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% 06.08.2008

Present: Mr R. D. Jolly with Mr Paras Chaudhary  
for the Appellant.

+ CM No. 10222/2008 in ITA 879/2008

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Allowed subject to all just exceptions.

ITA 879/2008

This appeal has been preferred against the Tribunal's order dated 12.10.2007 in respect of the assessment year 2002-2003. The Assessing Officer had denied the exemption to the assessee under Section 11 on the purported ground that the provisions of Section 13(1) of the Income Tax Act, 1961 had been contravened. However, no definitive finding in respect of the year previous to the assessment year in question had been returned. The Assessing Officer merely relied on certain observations which were made in respect of the block assessment. The finding of the Assessing Officer was overturned by the CIT (Appeals). The said order of the CIT (Appeals) was upheld by the Income Tax Appellate Tribunal. The Tribunal came to the following conclusion:-



“20. On considering the entire material to which reference was made by the learned representatives of the parties before us at the time of hearing and in particular after examining the copy of Memorandum of Association of Rules & Regulations of the Society available at page 20 of the Paper Book which contains list of Members of the Managing Committee as well as on examining of the auditor's report in Form No.10B, it is found that the Assessing Officer has not made any serious attempt to ascertain the correct facts. He has simply made certain observations which bear no relevant in so far as the assessment year 2002-03 is concerned. There is no justification on the part of the Assessing Officer to draw adverse inferences against the assessee society merely on the basis of vague observations while applying the so-called observations made in the block assessment proceedings. He has completely overlooked the fact that each assessment year has to be considered independently. So far as the violation and infringement of provisions contained section 13(2)(a) or (b) are concerned, definite and specific evidence has to be collected and shown for proving such infringement. In the instant case, it is not brought on record as to how and in what manner, which part of income or which part of property was lent to any person referred in section 13(3) without adequate compensation. A conjoint reading of sections 11 & 13 shows that for rejecting claim of the assessee for exemption of income in relation to a particular amount of such income, the Assessing Officer has to prove the case by correlating the



particular amount to such infringement. The burden absolutely lies on the revenue. In the instant case the Assessing Officer has not discharged this burden and has rejected the claim of the assessee without bringing out any material to justify his action. On the other hand, so far as the material brought on record shows no part of the income of the society is utilized for the benefit of members of the society. This is evident from the auditor's report also. There is no addition to the common asset as Virendra Gram during this year. In absence of any positive material that funds of the school were utilized for the personal benefit of members, the violation of section 13 cannot be proved. Further, as pointed out by the assessee in earlier and in subsequent years, the exemption was granted to the assessee and therefore, in view of the rule of consistency also, in this year a divergent view cannot be justified.

21. In view of the above and on considering the totality of the facts as also the circumstances, we do not find any infirmity in the order of the learned CIT(A), which is upheld by us and consequently the ground taken by the revenue is rejected.”

We see no reason to take a different view. Nothing has been brought to our notice which would show that any of the findings returned by the CIT (Appeals) and confirmed by the Tribunal are



perverse to the evidence on record. No substantial question of law arises for our consideration.

The appeal is dismissed.

*Badar Durrez Ahmed*  
BADAR DURREZ AHMED, J

*Rajiv Shakdher*  
RAJIV SHAKDHER, J

August 06, 2008  
SR