

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.: **480, 481, 482 & 483/Chny/2023**
निर्धारण वर्ष / Assessment Years: 2017-18, 2018-19, 2019-20 & 2020-21

Jeppiaar Educational Trust,
29A, Ganapathy Street,
Royapettah,
Chennai – 600 014.

[PAN: AAATJ-0562-E]

(अपीलार्थी/Appellant)

The Deputy/Assistant
v. Commissioner of Income Tax,
Central Circle -1(3),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. B. Ramakrishnan, FCA

प्रत्यर्थी की ओर से/Respondent by : Shri. R. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing : 24.07.2023

घोषणा की तारीख/Date of Pronouncement : 23.08.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

These four appeals filed by the assessee are directed against common order passed by the Commissioner of Income tax (Appeals)-18, Chennai dated 15.02.2023 and pertains to assessment years 2017-18 to 2020-21. Since, facts are identical and issues are common, for the sake of convenience, these appeals are heard together and are being disposed off by this consolidated order.

2. The brief facts of the case are that, the assessee M/s. Jeppiaar Educational Trust is registered u/s. 12A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), is imparting education and running various educational institutions. A search operation u/s. 132 of the Act was conducted in the case of the assessee on 07.11.2019. During the course of search, seized material Ann/KV/JEC/LS/S, was found which contains details of refund money for four assessment years. It is seen that Ms. Deepitha, Office Assistant, in her sworn statement dated 08.11.2019 has explained the seized document and stated that the trust has paid excess salary to various employees by cheque and received excess amount in cash and the same is recorded as refund money. She further stated that, the refund money has been spent for day-to-day expenses of college including payment of salary to non-teaching staff. This fact has been confirmed by Shri. S.K. Binu Siva Singh and stated that the staff of college are paid as per the norms of AICTE. But, since the college is not doing well in admission and having severe cash crunch to maintain the Department and pay salary to non-teaching staff, staff themselves pool the money out of the salary paid by the trust, to run the college and meet out the

daily expenses and maintenance of the college. The statements of Ms. Deepitha , Office Assistant and in-charge for collecting fees has been put forth to Smt. Regeena J Murali, Managing Trustee of the trust and in sworn statement dated 10.11.2019, she had confirmed payment of salary to staff and receipt of excess money in cash. She further stated that, refund money collected from staff has been spent for day-to-day expenses of college.

3. In pursuant to search, the case was selected for scrutiny and during the course of assessment proceedings, the AO called upon the assessee to explain as to why unaccounted cash receipts should not be brought to tax. In response, the assessee submitted that, refund money from its employees which has not been recorded in the books of accounts is spent for objects of the trust, which includes meeting day-to-day expenses of the trust and payment of salary to non-teaching staff. The Assessing Officer, however was not convinced with the explanation of the assessee and according to the Assessing Officer, unaccounted receipts from employees is outside the books of accounts and thus, opined that expenditure incurred outside books of accounts is nothing but unexplained

expenditure and thus, rejected arguments of the assessee and made additions towards refund money as unexplained expenditure u/s. 69C of the Act.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee has filed a detailed written submission which has been reproduced at Para 9 of page 9 to 12 of Id. CIT(A) order. The sum and substance of arguments of the assessee before the Id. CIT(A) are that the refund money received from employees has been utilized towards the objects of the assessee. The assessee further contended that the trust is having severe fund crunches due to poor admissions and because of this, the employees themselves pool funds to maintain day-to-day affairs of the college and also pay salary to non-teaching staff. Although, amount received from employees and expenditure incurred is outside the books of accounts, but fact remains that the trust has spent amount towards objects of the trust, which is more than 85% required to be spent in any financial year. Therefore, even assuming for a moment, refund money is excluded from the expenditure incurred for objects of the trust, still the trust has spent more

than 85% for the objects of the trust and thus, the question of taxation of refund money does not arise.

5. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of various facts opined that, amount received from employees and spent for objects of the trust cannot be included in the accumulated receipts to calculate 85% applied for objects of the trust, because inflating salary and refund money received from employees should not form part of amount applied for charitable purpose, whether it is 85% or more. Further, the onus is on the assessee to provide necessary evidences for the money received from employees has been spent for the very objects of the trust. Since, the assessee could not furnish necessary evidences towards expenditure incurred for objects of the trust, the Id. CIT(A) opined that excess salary paid to staff and received in cash amounts to appropriation of income of the trust for the personal benefit of trustee, in violation of provisions of section 13(1)(c) of the Act, and thus, rejected arguments of the assessee and sustained additions made by the Assessing Officer towards refund money as income of the trust. The relevant findings of the Id. CIT(A) are as under:

"10. DECISION ALONG WITH REASONS:

10.1 *After considering the assessment orders and submissions of the assessee, the admitted facts are as under:*

a. The assessee, M/s. Jeppiaar Educational Trust is engaged in education related activities. A search and seizure operation u/ s. 132 was conducted in the assessee case on 7.11.2019.

b. During the course of search in the case of the assessee trust on 7.11.2019, it was noticed from page nos.1 to 7 of seized material (Ann/ KV /JEC/LS/ S} that the assessee trust has received 'refund money' of Rs.82,34,693 (AY 2017-18); Rs.2,66,20,836/- (AY 2018-19); Rs. 1,74,74,677/- (AY 2019-20) and Rs.57,86,895/- (AY 2020-21) in cash from its employees after paying inflated salary to them by banking channel. The managing trustee of the assessee Smt. Regeena Jeppiaar has accepted this inflated expenditure and stated that this unaccounted cash receipts was meant to meet the day to day expenses of the trust. The trustee also stated that this entire process was carried out outside the regular books of account and thus, the entire cash sum of Rs.82,34,693/-(AY 2017-18); Rs.2,66,20,836/- (AY 2018-19); Rs.1,74,74,677/- (AY 2019-20) and Rs.57,86,895/- (AY 2020-21) involved in this process is not accounted.

c. The AO after issuing statutory notices completed the assessment by adding the unaccounted expenditure out of refund money received from employees u/s. 69C of Rs.82,34,693/- (AY 2017-18); Rs.2,66,20,836/- (AY 2018-19); Rs.1,74,74,677/- (AY 2019-20) and Rs.57,86,895/- (AY 202021) respectively.

d. The trustee Smt.Regeena Jeppiaar merely claimed that the inflated salary received back from employees in cash was utilized for the purpose of meeting day-to-day expenses of the trust without specifying the nature and extent of expenditure for each item.

e. The assessee did not submit the details of expenses incurred for the purpose of meeting day-to-day needs of the trust either during the course of the assessment proceedings or the appellate proceedings.

10.2 In the light of the above undisputed facts, it is to be decided whether the amount received back from the employees in cash and unaccounted in the books of the assessee trust is taxable or not.

10.3 Firstly, the amount received back from the employees is not accounted in the books of account of the assessee trust. Thus, the money received is not part of the accounted accumulations of the assessee. Section 11 of the Income-tax Act, 1961 provides exemption when 85% of the accumulated receipt is spent/ invested in accordance with the provisions of that section in the manner prescribed; this does not mean that the balance amount can be used by the trustees in any manner they want; the condition means the balance 15% of the accumulation or any residual thereof, which is not applied during the year should remain in the trust and they had to be applied only for the purposes provided in the objects of the trust. Similarly, any part of the so spent/invested of 85% is actually not spent/invested, as in this case where the inflated salary has been received back, would not also form part that the applied amount, whether it is 85% or more. The very fact that the money received is not accounted in the books of the assessee trust shows that it is not part of application of income of the assessee trust. It is straight away taxable as unaccounted receipt of the assessee trust not forming part of its accumulation for application.

10.4 Assessee has taken a ground as follows:

Assuming but not admitting that the refund money is not allowable as application of funds the learned AO erred in not considering the explanation of the appellant trust that no addition is required as the application of funds is more than 85 per cent of income of the Trust and consequently no tax is liable to be paid.

The assessee's argument in this ground is, even if the salary expenses are restricted to the correct amount disallowing the inflated amount, the application exceeds

85% and so, there is no problem for exemption u/ s 11. The argument of the assessee is fallacious. The inflated salary expenses are received back from the employees in cash and has been kept away from the accounts of the assessee trust and hence such recovered amount cannot form part of the accumulated receipts of the assessee trust to calculate 85% on it. The amount received back unaccounted by the assessee trust is hence separately taxable as it cannot form part of the accumulated receipts for consideration u/ s 11.

10.5 Even if the unaccounted money is treated as receipt forming part of the accumulation (which is not the case), even then, the entire onus is on the assessee to provide sufficient and necessary evidence that the money claimed as expenditure but received back has been spent for the very objects of the trust. The fact that the managing trustee has to resort to inflating salary expenses and receive back from the said employees in cash and keeping it out of the accounts of the assessee trust shows that the money has not been utilized for the purposes of the Trust. This is nothing but breach of the trust by the Managing Trustee. Section 11 of the Income-tax Act, 1961 starts with the sentence, "Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income". Therefore, the money first shown as expenditure by way of inflated salary and received back in cash but unaccounted, shall not be entitled for exemption provided under section 11 of the Income-tax Act, 1961 in view of the provisions of Section 60 to 63 of the Income-tax Act, 1961 which provides that the amount not spent in accordance with the objects of the trust shall be deemed to be the income of the trust.

10.6 As stated earlier, the issue here is whether the amount received back from the employees in cash under the above facts and circumstances is taxable or not. When the assessee has not even given the details of the expenditure claimed to have been incurred with any proof out of the amount received back from the employees, the claim of the assessee that they were spent for the day-to-day affairs of the trust is not entertain able at all. The obligation and onus is on the

managing trustee to prove with evidence that the said amount(s) were spent for the stated objects of the Trust. As there is a breach of the trust in this regard, the claim of the assessee that the amounts were spent as expenditure for the trust cannot be accepted.

10.7 Seen from this context, the AO's assumption that the assessee has incurred expenditure is not correct when the assessee or its managing trustee had failed to furnish the details of such expenditure which had been spent for the objects of the Trust out of the money received unaccounted. For invoking section 69C for making an addition, there must be: (i) expenditure incurred; (ii) such expenditure incurred are not recorded in the books; and (iii) the source for the expenditure incurred remains unexplained. Here, there is no proof of expenditure incurred in the first place out of the money received unaccounted and so the first condition itself is not satisfied and therefore, section 69C cannot be invoked. Other crucial aspects of the taxability of the amount received back from the employees in cash are discussed hereinafter.

10.8 The onus of proving the fact that the cash received back from the employees was utilized for meeting the day-to-day expenses towards the objects of the trust squarely lies on the managing trustee as it is claimed by her so. Reliance is placed on section 106 of the Indian Evidence Act also which reads as under:

Section 106 in The Indian Evidence Act, 1872

106. Burden of proving fact especially within knowledge.--When any fact s especially within the knowledge of any person, the burden of proving that fact; upon him. Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of Proving tho± intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden o prove, that he had a ticket is on him.

The fact that the cash received back claimed to have been used for day-to-day expenses of the trust should have been within the knowledge of the managing trustee Smt. Regeena Jeppiaar and therefore it is for her to prove the nature and extent of the expenditure incurred for the trust but the same has not been discharged by her. In the circumstances the only inference is that it was appropriated by the managing trustee towards personal use and thereby there is violation as mentioned in section 13(1)(c). Therefore, show cause notice has been issued to the assessee for invoking section 13(1)(c).

*10.9 In response, the assessee simply reiterates that the amount received back from the employees had been utilised towards the objects of the trust without any evidence. If the expenses are towards the objects of the trust, there is no need of inflating the salary expenses in the first place, then recovering the inflated part from the employees in cash and incurring the expenditure for the objects of the trust thereafter. If the expenses claimed to have been incurred are towards the objects of the trust, what prevented the assessee to debit them in *the* profit and loss account itself? If the expenses claimed to have been incurred are towards the objects of the trust, what prevented the assessee to furnish the details of such expenses with proof? The very fact that details of the expenses not furnished with any proof by itself shows the expenses claimed to have been spent outside books are not towards the objects of the trust.*

10.10 It is clear that the assessee has inflated the salary expenses. It is also clear that the assessee has recovered the inflated amount from the employees in cash. It is further clear that the recovered amount has not been accounted by the assessee trust in its books. Now, the assessee simply claims that the recovered amount remaining unaccounted in the books of trust was spent for the day-to-day expenses of the trust. Then, it is for the assessee who claims it was spent for the trust to prove the claim. The assessee has not discharged the onus. The assessee has not discharged the initial burden of proof on it. Only when it gives the details of the expenses incurred for the trust along with proof out of the unaccounted recovery- amount, then only the onus could shift to the department. Having not discharged its

onus, alleging that the department has not discharged the onus is against the basic principles of jurisprudence.

10.11 The assessee trust has not accounted the recovered amount from employees in cash in its books, meaning it is not available with the trust. Where is the amount then? It is a natural corollary that if the amount recovered are not accounted in the books of the trust, then the managing trustee who manages the affairs of the trust is answerable to the amount by virtue of section 13(1)(c). No satisfactory answer has come. Thus, the initial onus has not been discharged. A self-made bald claim that the amount was spent towards day-to-day expenses of the trust without any details without any evidence cannot at any stretch be taken as discharging of the initial burden of proof. Thus, at no point of time the onus shifted to the department. If the amount is to be spent for the day-to-day affairs towards the object of the trust, then where is the need to inflate the salary expenses in the first place? Where is the need to recover it in cash then? Where is the need to keep the recovered amount unaccounted? Where is the need for the trust existing for public charitable trust to spend for its legitimate purposes from such unaccounted recovered amount? All the above clearly leads to the inevitable conclusion that the unaccounted recovered amount siphoned out of the books of the trust in cash is with the managing trustee who manages the affairs of the trust in terms of section 13(1)(c), which has not been satisfactorily rebutted by the assessee/ managing trustee. The writing is very clear on the wall; it needs no further proof and it goes without say.

10.12 The fact that the recovered amount in cash is not available with the trust is clear by the fact that it was not accounted in the books of the trust. No proof has been given that the recovered unaccounted amount in cash was spent towards the objects of the trust. Now, it is for the assessee to explain how the managing trustee who manages the affairs of the trust utilized the amount. Silence clearly leads to the inference of section 13(1)(c), read with the Evidence Act. It is more so, in the civil proceedings where the preponderance of probability is enough.

10.13 The assessee relied upon the following decisions: (i) The Hon'ble High Court of Gujarat in the case of M/s.Surat City Gymkhana v. Deputy Commissioner of Income Tax [2002] 125 Taxman 82 (Gujarat), (ii) The Hon'ble High Court of Calcutta in the case of M/ s.Devi Kamal Trust Estate v. Director of Income-tax (Exemption), Kolkata [2017] 79 taxmann.com 212 (Calcutta) and (iii) The Income Tax Appellate Tribunal, Agra Bench in the case of M/s.Amol Chand Varshney Sewa Sansthan v. Additional Commissioner of Income-tax, Range -I, Aligarh [2013] 33 taxmann.com 366 (Agra - Trib.). The facts in those cases are entirely different: In the first case (i), the issue is of recording reasons for reopening beyond 4 years involving section 13(1)(c) without any direction to that effect from the earlier ITAT ruling. In the second case (ii), the fact involved is assessing repayment of loan to trustee for want of details of initial payment of loan by the trustee to the trust. In the third case (iii), the fact involved is assessing the difference in cost of construction of building. Thus, it can be seen the facts involved in the instant assessee's case are totally distinguishable from these three cases. In the instant case, the facts are: the assessee inflated the salary expenses; recovered the inflated amounts in cash from its employees; not accounted such recoveries in its books keeping the money away from the trust, meaning recovered money being not available to the trust, leading to the inference that the recovered money has to be in the hands of the managing trustee who manages the affairs of the trust. Here, the assessee claims that the unaccounted recovered money was spent for the day-to-day expenses towards the objects of the trust. As per the basic tenet one who claims has to prove it. Here the assessee failed to prove it in spite of several opportunities given to it. Assessee has not proved its claim during the search proceedings, or during the post search investigation proceedings, or during the assessment proceedings or even during the present appellate proceedings. Thus, the decisions quoted by the assessee go in fact in favour of department, in the sense, the initial onus is on the assessee who claimed that the unaccounted recovered cash was spent for the objects of the trust to prove the claim, which the assessee failed. If the expenses are for the trust, there is no need of inflating the salary

expenses in the first place, then it has to be recovered in cash, then such recovered cash kept unaccounted in the books of trust and then to apply for the trust!!! The claim is totally illogical and cannot be accepted at any stretch. It all goes without say, only when the amount was to be siphoned out of the trust in cash for to be kept with the managing trustee, all these things would happen. In other circumstances, such things could not happen. Thus, the case of the assessee is nothing but breach of trust by the managing trustee who has failed to secure the trust money which is meant for the beneficiary of the trust.

10.14 There is no presumptions, suspicion and surmise involved here as claimed by the assessee: Inflation in salary expenses for all the four years is a fact; recovery of such inflated amount in cash for all the four years is a fact; not accounting such recoveries in the books of the assessee trust is also a fact for all the four years; the claim that the unaccounted recovered money having been spent for the specific objects of the trust, not having been proved with any iota of evidence for all these four years is also a fact. These clinching facts prove that the unaccounted recovered money is with the managing trustee who manages the affairs of the trust. This modus operandi of defaults have not happened just in one year, but has been perpetrated consistently by the assessee for all the impugned years, knowing fully well that these things cannot be done in a public charitable trust. The duty of the managing trustee is to ensure that the money of the trust is spent only for the stated objects and if there is any failure, she is accountable and answerable for the same on behalf of the trust. In view of the above apparent failures, the onus is on the managing trustee to show that the recovered money is spent only towards the stated objects of the trust. All the above facts prove beyond the preponderance of probability that the recovered money has been siphoned off for the individual benefit of the managing trustee who manages the affairs of the trust. In view of the above facts, the decisions cited by the assessee in this regard are not applicable, as this is a case of breach of trust by the Managing Trustee.

10.15 The assessee further claimed:

8. It is also submitted that the Assessing Officer in para 4.1 at page 2 of his order had stated that - Smt. Regeena Jeppiaar, Trustee of the appellant trust had accepted that the inflated expenditure of salary being received back as unaccounted cash receipt were meant to meet the day-to day expenses of the Trust. From the statement recorded from Smt.Regeena Jeppiaar, it is clear that these funds were utilised to meet day-to day expenses of the appellant Trust and Your Authority has not brought on record any evidence to prove it otherwise. Thus, by no stretch of imagination it could be said that income was used or applied directly or indirectly for the benefit of the Trustees to invoke the provisions of section 13(l)(c) of the Act.

In this connection, it is submitted that the sworn statement forms a part of the seized material and has to be considered in toto. The Department cannot consider one part of the sworn statement which is favorable to it and completely ignore the balance.

10. In this regard, reliance is placed on the judgment of Hon'ble Income Tax Appellate Tribunal, Mumbai Bench in the case of DCIT v. Kanika Hospitality (P.) Ltd [2019] 110 taxmann.com 4 (Mumbai - Trib.) wherein it was held that The view taken by the Assessing Officer could not be accepted, the contents of a 'seized document' are to be read in toto, and it is not permissible on the part of an Assessing Officer to dissect the same and therein summarily accept the same in part and reject the other part."

The AO observed in his order that the managing trustee had accepted in the sworn statement that the salary expenses have been inflated and the amount received back in cash remained unaccounted. She also stated that the unaccounted cash receipts were meant to meet the day-to-day expenses of the Trust. The AR argues that if the AO accepts that portion of the statement relating to inflation of salary expenses, recovery of the same from employees in cash and kept it out of the trust by not recording it in the books of the trust, then he ought to accept the statement that it was meant to meet the day-to-day expenses of the trust also, by relying on the Mumbai Tribunal decision reported in 110 taxmann.com 4. The AR misinterprets the decision; there is no such rule that if the part of the statement is accepted, the remaining part of the statement should

also be accepted without any evidence. Only in a page of seized material, if certain entries are taken, then remaining entries should also be taken as such; AO cannot rely on certain entries on the page and ignore certain other entries in the very same page. Statement recorded u/ s 132(4) is not a seized material and so, the interpretation of the Hon'ble Mumbai Tribunal decision by the AR is wrong. Inflation of salary is an undisputed fact; recovery from the employees in cash is an undisputed fact; keeping it out of the books of trust by not recording such receipt is also an undisputed fact. The dispute is with respect to the averment of the managing trustee that it was meant to meet the day-to-day expenses of the trust; this averment all along remains only as a bald self-claim without any iota of evidence. And so, there is no case to accept such averment. When the recovered money is not in the books of the assessee trust and when averment of the managing trustee remains unproved, the natural corollary is that the amount remained siphoned out of the books of the trust with the managing trustee by the above means and so, section 13(1)(c) is rightly invoked here.

10.16 In any case there is no material on record brought by the assessee to prove that the cash received back from employees was applied for meeting the objects of the trust, except making a vague claim in the statement recorded and therefore it cannot be allowed as exempt under section 11 and 12 and therefore the AO is correct in taxing the income and hence the additions made by the AO are confirmed for all the four assessment years. But as already stated the action of the AO in making a reference to section 69C is not correct because there is no proof for expenditure incurred by the trust out of the cash received from employees and there is no scope for invoking section 69C, which can be applied only if the trust had incurred certain expenses which are not recorded in the books of accounts and the assessee is unable to give satisfactory explanation regarding the nature and source of such expenses, which is not the case here. In the nutshell, the inflated salary recovered in cash kept away unaccounted from the books of the assessee trust is taxable due to the following reasons:

The unaccounted receipt of the recovery of inflated salary in cash is not forming part of the assessee trust's accumulation for application and so, it is outside the purview of section 11. Therefore, it is taxable as the unaccounted income of the assessee trust not coming under the ambit of section 11.

The money first shown as expenditure by way of inflated salary and received back in cash but unaccounted, shall not be entitled for exemption provided under section 11 in view of the provisions of Section 60 to 63 which provides that the amount not spent in accordance with the objects of the trust shall be deemed to be the income of the trust.

Inflation of salary expenses, recovery from the employees in cash, and not accounting such recovered money in the books of the assessee trust are all not in accordance with law under Income tax Act as well as Indian Trusts Act. As these proceeds are not as per law, exemption u/s 11 cannot be given on them and hence they are taxable as unaccounted income of the trust.

Inflation of salary expenses, recovery from the employees in cash as admitted by the managing trustee, not accounting such recovered money in the books of the assessee trust, and the managing trustee who manages the affairs of the trust not explaining what has happened to the amount with any evidence leads to the inference that it is taxable by invoking section 13(1)(c).

The additions made by the AO are confirmed in view of the above reasons in this order and shall be subject to maximum marginal rate of tax as provided in the proviso to section 164(2) as explained by CBDT circular 387 dated 06.07.1984."

6. The Ld. Counsel for the assessee, submitted that the Id. CIT(A) erred in invoking provisions of section 13(1)(c) of the Act and consequent levy of tax at maximum marginal rate as

per provisions of section 164(2) of the Act, without appreciating the fact that, the amount received back from employees salary and not recorded in the books of accounts has been spent towards objects of the trust. The Ld. Counsel for the assessee, referring to a chart showing income of the trust and amount of application for objects of the trust submitted that, from assessment year 2014-15 to 2020-21, the assessee has spent over and above 85% of income required to be spent for objects of the trust. Further, even if you exclude refund money from application of income, still the amount spent for objects of the trust is more than 85% of gross income. Therefore, once having accepted the fact that amount spent for the objects of the trust is over and above required amount of income to be spent for objects of the trust, then the question of taxation of refund money does not arise. The Ld. Counsel for the assessee, further submitted that the Id. CIT(A) completely erred in invoking provisions of section 13(1)(c) of the Act without bringing on record any cogent material/evidence to prove that said money has been used for the benefit of persons referred to in section 13(3) of the Act. He further referring to statement recorded from employees and managing trustee of the trust submitted that, all the

parties have accepted fact that the refund money has been spent for the objects of the trust, therefore, once it is accepted fact that money collected from employees has been spent for the objects of the trust, the best method to compute income is include receipts in the gross receipts of the trust and then compute application of income to ascertain any surplus. In the present case, if you exclude refund money in gross receipts, still amount spent for objects of the trust is more than 85% threshold limit and thus, the question of taxation of the said money does not arise.

7. The Id. CIT-DR, Shri. R. Clement Ramesh Kumar, supporting order of the Id. CIT(A) submitted that, the statements recorded from employees and trustee clearly reveals that the assessee is taking away money from the trust in the form of salary paid to staff. Although, the assessee claims to have spent excess salary paid to staff for day-to-day expenses of the trust, but no evidence has been produced before the Assessing Officer and the Id. CIT(A) to substantiate its claim. Further, when the assessee is taking away money from the trust, it is for the assessee to furnish necessary evidences to prove that said money has been spent for objects

of the trust. Since, the assessee could not furnish any evidences to justify its claim, the Assessing Officer has rightly taxed refund money and the Id. CIT(A) has rightly invoked provisions of section 13(1)(c) of the Act.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the appellant trust is paying salary as per AICTE norms to its employees and taking back excess salary in cash, which is evident from incriminating material found during the course of search, which contains details of refund money received from staff for four assessment years. It is also not in dispute that one employee Ms. Deepitha, Office Assistant admitted that amount collected from employees as per directions of Shri. Gopinath, HR, and spent for day-to-day expenses of the trust and hand over balance cash to Shri. Gopinath, HR. It is a routine practice, where Ms. Deepitha hands over the balance amount in the evening and next morning Mr. Gopinath hands over the same to Ms. Deepitha for day-to-day expenses, and this fact has been confirmed by Mr. Gopinath. This fact is also strengthened by the statement of Shri S.K. Binu Siva Singh,

Assistant Professor, where he had clearly stated that refund money collected from staff has been spent for maintenance of college and to pay salary to non-teaching staff, because of cash crunches and also for poor admission during these assessment years. The statement of employees have been put forth to Smt. Regeena J Murali, managing trustee of the trust and in reply to specific question, she had been admitted the fact that payment of salary to staff was by received back money in cash. She, further admitted to have spent said amount for day-to-day expenses of the trust.

9. In light of above factual position, if you see the reasons given by the Id. Assessing Officer and Id. CIT(A) to make additions towards refund money as income of the trust, we find that the Assessing Officer has made additions towards refund money as unexplained expenditure u/s. 69C of the Act, on the ground that the source for expenditure has not been explained by the assessee. We do not find any merit in the reasons given by the Assessing Officer to make additions u/s. 69C of the Act, for the simple reason that the source is already known, which is out of excess money collected from employees. The only objection of the Assessing Officer is with

regard to evidence for expenditure claimed to have been incurred by the assessee. In our considered view, the statement of the employees are very clear in as much as the source of money is out of amount received from employees and the nature of expenditure is day-to-day maintenance of various departments of the assessee trust and also payment of salary to non-teaching staff. Once, nature of expenditure and source is explained, then the question of making additions towards refund money as unexplained expenditure u/s. 69C of the Act does not arise.

10. Coming back to the observations of the Id. CIT(A), although the Id.CIT(A) negated observations of the Assessing Officer in bringing to tax refund money u/s. 69C of the Act, but the Id. CIT(A) went on to tax said sum by invoking provisions of section 13(1)(c) of the Act. As per the provisions of section 13(1)(c) of the Act, any income/ property of the trust is used or applied or ensured for the benefit of any person referred to in section 13(3) of the Act, then the sum of amount utilized for the benefit of persons referred to in section 13(3) of the Act is not eligible for exemption u/s. 11 of the Act. In the present case, it is a fact that the amount received from employees as

refund money was utilized for the objects of the trust, which is established from the statements recorded from various employees at the time of search and even not disputed by the Assessing Officer while completing the assessment. In any event, the onus lies with the Department to establish the applicability of provisions of section 13(1)(c) of the Act, by bringing on record cogent material/evidences for utilization of said sum for the benefit of persons referred to in section 13(3) of the Act. Unless, the Assessing Officer proves that amount has been used for the benefit of trustee, the question of taxing amount received from employees as violation referred to u/s. 13(1)(c) of the Act does not arise. Further, the statements of employees clearly established the fact that the employees themselves pool funds for day-to-day maintenance of the college and to pay salaries to non-teaching staff, because of severe fund crunches and also poor admission in those assessment years. From the above, it is very clear that excess salary paid to staff and received back in cash and spent for objects of the trust is not utilized for personal benefit of trustee or relative of the trustee as referred to u/s. 13(3) of the Act and consequently, the CIT(A) has erred in invoking provisions of section 13(1)(c) of the Act.

11. Coming back to the factual aspect of the issue. The appellant has furnished statement of gross receipts of the trust and application of income for objects of the trust for assessment years 2014-15 to 2020-21. From the statement, we find that for assessment year 2017-18 to 2020-21, the appellant has spent for objects of the trust more than 85% of gross receipts as prescribed under the law, even after the exclusion of excess salary paid to staff. Further, even if refund money is included in gross receipts, and compared with amount spent for objects of the trust, then amount spent for objects of the trust is more than 85% required to be spent in any financial year. Therefore, we are of the considered view that, on this account also refund money received from employees and spent for objects of the trust cannot be taxed as income of the appellant. The Id. CIT(A), without appreciating relevant facts simply sustained additions made by the Assessing Officer towards refund money as income of the appellant trust. Thus, we set aside the order passed by the CIT(A) and direct the Assessing Officer to delete additions made towards refund money as unexplained expenditure u/s. 69C of the Act for assessment years 2017-18 to 2020-21.

12. In the result, appeals filed by the assessee for all four assessment years are allowed.

Order pronounced in the court on 23rd August, 2023 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /Vice President

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd August, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF