

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 21.04.2025

+ **ITA 179/2023****COMMISSIONER OF INCOME TAX
EXEMPTION DELHI**

..... Appellant

Versus

IILM FOUNDATION

..... Respondent

AND

+ **ITA 181/2023****COMMISSIONER OF INCOME TAX
EXEMPTION DELHI**

..... Appellant

Versus

IILM FOUNDATION

..... Respondent

AND

+ **ITA 182/2023****COMMISSIONER OF INCOME TAX
EXEMPTION DELHI**

..... Appellant

Versus

IILM FOUNDATION

..... Respondent

Advocates who appeared in these cases:

For the Appellant

: Mr Abhishek Maratha, Mr Apoorv Agarwal, Mr Parth Samwal, Ms Nupur Sharma, Mr Gaurav Singh, Mr. Bhanukaran Singh Jodha, Ms Muskaan Goel and Mr Himanshu Gaur, Advocates.

For the Respondent

: Mr Rohit Jain, Mr Aniket D. Agrawal, Mr Samarth Chaudhari, Mr V.K. Anand and Ms Ankita, Advocates.

CORAM:



HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

VIBHU BAKHRU, J

1. The Revenue has filed the present appeals under Section 260A of the Income Tax Act, 1961 [**the Act**] impugning a common order dated 24.12.2020 [**impugned order**] passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA 2675/Del/2013; ITA 2871/Del/2014; ITA 2872/Del/2014, and ITA 1131/Del/2016 in respect of Assessment Years [**AY**] 2008-09, AY 2009-10, AY 2010-11 and AY 2011-12. These appeals were preferred by the Revenue against orders passed by the Commissioner of Income Tax (Appeals) [**CIT(A)**]. The impugned order also disposed of the Assessee's appeal in respect of AY 2007-08, being ITA 1142/Del/2011.

2. The above captioned appeals are in respect of the impugned order pertaining to the appeals preferred by the Revenue (being ITA 2871/Del/2014, ITA 2872/Del/2014 and ITA 1131/Del/2016) for AY 2009-10, 2010-11 and 2011-12.

3. By a common order dated 12.09.2023 passed by this Court. The aforementioned appeals were admitted and the following questions of law were framed for consideration of this Court:

“(i) Whether the Income Tax Appellate Tribunal [in short, “Tribunal”] misdirected itself on facts and in law in holding that the respondent/assessee had not violated the provisions



of Section 13 (1)(c) of the Income Tax Act, 1961 [in short, “Act”] in remunerating Ms Malvika Rai for services rendered?

(ii) Whether the impugned order passed by the Tribunal is perverse both on facts and in law?

4. For the purposes of the present appeals, we consider it apposite to refer to the facts as relevant to the assessment in respect of AY 2009-10, which is the subject matter of ITA 181/2023. The Assessee (formerly known as Ram Krishna Kulwant Rai Charitable Trust) came into existence with effect from 01.04.2001. The said trust was registered under Section 12A of the Act by an order dated 01.02.2001. The name of the trust was changed to IILM Foundation [Assessee] by amendment of the trust deed dated 26.07.2007. The said change was also duly registered with the concerned income tax authority.

5. The Assessee is predominantly engaged in activities of imparting education and also runs the following educational institutions: (a) Banyan Tree World School at Gurgaon; (b) IILM Under Graduate Business School at Lodhi Road; (c) IILM Early College at Lodhi Road.

6. The Assessee had filed its return of income for AY 2009-10 on 29.09.2009 disclosing nil income. The said return was picked up for scrutiny and the proceedings culminated in the assessment order dated 26.12.2011 passed under Section 143(3) of the Act.

7. The registration granted to the Assessee under Section 12A of the Act was withdrawn by the Director of Income Tax (Exemption) with



effect from AY 2003-04 and thus, the Assessing Officer [AO] had proceeded to examine the Assessee's return on the premise that it was not registered under Section 12A of the Act and thus, not entitled to benefit of the exemptions under Section 11/12 of the Act.

8. During the financial year relevant to AY 2009-10, the Assessee had paid a salary of ₹16,20,000/- to Ms Malvika Rai, who was the Chairperson of the Assessee trust. The AO held that the same was excessive and not commensurate with her educational qualifications, experience and duties. Since Ms Rai is a related party, the AO disallowed 30% of the payments made to her and added a sum of ₹4,86,000/- to the income as declared by the Assessee. The relevant extract of the assessment order dated 26.12.2011 in regard to the salary paid to Ms Rai are set out the below:

“i) Ms. Malvika Rai, Chairperson of the trust is paid a salary of Rs. 16,20,000/- which is excessive in nature and not commensurate to her education, experience and duties and has been paid to the related party as she is chairperson of trust. Accordingly, as per provisions of Sec. 40A(2)(a) of I.T. Act, I disallow 30% of the payment made to her i.e. Rs. 4,86,000/- is added back to the net profit of the assessee.”

9. Apart from the above, the AO also found that the Assessee was running institutions, which were catering to an elite class of society with the sole purpose of making profit. Apart from the disallowance under Section 40A(2)(a) of the Act in respect of salaries paid to Ms Rai, the AO also added expenditure incurred by the Assessee in maintaining cars and fuel expenses as well as donations made by the Assessee. In



aggregate, the AO disallowed a sum of ₹26,06,844/-, which was booked as expenditure by the Assessee in its accounts. The Assessee's income was, accordingly, assessed at ₹12,69,57,640/- and the Assessee was treated as an association of persons for the purposes of levy of income tax on the assessed income.

10. As noted above, the Assessee's registration under Section 12A of the Act was cancelled in terms of an order dated 07.07.2011 passed by the Director Income Tax (Exemptions) with effect from AY 2003-04. The Assessee had filed an appeal against the said decision before the learned ITAT, which was pending at the material time.

11. The Assessee preferred an appeal before the CIT(A). The CIT(A) allowed the appeal and deleted the addition made by the AO in respect of expenses booked under the head of Maintenance and Fuel Expenses as well as the addition of ₹4,86,000/- made on account of part disallowance of the expenditure incurred on account of salary paid to Ms Rai. The CIT(A) found that the annual salary of ₹16,20,000/- paid to Ms Rai was reasonable and a similar expenditure had been allowed by the CIT(A) in the Assessee's appeal for AY 2008-09. Accordingly, the CIT(A) deleted the addition made on the said account by following the earlier order in respect of AY 2008-09.

12. It is also material to note that in the meanwhile, the order dated 07.07.2011 passed by Director of Income Tax (Exemptions) cancelling the Assessee's registration under Section 12A of the Act was set aside by the learned ITAT by an order dated 23.03.2012 in the appeal



preferred by the Assessee [ITA No.3638/Del/2011]. Accordingly, the CIT(A) also granted the Assessee the benefit of exemption under Section 11/12 of the Act. We consider it apposite to set out Paragraph 6.2 and 6.3 of the order dated 24.02.2014 passed by the CIT(A). The same is reproduced below:

“6.2 The assessee is in appeal against the order of the AO and it is submitted that Mrs. Malvika Rai is a chairman of the trust and is involved in educational activities and she has been paid a reasonable annual salary of Rs.16,20,000/- and the AO is not justified to make the estimated disallowance @ 30%. It is also submitted that there was a similar disallowance in the A.Y. 2008-09 and the Ld. CIT(A)-XII has allowed the appeal of the assessee.

6.3 I have considered the order of the AO and the submissions of the assessee and I find considerable merit in the submissions of the assessee that the annual salary of Rs.16,20,000/- is apparently reasonable and the same has been allowed by the Ld. CIT(A) in the A.Y 2008-09. After considering all the facts and circumstances of the case, I am of the view that there is no proper justification for making the estimated disallowance @ 30% and accordingly the addition made by the AO is deleted following the order of the A.Y 2008-09 on the principle of consistency.”

13. The Revenue preferred an appeal against the CIT(A)’s decision before the learned ITAT (being ITA No.2871/Del/2014), which was considered along with other appeals. The Revenue had challenged the CIT(A)’s order on several grounds including that the CIT(A) had erred in not considering that the Assessee was in violation of the provisions of Section 13(1)(b) of the Act and therefore, was disentitled to exemption under Section 11/12 of the Act. The Revenue also



challenged the finding of the CIT(A) that the salary drawn by Ms Rai was commensurate with her educational classification. The Revenue's appeal was allowed by a common order dated 08.11.2017.

14. The Assessee filed an application before the learned ITAT for recalling of the common order dated 08.11.2017 passed by the learned ITAT, *inter alia*, on the ground that the learned ITAT had not rendered any decision in the application filed by the Assessee for producing additional evidence under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963. The learned ITAT allowed the said application and recalled the common order dated 08.11.2017, whereby the Revenue's appeal was allowed.

15. Thereafter, the learned ITAT proceeded to examine the Revenue's appeal in the light of the additional evidence produced by the Assessee and dismissed the Revenue's appeal. We consider it apposite to set out the following passages from the impugned order:

“14. Learned counsel rebutted the aforesaid observation and the conclusion of the learned CIT (A) in the following reasons:

(a) First and foremost, the CIT(A) erroneously considered remuneration of Ms. Malvika Rai as “Rs.16,20,000 p.m.”, whereas actual remuneration paid was Rs.16,20,000 for the entire year and not Rs.16,20,000 p.m. This fundamental mistake, it is submitted, vitiates the entire conclusion of the CIT(A) on the aforesaid issue;

(b) Secondly, the CIT(A) proceeded on a flawed premise that the appellant did not justify how “the educational qualification of Mrs. Malvika Rai is commensurate with the salary which she is drawing” whereas the legal



requirement is to examine the remuneration based on the services being rendered. The only requirement in law is that the salary paid should not be excessive or unreasonable having regard to services rendered. The services rendered have to be benchmarked not only with reference to the educational qualification of the person(s) specified in section 13 of the Act but also the requisite experience;

(c) Thirdly, none of the comparative material/ instances placed on record and vital for adjudication of the issue have been considered by the CIT(A);

(d) Fourthly, nothing has been brought on record to controvert any of the actual submissions of the appellant;

(e) Fifthly, none of the authorities (the assessing officer in subsequent years and also the CIT(A) in the year under consideration) have brought any evidence on record to show that the salary paid was excessive having regard to the legitimate needs of the appellant trust in carrying out educational activities;

(f) Sixthly, the CIT(A), it appears, was influenced by the fact that Mrs. Malvika Rai was only a graduate, which cannot be the basis to hold. that services rendered were not commensurate with the salary paid. It has not been appreciated that Mrs. Rai had experience of over two decades in the educational field. The CIT(A) has conveniently ignored all other factors, more particularly her diverse experience in the field of education, which adds to her educational qualification.

15. Apart from that appellant has also placed on record following additional evidences under Rule 29 of ITAT Rules, 1963.

- Copies of extracts from the brochure of IILM -UBS (refer page Nos. 1-4 @2);
- Compilation of various editions of quarterly journal of the applicant Institute, namely 'The Edge' (page Nos. 5-193);



- Documentary evidences of various events of the applicant being organized under the guidance of Mrs. Malvika Rai (page Nos. 194-229 @208, 210, 212, 213, 215, 216, 217, 218, 219)

16. On a perusal of the aforesaid additional evidence placed on record, it was submitted that being Chairperson of 'IILM' as a whole, Mrs. Malvika Rai has been actively engaged in the working of the Institutes and managing the day to day affairs of the schools and colleges run by the appellant. She was a part of the events organized by the schools and has represented IILM before distinguished guests on numerous occasions. To further substantiate the activities undertaken by Mrs. Malvika Rai, the assessee has given the following gist of activities for various events organized by the assessee in the under the guidance of Mrs. Malvika Rai, as submitted before the CIT(A) for assessment year 2008-09:

S. No.	Particulars of Event	Page Nos of Add. Evidence Application
1	Convocation ceremony wherein Mrs. Malvika Rai is seen meeting with Prof Chris Taylor Vice-Chancellor, University of Bradford	210-211
2	Function at Banyan Tree World School (formerly known as IILM Word School) wherein Mrs. Malvika Rai is seen meeting with Mr. Patrich Rittee from International Baccalaureate Organisation	212-213
3	Alumni Association get-together meeting.	214-215
4	Orientation programme at IILM Undergraduate School	216
5	3 days festival 'Mosaic for IILM students. Mosaic, a platform for exchange of talent ranging from creativity of words to expression in writing attended by Finest Business Schools from India	217
7	Convocation ceremony wherein Mrs. Malvika Rai is seen with Kumari Selja, Union Minister of State, Ministry of Urban Employment and Prof. Badal Mukherji, Ex Director, Delhi School of Economics	218
9	Graduation ceremony of students of IILM UBS	219-222



11	Lecture to students by Dr E. Sreedharan being guided by Mrs Malvika Rai	223
12	Spiritual lecture to students by Sant Shri Murari Bapuji, being guided by Mrs Malvika Rai	224
13	Mrs Malvika Rai with His Holiness the Dalai Lama for Guest Lecture to IILM students	228

17. Taking note of the aforesaid actual position, in the appellant's own case for subsequent assessment years 2008-09 to 2011-12, the CIT(A) held that there is no violation of section 13(1)(c) of the Act, after taking into consideration the entire material / evidences placed on record. Our attention was particularly invited to the following events relating to A.Y. 2008-09. In A.Y. 2008-09, when the errors in the order of the CIT(A) for assessment year 2007-08 were highlighted, the CIT(A) forwarded the additional evidence(s) and the submissions to the assessing officer for his comments; In remand report dated 08.08.2011 filed in A.Y. 2008-09, copy of which has been placed at pgs. 332-333/ PB for A.Y. 08-09. The assessing officer mainly relied upon the CIT (A) order for A.Y 2007-08 that remuneration is not commensurate with educational qualification and further stated that the additional evidence pertains to magazine "Edge" published by IILM institute of Higher Education, without realizing that the said educational institute is also part of the appellant.

18. Importantly, the assessing officer in none of the subsequent years has placed on record any material/ evidence to controvert any of the submissions of the appellant. In fact, in the subsequent years, the assessing officer made ad-hoc disallowance as tabulated hereunder:

A.Y.	Remuneration Paid	Disallowed by AO	Remarks
2007-08	16,20,000	2,25,000	Subject matter of present appeal
2008-09	16,63,200	16,63,200	Deleted by CIT(A)
2009-10	16,20,000	4,86,000	Deleted by CIT(A)
2010-11	19,08,646	5,72,594	Deleted by CIT(A)



2011-12	16,20,000	NIL	No disallowance by AO.
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19. In view of the aforesaid profile/ roles and responsibilities and contributions / services of Mrs. Malvika Rai, it has been submitted that the aforesaid salary paid to her was very much justified and not at all unreasonable/excessive and cannot, in any manner, be considered as giving of any undue benefit by the appellant. It was further submitted that under section 13(1)(c) read with section 13(2)(c) there is no bar on payment of salary, etc., to the persons mentioned in section 13(3) of the Act for the services rendered by such persons. The law only provides that if payment is made to persons mentioned in section 13(3) of the Act in respect of services rendered by such persons, the same should not be unreasonable.”

SUBMISSIONS

16. Mr Abhishek Maratha, the learned counsel appearing for the Revenue submitted that the exemption under Section 11/12 of the Act was unavailable to the Assessee as it was admitted that it had paid salary to a related party. He relied on the decision of the Coordinate Bench of this Court in ***Director of Income Tax (Exemption) v. Charanjiv Charitable Trust: 2014 SCC OnLine Del 7776*** and referred to the following passage from the said decision:

“22. It is also to be noted that even if there is one instance of application or use of the income or property of the trust directly or indirectly for the benefit of any prohibited person, the trust will lose the exemption in respect of its entire income. Therefore, if in respect of the monies paid either to APIL or to Charanjiv Educational Society, it is found that the provisions of Section 13(1)(c)(ii) read with Section 13(3) of the Act are not followed, the trust would lose its exemption entirely, with



the result that the assessment of its income will be made according to the provisions of the Act.”

17. On the strength of the aforesaid decision, Mr Maratha submitted that even if there is one instance where the income of the property is directly or indirectly used to the benefit a prohibited person, the trust would lose its exemption. He submitted that in the present case, it was admitted that Ms Malvika Rai is a prohibited person and she had received salary from the Assessee. He contended that irrespective of whether payment was reasonable or unreasonable, since Ms Rai was one of the prohibited persons, the Assessee would not be entitled to any exemption from tax on any part of its income.

18. Mr Rohit Jain, learned counsel for the Assessee stoutly opposed the aforesaid contention. He referred to Section 13(1)(c) of the Act as Section 13(2)(c) of the Act and submitted that the plain reading of the said provisions does not sustain the contention as advanced on behalf of the Revenue.

REASONS AND CONCLUSION

19. Before proceeding further, it would be relevant to note that there is no cavil that the salary paid to Ms Rai was not excessive or unreasonable considering her educational qualifications and the functions performed by her. The learned ITAT had examined the evidence as to her qualifications as well as her contribution. The learned counsel for the Revenue also did not contest the said findings. As noted above, he had advanced submissions on the sole ground that if any part of the income of the trust is diverted for benefit of any of the prohibited



person referred to in sub-section (3) of Section 13 of the Act, the entire income of the trust would be chargeable to tax.

20. It would now be important to refer to clause (c) of sub-section (1) of Section 13 and clause (c) of sub-section (2) of Section 13 of the Act. The said provisions are set out below:

“13. Section 11 not to apply in certain cases. —(1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3):

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution:



Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3) insofar as such use or application relates to any period before the 1st day of June, 1970;

(2) 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),—

(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;”

21. A plain reading of sub-section (1) of Section 13 of the Act indicates that exemptions under Section 11/12 of the Act would not operate so as to exclude from the total income of the previous year any income, which is directly or indirectly, for the benefit of the person referred to in sub-section (3) of Section 13 of the Act. It is, thus, clear that if any part of the income of a trust for charitable or religious purposes is diverted for the direct or indirect benefit of a person referred



to in sub-section (3) of that Act, that part of the income would not be excluded from the total income of the Assessee by virtue of Section 11/12 of the Act. In other words, the exemption under those Sections would not be available to the extent that the said income of a charitable or religious purposes is applied for the benefit of a person specified in sub-section (3) of Section 13.

22. By virtue of clause (c) of sub-section 2 of the Act if any amount is paid by way of a salary or allowance to a person, which is specified under sub-section (3) of Section 13 of the Act, it would be deemed that the income of the property or trust has been applied for the benefit of that person for the purposes of Clause (c) and (d) of sub-section (1) of Section 13. However, if a person specified under sub-section (3) has rendered any service and the amount or allowance paid to such person is such, that is, reasonably paid for such services, the same cannot be deemed to have been applied for the benefit of the said person for the purposes of clauses (c) or (d) of Section 13(1) of the Act. This is apparent from the plain language of clause (c) of sub-section (2) of Section 13 of the Act. The opening words of the said clause must be read in conjunction with the last words of the said clause – *“If any amount is paid by way of salary, allowance or otherwise in excess of what may be reasonably paid for such services”*. Thus, if the amount paid for services is such as is reasonably payable for such service, the same cannot be construed as applied for the benefit of a prohibited person notwithstanding that it is paid to such a person. Consequently,



such payment would not fall within the exception of clause (c) of sub-section (1) of Section 13 of the Act.

23. The observations made by this Court in *Director of Income Tax (Exemption) v. Charanjiv Charitable Trust (supra)* must be read in the context of the facts of that case.

24. In view of the above the questions of laws as noted in paragraph no.3 of the order is answered in favour of the Assessee and against the Revenue.

25. Although this Court did not note the facts relevant to assessment years 2010-11 and 2011-12. However, the counsel is *ad idem* that the facts are similar in material aspects and the decision in this appeal would be equally applicable in the facts of those cases.

26. The appeals are, accordingly, dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 21, 2025
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