter, the AO rectified the assessment order vide order dated 09.03.2012 when the assessee u/s 154 of the Act pointed out mistake in the calculation of taxable income and the AO determined the income at Rs.1,86,68,234/- by rectifying the mistake in calculation i.e. totaling.

8. The assessee challenged the validity of the reopening before the ld. CIT(A) who observed that the case was reopened u/s 148 of the Act on the basis of certain informations and that the Honøble High Court had directed the AO to proceed in accordance with law vide order dated 02.02.2012. The ld. CIT(A) accordingly dismissed the grounds raised by the assessee against the reopening of the assessment. As regards to the addition made by the AO, the assessee submitted written submissions dated 30.07.2012 before the ld. CIT(A) which has been reproduced in para 3 of the impugned order and read as under:

*“The Assessing Officer has raised some Queries during the assessment proceedings u/s. 143(3)*

*relating to the survey conducted on the premises of the assessee on 14.01.2011 and we had submitted all papers and documents before the assessing officer during the assessment proceedings itself, but the assessing officer has not even considered the same and passed the order against the law. Hence we are submitting herewith following details and documents for your consideration.*

*1. The school has sold four buses, some old broken furniture, one almarah and one old scooter. In respect of sale of old furniture, it is explained that a list of unserviceable furniture and fixture is being prepared and advertisement for the same is being' given. In addition to that a notice was also displayed at a school notice board outside the main gate of the school for disposal of old unserviceable furniture and fifteen days time was given for intending customers to read the notice and come for the purpose of items. On the appointed date, customers came and offered their bid, the highest bid was accepted. The item was handed over after receipts of money and the same has been credited to the books of accounts of the school. Further the school bus as been phase out after 15 years of their running and the school could not run the bus as per the direction of honorable Delhi High Court, hence there were no option other than the sale of old bus. A detailed chart showing book value, buyer name, relation, amount received, mode of payment and copy of advertisement for the same is enclosed herewith for your kind consideration. Copy of confirmation of the buyer of the buses is also enclosed herewith for your kind consideration.*



*2. Detailed notes on repairs and maintenance of vehicles: this school has 25 buses during the financial year under consideration to transport around 2960 students. The expenses under the head vehicle maintenance is Rs.2,99,31,013.00 against the transport charges collected from the students Rs.2,93,59,944.00. From the above it is seen that the school has minor deficit of Rs.5,71,069.00 under this head. Providing transport is optional for the school, but keeping in view the security of the students, parents prefer rather compel the school to provide school transport for safety of their wards. Today, parents even don't tolerate any trip missing for picking of their wards. They agitate and come to the school in grounds and even break the window pan to express their grievances for missing trip of the bus. In the circumstances explained above the school is compelled to employ vehicle mechanic and vehicle electrician on contract basis to ensure that buses are kept road worthy at all times of the year, copy of proof for payment of salary to vehicle mechanic and electrician is enclosed herewith for your kind consideration. The school has made facilities available to repair the school but in the school premises itself and for this purpose it buys commonly used spare parts and stores the same to meet the emergency. We also hire buses from outside transporter if school bus breaks down and tyre punctures, Further, complete detail of nature of expenditure incurred by transport department has already been submitted with the submission dated 10.05.2012.*

3. *Appointment of Principal, Vice Principal and Director (Administration) has properly been made as per norms and procedures prescribed by the Directorate of Education, NCT of Delhi in this behalf. Copy of documents, statement in this regard has already been submitted with submission dated 10.05.2012.*

4. *The assessing officer has invoked the provision of Sec. 13(3) of the IT Act, 1961 for the use of word Lancer, here we would like to say that the word Lancer neither registered nor copyright by the society anywhere as a brand Name and any person can use the word lancer with their institution. There are schools around Delhi who have named their school as Lancer, one on Sikandrahad (UP) by name Lancer Public School, Two in Shamli, Copy of proof is enclosed herewith for your kind consideration. Further, there are Lancer Car, Lancer Shoes and even Lancer playing card. This ANAND EDUCATION SOCIETY and any of its office members are not connected or concerned with the above mentioned Lancer name organization. Further, Lancer Convent School is affiliated to CBSE whereas Lancer International School, Gurgaon is running under the strength of Private Limited Company and Affiliated to International Board and as on today students from 17 countries are studying in Lancer International School. Further, only 300 students are enrolled on the roll of this school. Therefore, no benefit of any kind has derived from the Lancer Convent School to anyone. Hence, there is no question of attracting Sec 13(3) of the Income tax Act, 1961 in this concern.*

*5. Development fees collected during the Financial Year has been shown in the Balance Sheet as per circular issued by Directorate of Education, NCT of Delhi, copy of circular is enclosed herewith for your kind consideration. In this case we have simply followed the circular and not furnished the inaccurate particular of income in the return filed. We hope your good honour would find the above submission in order and do the needful in this regard. Further, we shall be glad to furnish any other statement or document required to dispose off this appeal in the next hearing.”*

9. The assessee again vide letter dated 28.08.2012 submitted to the Id. CIT(A) as under:

*“1. In the above case the Assessing Officer has illegally and arbitrary initiated the proceeding u/s. 148 of the IT Act, 1961 on account of concealment of Development fund, whereas the amount of development fund has properly disclosed by the assessee in the Balance Sheet and the same has properly been utilized for the purpose for which the same has been collected from the students during the financial year under consideration and the Balance Sheet and Income and Expenditure accounts are integral part of each other. Further the accounting treatment of the development fund has been made as per the guidelines and direction of the Directorate of Education, copy for the same is enclosed herewith for your kind consideration. Hence there is no concealment of income on account of development fund at all. Therefore the order passed by the assessing authority u/s.147/143(3) of the IT Act, 1961 is totally wrong,*

*illegal and arbitrary as per the Law prescribed and the same should be quashed.*

*2. The assessee is a society properly registered under the society registration Act, 1860 vide regn.No.13042/1982 w.e.f. 04.11.1982 and the same has been registered u/s.12A(a) of the IT Act 1961 by the Commissioner of Income Tax (E), New Delhi-VI vide order bearing No.CIT/D-VI/TE/269/84/19 dated 01.04.1985 and also registered u/s.80G(vi) of the IT Act, 1961, copy of order is enclosed herewith for your kind consideration. Further the society is running only one school under the name and style of LANCERS CONVENT SCHOOL AT PRASHANT VIHAR, ROHINI, Delhi-110085 and no other activities has been done ever by the society since its inception and the Memorandum of Association of the society have only on object, EDUCATION and no other object are exist in the Memorandum of Association of any type, copy of Memorandum of Association and registration u/s.12A(a) of the IT Act, 1961 is enclosed herewith for your kind consideration.*

*3. The Assessing Officer in its assessment order dated 02.03.2012 has alleged the activities of the society are non-charitable and no longer be regarded as a charitable organization without any base and legal back, here it is well settled law that once registration u/s.12A(a) of the IT Act, 1961 stands granted, the charitable character of the activities of the Society/Trust cannot be challenged/doubted. In this regard reliance has been placed on ACIT Vs Surat State Gymkhana, 170 Taxmann 612 (SC), hold that the AO in the*

*assessment proceedings, is not entitled to hold the objects of the assessee to be not charitable in nature, once registration u/s. 12A of the IT Act, 1961 does not stand withdrawn. And reliance has also been placed in a very famous case of PUNJAB AND Haryana High Court in Sonipat Hindu Educational Charitable Society Vs. CIT, 278 ITR 262 (P&H), it was held that the registration of an institution u/s.12A of the IT Act, 1961 is sufficient proof of the fact that the trust or institution concerned is created or established for charitable or religious purpose, here we are citing another case namely stock Exchange, Ahmadabad vs. ACIT, 74 ITD I (Ahd) it has been held that once an institution has been registered u/s.12A, it is for the AO to find out whether the income of the institution has been applied for the objects of the institution and the statutory conditions laid down in sections 11 to 13 of the IT Act, 1961 are fulfilled by the assessee and that the AO had no jurisdiction to reject the claim of exemption u/s.11 of the Act by looking into the objects of the Association and holding them to be non-charitable in nature.*

*Further the assessee society has only one object, EDUCATION, in their Memorandum of Association and the same has fall under the, definition of Charitable purpose as per section 2(15) of the IT Act, 1961. Hence there was no room for the Assessing Officer to treat the activities of the society as non-charitable and not as per the object in the explained circumstances. Therefore the allegation of the Assessing Officer may strictly be quashed. The following are the other decisions to the same effect:*

- A. DCIT Vs Rajnees Foundation, 280 ITR 533 (Bom)*
- B. N.N. Desai Charitable Trust Vs CIT, 246 ITR 452 (Guj)*
- C. Orpat Charitable Trust Vs. CIT 256 ITR 690 (Guj)*
- D. Umaid Charitable Trust Vs Union of India and others 307 ITR 226 (Raj)*
- E. ITO Vs Trilok Tirath Vidavati Chuttani Charitable Trust 90 ITD 569 (Chd)*
- F. Ananda Marga Pracharaka Sangha Vs CIT 218 ITR 254 (Cal.)*

*4. The Assessing Officer has denied the exemption u/s. 11 of the IT Act, 1961 to the society for violation of the provision of section 13(3) of the IT Act, 1961 for the payments made to specified person on account of salary, whereas the society has not violated the provision of section 13(3) of the IT Act, 1961 in any manner. The provisions of section 13(3) does not impose any bar and restriction to remunerate the specified persons and the Trust and charitable Society can made payments of salary to specified persons commensurate to their service provided. Here we would like to say that the Assessing Officer was not fully aware about the provisions of section 13(3) of the IT Act, 1961 and has made his own interpretation in this regard which is not in any way permitted by the law. Hence in this allegation the Assessing Officer was not legally correct and action of the Assessing Officer to denying the exemption u/s. 11 to the society was illegal, arbitrary and unilateral.*

5. *The society has appointed the Principal, Vice-Principal and Director (Administration) as per the proper procedure and practice prescribed by the Directorate of Education and paid monthly salary of Rs. 35,970.00, 28,108.00, 41,190.00 respectively as per the scale prescribed by the Govt. of NCT of Delhi which was not in any way excess, undue and unreasonable. Further they have been appointed and receiving salary since many years and the same has been accepted by the department and assessed the case u/s. 143(3) of the IT Act, 1961, copy of Assessment order u/s. 143(3) of the IT Act, 1961 for last four Assessment Year has already been submitted with submission dated 10.05.2012. Further copy of appointment procedure, minutes books, scale of their pay and copy of their ITR return for the financial year under consideration is enclosed herewith for your kind consideration.*

6. *There are various pronouncement by different Honourable Courts and Tribunal who hold that only payments made to specified person cannot regarded the violation of provisions of section 13(3) of the IT Act, 1961. The Honourable High Court (P&H) in Pinegrove International Charitable Trust vs. Union of India 327 ITR 73 (P&H) and the Honourable Bombay High Court in Vanita Vishram Trust vs. CIT 327 ITR 121 (Bom.), wherein it was held that where the payment made is commensurate with the nature of services rendered by the specified person, the charitable nature of the trust cannot be doubted, which proposition also find support from ADIT vs. MANAV BHARTI CHILD AND PSYCHOLOGY 20 SOT 517 (Del.), wherein it has been held that, in the context of section 11 and*

*12 of the Act, that in the act there no prohibition to remunerate the interested person, that such remuneration should be commensurate with the service rendered by them and if it is so found, it cannot be said that the provisions of section 13(l)(c) of the Act are attracted. The decision of the Honorable Delhi High Court in the case of Privar Seva Sansthan 254 ITR 268 (Del) is also to the same effect.*

*The following are the decision on section 13(3) of the IT Act, 1961 giving below for your kindly consideration.*

*A) Asstt. Commissioner of IT, Faridabad Vs M/s Idicula Trust Society ITA No.4514/Del/2011*

*B) Income tax Officer vs. M/s Resource Development & Management Trust (ASBM Trust) ITA No. 14/CTK/2011*

*C) Career Launcher Vs DGIT (E) ITA No. 2849/Del/2011.”*

10. The ld. CIT(A) after considering the submissions of the assessee pointed out that the AO in the assessment order observed that there was violation of Section 13(3) of the Act for the following reasons:

*“1. Sh. A.S. Mann is the President of the society and his son Sh. Joginder Singh Mann is the Secretary of the society. In ‘Lancers Convent’ School, Rohini, Principal is Mrs. Sudesh Singh and Vice Principal is Mrs. Latesh Chaudharv, the two daughters of Sh. A.S. Mann and sisters of Shri Joginder Singh Mann.*



*Mrs. Sudesh Singh, Mrs. Latesh Chaudharv and Mrs. Anita Mann are in receipt of salary of Rs.66,047/- pm, Rs.49,382/- pm, and Rs.73,471/- pm respectively. All the three ladies are stated to be MA. B.Ed. Mrs. Sudesh Singh has been provided with car by the school.*

*As per the norms of Education Department, the schools cannot have the post of Director (Admn.) but Mrs. Anita Mann is occupying the seat of Director (Admn.) and is being paid a hefty amount in the name of salary.*

*Sh. A.S. Mann was stated to be looking after the transportation, sale purchase, school activity etc. No remuneration was stated to be taken by him but the society had provided car and phone facility to him.*

*Looking to age of Sh. A.S. Mann who is at 79 years old, the possibility of his active involvement in the affairs of the schools is remote.*

*There is a clear-cut violation of Section 13(3) as the assessee is paying unreasonable salary to Mrs. Sudesh Singh, Mrs. Lalesh Choudhary, Mrs. Anita Mann along with providing car and phone facility to Sh. A.S. Mann.*

*The recruitment of Mrs. Anita Mann as Director Administration leaves no doubt that the recruitment process was a sham one so as to give all posts to the relatives of the trustee or trustee themselves.*

*The advertisement for the post of Director Administration was published on 23<sup>rd</sup> June 2009" in HT Classifieds. The managing Committee of Lancers Convent met on 22<sup>nd</sup> October 2009.*

*The case for ex-post facto approval of selection of Mrs. Anita Mann was put up to committee who had already been selected for the post of Director-Administration w.e.f. 1.1.2008.*

*Thus it is clear that advertisement in the newspaper was a futile exercise just to lend credibility to the selection of Mrs. Anita as Director Administration.*

*The assessee has not established any credible evidence that Society has followed due process for the selection of these key posts. Perusal of the Bio-data of other persons who have applied for these posts makes it clear that more experienced and qualified talent has been rejected and members of a single family have been selected. All these members have been paid huge salaries without their suitability for these posts. Further, it is very strange that for all key positions of the Society, competent persons have been found in the family tree of Sh. A.S. Mann only and School could not find more talented persons than him for these posts. Therefore, the violation of Sec. 13(3) of IT Act is clear from the conduct of the Society in these appointments as benefit has accrued to family members of the specified persons."*

11. The Id. CIT(A) also pointed out that the expenses of the Mobile Number 9810010833 used by Secretary Sh.

Joginder Singh Mann, were being claimed under Mobile expenses amounting to Rs.63,083/- for the year under consideration and that high value mobile phone worth Rs.25,000/-, Rs.10,000/- and Rs.22,300/- had been purchased allegedly for Transport Manager, Care Taker & Secretary of the Society, which were claimed in the accounts of the school without any justification about the services rendered by them to the assessee Society and corresponding facilities given to others and that the AO disallowed 50% of those expenses being excessive in nature. The Id. CIT(A) further observed that the finding of the AO were very specific that the assessee had violated the provisions of Section 13(3) of the Act by giving undue benefit to the family members which had cost a huge financial loss to the assessee Society and the explanation given by the assessee was not convincing. He further observed that Mrs. Anita Mann was occupying the seat of Director Administration and was being paid hefty salary and that Sh. A.S. Mann who was 79 years old was provided phone facilities and car, however, it was not known that what kind of activities were performed by him. The Id. CIT(A) also observed that unreasonable salary was being paid to Mrs. Sudesh Singh and Mrs. Latesh Chaudhary. He also mentioned that Sh. A.S. Mann was the President of the

society, his son Sh. Joginder Mann was the Secretary and that Mrs. Sudesh Singh and Mrs. Latesh Chaudhary are the daughters of Sh. A.S. Mann, so, whole affair had been managed in such a way that this was totally a family affair, so, there was violation of Section 13(3) of the Act. The reliance was placed on the decision of the ITAT Hyderabad Bench in the case of ADIT(E) Vs Chirec Education Society reported at 58 DTR 453 and the judgment of the Honøble Allahabad High Court in the case of CIT Vs Vijeta Educational Society (2011)-TIOL-592. Accordingly, the ld. CIT(A) held that the AO was justified in denying the exemption u/s 11 of the Act as the assessee had violated provisions of Section 13(3) of the Act.

12. As regards to the additions relating to sale/purchase of assets, vehicle maintenance and furniture & fixture, the ld. CIT(A) observed that the assessee had filed the details vide letter dated 30.07.2012 which revealed that the school had 30 buses to transport around 2960 students. The ld. CIT(A) pointed out that the AO while making the addition on account of loss on sale of assets amounting to RS.33,91,384/- had taken calculation for four years. He also pointed out that there was a loss in the preceding years amounting to Rs.30,97,729/-, Rs.44,42,099/- and

Rs.81,20,665/- in the assessment years 2006-07, 2007-08 and 2008-09 respectively but no adverse view had been taken for those years. The Id. CIT(A) was of the view that it is a common practice that such old buses are sold on depreciated value, so, there will be loss on old buses and had it been a manipulation it should have been committed for other years also, which issue had not been touched by the AO. The Id. CIT(A) deleted the addition made by the AO by following the ratio laid down by the Honøble Supreme Court in the case of Radha Swami Satsang reported at 193 ITR 321.

13. Now both the parties are in appeal.

14. The department is in appeal against the relief allowed by the Id. CIT(A) while the assessee is in appeal against the confirmation of the action of the AO in denying the exemption u/s 11 of the Act by invoking the provision of Section 13(3) of the Act. The Id. Counsel for the assessee submitted that the assessee asked the copy of reasons recorded for issuing the notice u/s 148 of the Act but the AO did not provide the same. Therefore, the proceeding in pursuant to the notice u/s 148 of the Act is liable to be

quashed. The reliance was placed on the following case laws:

- *GKN Driveshafts (India) Ltd. Vs ITO and Others (2013) 259 ITR 19 (SC)*
- *Haryana Acrylic Manufacturing Company Vs CIT and Anr. (2009) 308 ITR 38 (Del)*
- *CIT Vs Videsh Sanchar Nigam Ltd. (2012) 340 ITR 66 (Bom)*
- *M/s Jagat Talkies Distributors Vs DCIT in ITA No. 1068 to 1073/Del/2008 order dated 10.06.2015*

14.1 It was further submitted that the AO had recorded two reasons for reopening the assessment, the first one was regarding development charges not shown in the income and expenditure statement, which was factually incorrect. Therefore, reopening on this basis was not justified. The reliance was placed on the decision of the Honorable Delhi High Court in the case of Lalit Bagai Vs DCIT, WP(C) No.5054/2014 order dated 05.12.2014.

15. It was further submitted that the second reason recorded for reopening u/s 148 of the Act was that, the assessee had employed specified persons in violation of the Section 13(3) of the Act. The said reason could not be a valid reason for reopening, as there was no prohibition in employing specified persons u/s 13(3) of the Act unless the

amount is in excess then what may be reasonably paid for such services. It was further submitted that as per the provisions of Section 13(2)(c) of the Act, there are two conditions firstly the salary, allowances has to be paid to the persons referred to in Section 13(3) of the Act and the same is in excess of what may be reasonably paid for such services. Therefore, both the conditions as mentioned u/s 13(3) of the Act must have been fulfilled. But in the present case, it is not the case of the AO that the amount was paid in excess what may be reasonably paid for such services. Contrary to that the salary was paid in accordance to the pay scale fixed by the Directorate of Education for the similar posts (A reference was made to page nos. 154 to 155 & 196 of the assessee's paper book). It was further that a proper selection procedure had been followed by the Selection Committee which included two members nominated by the Directorate of Education (a reference was made to page no. 197 of the assessee's paper book). Accordingly, it was submitted that the AO as well as the Id. CIT(A) were not justified in denying the exemption u/s 11 of the Act by invoking the provisions of Section 13(3) r.w.s. 13(2)(c) of the Act. The reliance was placed on the following case laws:

- *DIT Vs Pariwar Sewa Sansthan (2002) 254 ITR 268 (Del)*
- *DIT(Exemptions) Vs Manav Bharti Institute of Child Education & Child Psychology in ITA No. 881/2010 order dated 13.07.2010 (Del)*
- *DIT(Exem.) Vs Institute of Marketing and Management in ITA No.4182/Del/2013 order dated 21.02.2014 (Del ITAT)*
- *Career Launcher Education Foundation VS DIT(E) in ITA No. 2849/Del/2010 order dated 10.02.2012 (ITAT Del)*
- *ITO Vs M/s Human Resource Development & Management in ITA No.127/CTK/2011 order dated 29.07.2011 (ITAT Cuttack)*

16. The Id. Counsel for the assessee contended that the assessee society was registered u/s 12A of the Act since its inception and was earlier approved/notified for exemption u/s 10(23C)(vi) of the Act and the approval was also granted for exemption u/s 80G(5)(vi) of the Act vide order dated 15.07.2009 till the assessment year 2012-13. It was further submitted that the earlier assessment of the assessee had been finalized and concluded u/s 143(3) of the Act regularly at the Nil income after due verification of accounts. It was also submitted that the reopening done by the AO u/s 148 of the Act which has been upheld by the Id. CIT(A) was not justified.



17. On the merit of the case the ld. Counsel for the assessee submitted that the ld. DG of the Income Tax Department withdrew the exemption u/s 10(23C) of the Act but the order was quashed by the Honøble High Court and the matter was directed to be decided afresh. It was further submitted that the AO repeated the order of the DG(Exemption) passed u/s 10(23C) of the Act in the assessment order. It was pointed out that para 2.1 of the order of the DG (Exemption) was repeated in para 1 of the assessment order and similarly para 2.3 of the order of the DG(Exemption) was repeated in para 3 of the assessment order. It was submitted that the Principal of the School was appointed in 1996 after following the proper procedure (a reference was made to page nos. 111 & 112 of the assessee's paper book). He also submitted that the applications were received against the advertisement for the post of the Principal (a reference was made to page nos. 116 to 118 of the assessee's paper book). It was contended that the salary was fixed in accordance with the fixation by the 6<sup>th</sup> Pay Commission, so there was no violation of Section 13(3) of the Act as there was no prohibition in appointing the relatives of the trustees. It was further submitted that nothing was brought on record to substantiate that excessive salary was paid to the Principal Mrs. Sudesh Singh, Mrs.

Latesh Chaudhary and Mrs. Anita Mann and that in the subsequent year the salary paid had been accepted, so there was no application of mind by the AO while alleging that the excessive payment was made to the relative and there was violation of the provisions of Section 13(3) of the Act.

18. In his rival submissions the Id. DR supported the orders of the authorities below and further submitted that in this case intimation u/s 143(1) of the Act was only issued and no assessment was framed u/s 143(3) of the Act. It was further submitted that the assessee inflated the expenses and the AO has reasons to believe that income escaped the assessment and that the notice u/s 148 of the Act was issued within the time limit of four years. It was further submitted that Mrs. Sudesh Singh who was the Secretary of the assessee Society was appointed as Principal and that the Trustees and Member of the Management Committee of the assessee society were getting the benefits, therefore, the AO rightly invoked the provisions of Section 13(3) of the Act and denied the exemption u/s 11 of the Act. It was accordingly submitted that the Id. CIT(A) was justified in upholding the action of the AO for issuing the notice u/s 148 r.w.s. 147 of the Act.

19. We have considered the submissions of both the parties and carefully gone through the material available on the record. As regards to the issue agitated by the department in ITA No. 1005/Del/2013 relating to the depreciation on the assets purchased in the earlier year from the income claimed to be exempted is concerned, it is noticed that the Honøble Jurisdictional High Court has settled this controversy while deciding the case of Director of Income Tax Vs Vishwa Jagriti Mission reported at 73 DTR (Del) 195 wherein their lordships has observed in paras 11 to 14 as under:

*“11. The revenue is in appeal against the aforesaid order of the Tribunal.*

*We are not inclined to admit the appeal and frame any substantial question of law since none arises from the order of the Tribunal. There is no dispute that the assessee has been granted registration under Section 12AA vide order dated 11th September, 2009 and, therefore, it was entitled to exemption of its income under Section 11. The only question is whether the income of the assessee should be computed on commercial principles and in doing so whether depreciation on fixed assets utilised for the charitable purposes should be allowed. On this issue, there seems to be a consensus of judicial thinking as is seen from the authorities relied upon by the CIT(Appeals) as well as the Tribunal. In CIT vs. The Society of the Sisters of St. Anne (Supra), an identical question arose before the Karnataka High Court There the society was running a school in Bangalore and was*

*allowed exemption under Section 11. The question arose as to how the income available for application to charitable and religious purposes should be computed. JagannathaSetty, J. speaking for the Division Bench of the Court held that income derived from property held under trust cannot be the "total income" as defined in Section 2(45) of the Act and that the word "income" is a wider term than the expression "profits and gains of business or profession". Reference was made to the nature of depreciation and it was pointed out that depreciation was nothing but decrease in the value of property through wear, deterioration or obsolescence. It was observed that depreciation, if not allowed as a necessary deduction for computing the income of charitable institutions, then there is no way to preserve the corpus of the trust for deriving the income. The circular No.5-P (LXX-6) of 1968, dated July 19, 1968 was reproduced in the judgment in which the Board has taken the view that the income of the trust should be understood in its commercial sense. The circular is as under:-*

*"Where the trust derives income from house property, interest on securities, capital gains, or other sources, the word 'income'<sup>1</sup> should be understood in its commercial sense, i.e., book income, after adding back any appropriations or applications thereof towards the purpose of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. It should be noted, in this connection, that the amounts so added back will become chargeable*

*to tax u/s. 11(3) to the extent that they represent outgoings for purposes other than those of the trust. The amounts spent or applied for the purposes of the trust from out of the income computed in the aforesaid manner, should be not less than 75 per cent, of the latter, if the trust is to get the full benefit of the exemption u/s. 11(1)."*

*12. A similar view was earlier expressed by the Andhra Pradesh High Court in Commissioner of Income-tax v. Nizam's Suppl. Religious Endowment Trust (1981) 127 ITR 378 and by the Madras High Court in Commissioner of Income-Tax vs Rao Bahadur Calavala Cunnan Chetty Chanties (1982) 135 ITR 485. The Madhya Pradesh High Court in CIT vs. Raipur Pallottine Society (supra) has held, following the judgment of the Karnataka High court cited above, that in computing the income of a charitable institution/trust, depreciation of assets owned by the trust/institution is a necessary deduction on commercial principles. The Gujarat High Court, after referring to the judgments of the Karnataka, Maharashtra and Madhya Pradesh High Courts cited above, also came to the same conclusion and held that the amount of depreciation debited to the accounts of the charitable institution has to be deducted to arrive at the income available for application to charitable and religious purposes.*

*13 The judgment of the Supreme Court in Escorts Limited vs. Union of India (supra) has been rightly held to be inapplicable to the present case. There are two reasons as to why the judgment cannot be*

*applied to the present case Firstly, the Supreme Court was not concerned with the case of a charitable trust/institution involving the question as to whether its income should be computed on commercial principles in order to determine the amount of income available for application to charitable purposes- It was a case where the assessee was carrying on business and the statutory computation provisions of Chapter IV-D of the Act were applicable. In the present case, we are not concerned with the applicability of these provisions we are concerned only with the concept of commercial income as understood from the accounting point of view. Even under normal commercial accounting principles, there is authority for the proposition that depreciation is a necessary charge in computing the net income. Secondly, the Supreme Court was concerned with the case where the assessee had claimed deduction of the cost of the asset under Section 35(1) of the Act, which allowed deduction for capital expenditure incurred on scientific research The question was whether after claiming deduction in respect of the cost of the asset under Section 35(1), can the assessee again claim deduction on account of depreciation in respect of the same asset. The Supreme Court ruled that, under general principles of taxation, double deduction in regard to the same business outgoing is not intended unless clearly expressed. The present case is not one of this type, as rightly distinguished by the CIT(Appeals).*

*14. Having regard to the consensus of judicial opinion on the precise question that has arisen in the present appeal, we are not inclined to admit the*

*appeal and frame any substantial question of law. There does not appear to be any contrary view plausible on the question raised before us and at any rate no judgment taking a contrary view has been brought to our notice. In the circumstances, we decline to admit the present appeal and dismiss the same with no order as to costs."*

20. So, respectfully following the ratio laid down by the Honorable Jurisdictional High Court in the aforesaid referred to case, we do not see any merit in the appeal of the department and are of the considered view that the AO was not justified in making the addition on account of depreciation.

21. As regards to the issue agitated by the assessee in its appeal against the denial of exemption u/s 11 of the Act on the ground that the assessee violated the provisions of Section 13(3) of the Act is concerned, it is noticed that the AO alleged that the management had unduly cost huge financial loss to the society and the affairs of the society were being managed in non-transparent manner. The AO also alleged that the Principal Mrs. Sudesh Singh of the school namely Lancers Convent School, Rohini, and Vice-Principal Mrs. Latesh Chaudhary are the daughters of Sh. A.S. Mann, the President of the assessee Society and sisters of Sh. Joginder Singh Mann, the Secretary of the Society

and that the Director(Administration) Mrs. Anita Mann is wife of Sh. Joginder Singh Mann. Therefore, there was a clear-cut violation of Section 13(3) as the assessee was paying unreasonable salary to the aforesaid ladies. However, nothing was brought on record as to how much salary was excessive in comparison to the salary paid to another persons working in the same capacity and in the similar circumstances, in another institutions.

22. On a similar issue the Honøble Jurisdictional High Court in the case of DIT(Exemption) Vs Manav Bharti Institute of Child Education & Child Psychology (supra) has held as under:

*“The AO brought nothing on record to show that either of the facilities provided to her was used for personal purposes. The facilities were the basic facilities necessary for management and administration of the institution as Principal and the Chairman. Further, the AO has brought nothing on record to show that the expenditure on salary or facilities provided to her was excessive having regard to fair market value of services provided by her.”*

23. In the present case also the AO simply stated that there was violation of the provisions of Section 13(3) of the Act and unreasonable salary was paid to Mrs. Sudesh Singh,



Mrs. Latesh Chaudhary and Mrs. Anita Mann. However, nothing is brought on record as to how much salary paid to these ladies was excessive. On the contrary, the assessee adopted the proper procedure for appointment of the Principal and Vice-Principal by giving an advertisement in the newspaper Hindustan Times, New Delhi dated 28.05.1996 (copy of which is placed at page no. 111 of the assessee's paper book). Thereafter, Mrs. Sudesh Singh applied for the post of Principal (copy of the application is placed at page nos. 112 to 115 of the assessee's paper book) while applying for the post of the Principal, the said lady was having the teaching experience of 8 years and the degree of MA, B.Ed. The selection was made by the Selection Board out of the 14 persons who were called for interview which is evident from page no. 140 of the assessee's paper book. The Selection Board was having two nominees of the Education Department. Similarly, Mrs. Latesh Chaudhary applied for the post of Vice-Principal in lieu of the advertisement dated 08.03.1995 (copy of which is placed at page no. 139 of the assessee's paper book). The salary was given to both of them in accordance with the recommendation by the Directorate of Education, Old Secretariat (copy of which is placed at page nos. 144 to 147 of the assessee's paper book) and the AO nowhere brought

it on record that the salary paid to Mrs. Sudesh Singh, Principal and Mrs. Latesh Chaudhary, Vice-Principal was excessive. On the contrary, the assessee brought on record the order of Directorate of Education, Old Secretariat, Delhi to substantiate that the salary paid was in accordance with the norms fixed by the Government. Similarly, Mrs. Anita Mann was appointed as Director(Administration) for proper running of the institutions established by the assessee Society and was provided with car and phone facility. The AO did not bring any material on record to substantiate that the facilities provided to Mrs. Anita Mann were not used to achieve the objects of the assessee Society or it was misused for personal benefits. In the present case, the remuneration received by the aforesaid ladies was disclosed in their respective returns of income and accepted by the department.

24. On a similar issue the Honorable Jurisdictional High Court in the case of DIT Vs Pariwar Sewa Sansthan (2002) 254 ITR 268 held that the salary, rent etc. paid to chief executive officer and the project co-ordinator were not excessive and that the expenditure incurred on conferences and clinics was part of charitable activities. We, therefore, are of the view that the Id. CIT(A) was not justified in

confirming the action of the AO for denying the exemption u/s 11 of the Act by invoking the provisions of Section 13(3) of the Act. In the present case, it seems that the AO alleged that it was a family affairs of the assessee without appreciating the functioning of the Society and the requirement of law and also did not bring any material on record to substantiate that the facilities provided by the assessee to the aforesaid persons or the remuneration paid was not for the services rendered by the relatives of the trustees to achieve the objectives of the assessee society. In the instant case, it is an admitted fact that the assessee was registered u/s 12A of the Act and run the school in the name of Lancers Convent School at Prashant Vihar, Rohini, Delhi. The primary object of the assessee society is to impart the education among the general public. It is well settled that the imparting of education is a charitable activity. However, the AO denied the exemption u/s 11 of the Act to the assessee, which is available on the income from property held for charitable or religious purposes, for denying the said exemption, the AO invoked the provisions of Section 13(3) r.w.s. 13(2)(c) of the Act. The provisions contained in Section 13(2)(c) of the Act reads as under:

*“13(2)(c) Without prejudice to the generality of the provisions of clause (c) and clause (d) of sub-*

*section (1), the income or the property of the trust or institution or any part of such income or property shall for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3)-*

*(a) .....*

*(b) .....*

*(c) If any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services.”*

25. In the present case, it is an admitted fact that the relatives of the trustees were appointed as Principal, Vice-Principal and Administrative Director. However, their appointments were not illegal as the same were done by following the proper procedure, an advertisement was published in the National Newspaper for the post of Principal and Vice-Principal. In response to the said advertisement, the applications were received from the eligible person and after a proper scrutiny, those persons who fulfilled the requisite qualification and having the experience, persons were called for an interview. The Selection Board who conducted the interview included, two

nominees of the Education Department of the Government and selection was done on merit. The remuneration paid was in accordance with the pay scale fixed by the Directorate of Education for the similar post. It is not the case of the AO that the remuneration paid was in excess of what may be reasonably paid for such services. It is also not the case that the expenses relating to telephone etc. were not incurred for furtherance of the objectives of the assessee society. In the present case, the AO has observed that the development charges were not shown in the income and expenditure account and reopen the assessment on the said basis. This observation of the AO was factually incorrect because the assessee had shown the development charges in its books of account which is evident from the various copies of the ledger account furnished by the assessee to the AO vide letter dated 19.12.2011 which are placed at page nos. 282 to 305 of the assessee's paper book. The assessee also furnished copies of the journal vouchers in respect of tuition fees and development fees along with student wise details which are placed at page nos. 306 to 314 of the assessee's paper book. In the present case, the AO has not brought anything on record to substantiate that the expenditure on salary or facilities provided to the relatives of the trustees of the assessee society were excessive having

regard to fair market value of the services provided by them. Therefore, the AO wrongly invoked the provisions of Section 13(3) of the Act and the Id. CIT(A) was not justified in confirming the action of the AO. We, therefore, set aside the impugned order and direct the AO to allow the exemption u/s 11 of the Act to the assessee. Since we have decided the Ground Nos. 6 to 11 in favour of the assessee on merits, therefore, no findings are being given on the issue relating to the reopening u/s 147 of the Act raised by the assessee vide Ground Nos. 1 to 5.

26. In the result, appeal of the assessee is allowed and that of the department is dismissed.

(Order Pronounced in the Court on 15/07/2016)

Sd/-  
**(Kuldip Singh)**  
**JUDICIAL MEMBER**

Sd/-  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 15/07/2016**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**