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

+ ITA 881/2010

DIRECTOR OF INCOME TAX (EXEMPTIONS) Appellant
 Through: Mr. Abhishek Maratha, Advocate
 with Ms. Anshul Sharma,
 Advocate.

versus

MANAV BHARTI INSTITUTE OF CHILD
 EDUCATION & CHILD PSYCHOLOGY Respondent
 Through: None.

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Date of Decision: 13th July, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

MANMOHAN, J (Oral)

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act 1961") challenging the order dated 27th November, 2009 passed by the Income Tax Appellate Tribunal (in short



“ITAT”), for the assessment year 2005-2006.

2. Mr. Abhishek Maratha, learned counsel for revenue submitted that ITAT was not justified in allowing the assessee to have benefit of Section 11 of the Act, 1961 as there was clear infringement by the assessee of Section 13(1)(c) of the Act, 1961.

3. However, on perusal of the impugned order, we find that ITAT has given cogent reasons for rejection of the revenue appeal. The relevant portion of the impugned order is reproduced hereinbelow:-

“5. Ground No.1 is regarding denial of deduction w/s 11 on account of the fact that benefit was given to prohibited persons. As seen from the orders of authorities below, three persons have been listed for this purpose. Mrs. Bharti Pandey was the Principal of the institution and she was also looking after the boarding school. She was paid salary and she was also provided residential accommodation and attendant facilities, which included the facility of a car and telephone. The ld. CIT (Appeals) mentioned that these payments and facilities were made and provided in earlier years also. 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. On the other hand, the assessee showed that she owned a car of her own and mobile telephone for personal use and, thus, there was no personal use of the car and telephone provided to her. Before us also, the ld. DR has not been able to bring any evidence or argument to rebut the aforesaid findings given by the ld. CIT(Appeals). Thus, the fact on record is that she was paid salary and provided facilities which were reasonable when compared with services rendered by her.



In view thereof, we do not find any merit in invoking section 13(1)(c) as payment and provision of facilities did not constitute any benefit provided to her.

5.1 In regard to Mr. Prashant Pandey, it was mentioned by the ld. CIT (Appeals) that he is a qualified architect and was appointed as Bursar to look after general administration, building maintenance and construction of a new block. He was paid gross salary of Rs.2,24,379/-. The AO brought nothing on record to show that the salary was excessive having regard to services provided by him. Therefore, it was held that no benefit was provided to him also so as to lead to infringement of provision contained in Section 13(1)(c). In this case also, the ld. DR has not been able to bring any evidence or argument that the salary paid was excessive having regard to the services provided by him. Therefore, as in the case of Mrs. Bharti Pandey, we have no reason to interfere with the findings of the ld. CIT(Appeals) in this matter.

5.2 In regard to Mr. Nikhil Pant, it was mentioned that he is Civil Engineer from National Institute of Technology, Allahabad. He has rendered services at various places with which he gained sufficient experience. He was appointed as counselor in the institution and the salary paid to him was Rs.1,60,338/-. There was no evidence on record that this salary was excessive. Before us also, the ld. DR was not able to bring any evidence on record that the payment was excessive having regard to services rendered by him. Consequently, we do not find any reason to interfere with the findings of the ld. CIT (Appeals) in this matter also.”

4. In our opinion, the issue whether the assessee has violated Section 13(1)(c) by utilizing the assets of the society for benefit of persons specified under Section 13(3) of the Act, 1961, is essentially a question of fact. Since both the Commissioner Income Tax (Appeals) and ITAT have given cogent reasons for concluding that money paid by



the assessee was for the services provided and the amount paid was excessive, we are of the opinion that no substantial question of law arises in the present proceedings.

5. Consequently, the present appeal being devoid of merits stands dismissed in limine but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

JULY 13, 2010

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