

ITAT remanded matter to verify whether trust was owner of building for which repair exp. was incurred

Summary – The Mumbai ITAT in a recent case of Children Welfare Education Trust., (the Assessee) held that Without verifying claim of assessee trust that it was occupying third and fourth floor of building without paying any rent and trustee was required to repay expenditure incurred by assessee, Assessing Officer could not have disallowed expenditure incurred towards repairs and renovation of building owned by trustee on ground that it was in contravention of provisions of section 13(1)(c) as a benefit had accrued to trustee through such payment

Facts

- The assessee a registered charitable trust was basically engaged in imparting education through a School in the name of St. Xavier's High School. It filed its return of income for relevant assessment year 2010-11 declaring total income of Rs. 2 lakhs, after claiming exemption under section 11.
- The Assessing Officer alleging violation of section 13(1)(c) reopened the assessment under section 147. In response to the notice issued under section 148, the assessee filed a revised return of income on 11-4-2014.
- During the assessment proceedings, the Assessing Officer noticing that the assessee had incurred expenses from the building fund for expansion of the building owned by a trustee. Further, from the computation of income of the assessee, the Assessing Officer found that out of the total receipts an amount was claimed to have been spent for the objects of the trust which worked out to 75 per cent of the total receipt. Out of the surplus of Rs. 27 lakhs, assessee claimed exemption of Rs. 25 lakhs under section 11 while offering the balance amount of Rs. 2 lakhs to tax. The Assessing Officer after perusing the leave and license agreement between the assessee and the trustees was of the view that the expenditure incurred for repair and renovation of the building was in contravention of the provisions of section 13(1)(c) as a benefit had accrued to the trustee through such payment who happened to be the owner of the building. The Assessing Officer disallowed the repairs and renovation expenses. Further, out of the accumulated surplus, the Assessing Officer disallowed claim of exemption in respect of Rs. 25 lakhs on the reasoning that the amount having been advanced to the trustee a benefit had been provided in violation of section 13(1)(c), read with section 13(3).
- On appeal, the Commissioner (Appeals) accepted assessee's claim with regard to expenditure incurred towards repairs and renovation and deleted the addition in this respect. However, as regards utilisation of Rs. 25 lakhs out of the surplus fund, the Commissioner (Appeals) upheld the addition made by the Assessing Officer by holding that by incurring such expenditure, the trust had provided a benefit to the trustee in violation of section 13(1)(c). Thus, he upheld the addition of Rs. 25 lakhs.
- On appeal to the Tribunal:

Held

- It is evident that the Assessing Officer has disallowed assessee's claim of exemption under section 11(2) out of the surplus income/receipt on the ground that such amount was advanced to the trustee who is the owner of the building on which the assessee has constructed the third and fourth floor by incurring expenditure. It is the case of the Assessing Officer that by incurring such expenditure the assessee has provided benefit to the trustee which is in contravention of section 13(1)(c). Though, before the Assessing Officer, the assessee has furnished the memorandum of understanding between the assessee and the trustee to emphasize that the assessee has incurred the expenditure in constructing the third and fourth floor of the building for running the School and the Trustee is required to repay the expenditure incurred by the assessee, however, the Assessing Officer has rejected the agreement as an afterthought. Notably, before the Commissioner (Appeals), the assessee has furnished a lease agreement with the trustee under which the assessee is authorised to occupy third and fourth floor of the building for a period of 25 years without paying any rent. However, the Commissioner (Appeals) has refused to take cognizance of the lease agreement by stating that it was neither submitted before the Assessing Officer nor the assessee brought to the notice of the Assessing Officer the fact that it was occupying the third and fourth floor of the building without paying any rent. On a perusal of the lease agreement, it is found that there is a specific term in the lease deed providing that the assessee is to be given lease of the 3rd and 4th floor of the building for a period of 25 years without paying any rent. It further provides that only after expiry of 25 years the assessee will pay rent at the market rate. The said lease agreements also provides an option to the trustee to buy back the third and fourth floor by paying the actual cost to the assessee. Thus, as could be seen from the aforesaid facts, the assessee has not incurred the expenditure in constructing the third and fourth floor of the building owned by the trustee for free. As per the terms of the lease agreement, the assessee has a right to occupy the third and fourth floor without paying any rent. The assessee has made a submission at the bar that though he is occupying the third and fourth floor of the building, till date it has not paid any rent to the trustee. The aforesaid claim of the assessee could have been factually verified either by the Commissioner (Appeals) himself or through the Assessing Officer. Without verifying or ascertaining the claim of the assessee through proper enquiry, the documentary evidences submitted by the assessee cannot be discarded by terming it as an afterthought. In case, the claim of the assessee that it is occupying the third and fourth floor of the building owned by the trustee without paying any rent is found to be correct then the allegation made by the Departmental Authorities with regard to violation of section 13(1)(c) may not be valid. However, the claim of the assessee that it is occupying third and fourth floor of the building without paying any rent requires to be verified factually. Since, neither of the Departmental Authorities have factually examined this claim of the assessee, the issue is to be restored to the Assessing Officer for verifying assessee's claim. With the aforesaid observations, the issue raised in this ground is restored to the Assessing Officer for fresh adjudication after due opportunity of being heard to the assessee. Grounds raised on this issue are allowed for statistical purposes.