

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 687/Chd/2018
निर्धारण वर्ष / Assessment Year : 2010-11

The Sikh Educational Society Shiromani Budha Dal, Punjawan Takhat (Regd.), Lower Mall, Patiala(Punjab)	बनाम	The Addl. CIT Patiala Range Patiala
स्थायी लेखा सं. / PAN NO: AADTS3991B		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA NO. 874/Chd/2018
निर्धारण वर्ष / Assessment Year : 2010-11

The Jt. CIT(OSD) Circle-1(Exemption), Chandigarh	बनाम	The Sikh Educational Society Shiromani Budha Dal, Punjawan Takhat (Regd.), Lower Mall, Patiala(Punjab)
स्थायी लेखा सं. / PAN NO: AADTS3991B		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Vibhor Garg, C.A
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT, DR
सुनवाई की तारीख/ Date of Hearing : 08/05/2024
उदघोषणा की तारीख/ Date of Pronouncement : 21/06/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the Assessee called Sikh Educational Society Patiala, Punjab. The Assessment Year is 2010-11.

2. The assessee is aggrieved by order of Ld. CIT(A) dt. 28/03/2018 in Appeal No. 87/IT/CITA/PTA/13-14 passed under section 250(6) of the Income Tax Act, 1961, which is hereinafter referred to as the "**impugned order**". The assessee was in first appeal before the Ld. CIT(A) against assessment order dt. **30/03/2013** which was passed by Additional Commissioner of Income Tax, Patiala Range, Patiala, Punjab which order is hereinafter referred to as "AO's order".

Factual Matrix

3. Return declaring **NIL** income by availing exemption **u/s 11** of the Income Tax Act, 1961 was filed on **15/10/2010** by the assessee wherein **exemption** under section 11 of the Income Tax Act, 1961 was sought and claimed. Section 11 of the Income Tax Act, 1961 which falls under **Chapter III** and broadly deals with **income which do not form part of total income**. In specific section 11 falls under **heading** Income from Property **held** for charitable or religious purposes. The return of income was processed under section 143(1) of the Income Tax Act.

4. Thereafter, the above return of income was **selected under scrutiny** as per the guidelines issued by the **CBDT** and after seeking the prior approval of the Commissioner of Income Tax, Patiala. Statutory notice u/s 143(2) was issued on 22.09.2011 which was duly served upon the assessee on 27.09.2011. Subsequently, a detailed questionnaire alongwith notices u/s 143(2) & 142(1) were issued on 29.08.2012. In response to which Sh. Ajay Garg, C.A., Sh. K.P. Bajaj, Advocate alongwith Sh. Ravinder Singh Accountant attended the assessment proceedings from time to time and the case was discussed with them. Detailed information and the documents, as called for, were filed which were examined and placed on record.

5. That during the year under consideration the assessee society was found to be **running schools at Patiala, Zirakpur ad Samana**.

6. In the income and expenditure account of the assessee society gross receipt of Rs. 6,04,44,999/- is shown. This gross receipt is inclusive of income transferred from Patiala and Samana schools to the extent of Rs. 4,63,77,474/- and Rs. 75,26,662/- respectively.

7. The assessee society has shown the net income of Rs. 3,66,78,419/-. The assessee claimed exemption under section 11 of the Income Tax Act, 1961.

8. The assessee society claimed capital expenditure of Rs. 6,61,52,498/- on account of construction of building.

9. The assessee society was called upon to justify and substantiate the aforesaid **capital expenditure** as claimed by them in the computation sheet with the documentary evidence in support thereof.

10. During the Financial Year **01/04/2009 to 31/03/2010** relevant to the A.Y. 2010-11 the gross receipts and expenditure of the society from various sources as worked out is as under:

Expenditure including depreciation.	Expenditure	Income receipts.	Gross	Capital Expenditure
Samana	11427470	18954132		1130287
Patiala	37699750	84077224		6664172
Zirakpur	3373077	2651392		8076586
Society	22974168	7733275		47476722
	75474465	113416023		63347767

11. From the above chart, the percentage of the utilisation of income of the society is worked out as under:

Total receipts of the society	Rs. 11,34,16,023/-
85% of Rs. 11,34,16,023/-	Rs. 9,64,03,619/-
Amount utilized by the Society	Rs. 7,54,74,465/-
Difference between amount utilized and 85% of the gross receipts	Rs. 2,09,29,154/-

12. The assessee society thus claimed capital expenditure of Rs. 6,33,47,767/-.

13. During the course of assessment proceedings, the assessee was asked to file the sanction order/ site plan approval from the Competent Authorities to construct the buildings at Patiala, Samana and Zirakpur. The assessee has failed to file the site plan approval from the competent authorities. The assessee has only filed the copies of the **site plan prepared by Ar. L. R. Gupta, Registered Architect, C.A. -78/4735, -FIIA12536, a prop. Of M/s Unique Architects**, SCO-51, First Floor, Leela Bhawan Complex, Patiala. The Prop. Of

M/s Unique Architects, is the Engineers, Planners, Interior Designers, Valuers, and Industrial Consultants. **Sh. L.R. Gupta, has certified that the buildings were planned and designed and supervised by him for The Sikh Educational Society Shiromani Budha Dal Punjawan Takhat (Regd.) Lower Mall, Patiala.**

14. **Enquiries** were conducted from the Municipal Corporation, Patiala, Municipal Councils, Zirakpur and Municipal Council, Samana regarding the approval granted to the society by them for construction of building within their jurisdiction. The Municipal Corporation, Patiala has reported in its letter No. 3079/Bld/ dated 20-3-2013, that as per records of the corporation, the Management of Budha Dhal Public School has not submitted any building plan for sanction in Municipal Corporation for construction of Building situated at Lower Mall, Patiala during the financial year 2008-09 and 2009-10. Similarly, the Municipal council, Zirakpur has reported vide its letter No. 427 dated 28-3-2013, that The Sikh Educational Society Shiromani Budha Dal Punjawan Takhat (Regd.) Lower Mall, Patiala has not deposited any fee for sanctioning of site plan for construction of building. The Municipal Council, Samana vide its letter dated 2013/535 dated 19-3-2013 has reported that the area where the Budha Dhall Public School, Samana has constructed the building is out of the jurisdiction of Municipal Council, Samana.

15. A detailed letter was written to the assessee asking it to **show cause** as to why the **expenditure incurred by the society amounting** to Rs. 6,14,08,881/- towards the **construction of building** may not be **disallowed** vide this office letter dated **22-3-2013**, which is reproduced below :-

" In connection with the assessment for the A.Y. 2010-11, you are required to furnish the reply on the following points/ queries:-

2. *During the course of assessment proceedings, it is noticed that :-*

(i) Despite affording number of opportunities , you have failed to produce the books of accounts for the period relevant to assessment year under consideration i.e. A.Y. 2010-11.

(ii) You have produced bills/ vouchers only. A perusal of these bills/ vouchers reveals that on most of the bills no mode of transportation has been mentioned.

(iii) From the purchase bills of various items , which you have claimed for the construction of school building, it is noticed that in the column where name of purchaser is mentioned , in that column name of station is mentioned Mohali, Fatehgarh , Damdama Sahib etc.

(iv) Till date, you have failed to produce the approved plan prepared by an architect for the construction of the school buildings under taken by you at different places i.e. zirakpur, Samana, Patiala.

(v) Enquiries made from the Municipal Corporation, Patiala reveals that the civic body never got any application for approval of site/ building plan in respect of any construction carried out by you during the Assessment years 2008-09, 2009-10, 2010-11 .

(vi) No details such as name and address of the persons/ contractors from whom you have got constructed the school buildings for verification in respect of your claim in respect of expenditure incurred by you on the construction of buildings have been filed.

(vii) No details of persons engaged as electricians, carpenters, plumbers, interior-decorators, painters, polishers & any other work related to execution of construction of school building have been furnished.

(viii) As per assessment records during the year under consideration you have claimed the additions made in the building accounts as per details given below :-

Sr.No.	Place of Building/ authority incurring the expenditure.	Amount for additior made during the yea under consideration.
1	Budha Dal Public School Patiala.	Rs. 87,58,302/-
2	Budha Dal Public School Samana.	Rs. 6,32,238/-
3	Budha Dal Public School Zirakpur	Rs. 51,80,286/-
4	Sikh Education society.	Rs. 4,68,38,055/-
		Rs. 6,14,08,881/-

Further no documentary evidence of having made payments to these persons has been adduced which means you have not done any construction of the building amounting to Rs. 6,14,08,881/- claimed by you.

Further, it is ironical that such a huge expenditure on account of building construction has been claimed by you but no corroborative or contemporaneous records have been produced by you. At the rate of Rs. 800/- per sq. Ft.(The average rate of construction of building of good quality), by spending Rs. 6,14,08,881/- , your covered areas of the building should have been about 76,760 sqt ft. You have not been able to offer the undersigned to

inspect the building physically claimed to have been constructed by you during the period under consideration at any stage of the assessment proceedings.

During the course of assessment proceedings, no log books, with the complete names and address and contact number of drivers have been provided in respect of Car utilized by the society. You have also failed to intimate about of purpose for which these cars have been utilized . Even the identity of the persons who utilized these cars have not been furnished by you with documentary evidence.

Since, you have failed to produce the documentary evidence in respect of expenditure incurred by the society amounting to Rs. 6,14,08,881/- as detailed above , towards the construction of building, you are required to show cause as to why the difference of surplus in excess of 15% as envisaged u/s 11 read with section 12 i.e. 33% (85% minus %age of application of income in the year under consideration) should not be added in your return of income. Your reply should reach to the office of the undersigned on or before 26-03-2013 at 3.30 P.M.

16. In response to the above letter, the assessee society vide its letter dated 25-3-2013 received in this office on 26-3-2013 has made its submissions. The same is reproduced as under :-

*(i) It is incorrect to say that the books of account have not been produced. It is a fact that the case was fixed many a times and the information filed was examined vis a vis the books of account by Mr. Kapil Kumar, Inspector, to whom the dealing with the proceedings was entrusted. The undersigned appeared before your goodself in the month of December, 2012 when various vouchers were examined qua the books of account. It may be submitted that the assessee is a educational society and operates through three schools, Budha Dal Public School, Patiala, Samana and Zirakpur. Separate books of account for each institutin are maintained. A chart showing the books of account maintained in each institution is separately enclosed. **The car load of books of account is being produced for necessary examination.***

(ii) A very general statement has been given in the query vide which it is noted that on most of the vouchers the mode of transportation of material has not been mentioned. No such bill has been pointed out in the notice. The goods are purchased FOR destination in some cases in which case there is no requirement of any bill of transportation. A statement showing the bills received in connection with material supplied and transportation charges debited to the respective account is enclosed. The fact can be verified from the books of account produced for your examination in 2(i) above.

(iii) The purchases of material made is supported by duly drawn bills, detail of which is enclosed separately. To cut short, the seller of the goods might have mentioned the name of the station only but it is a fact that the material reached the premises and used on construction of the building.

(iv) Copies of the plans of school building as prepared by the architect were supplied during the course of assessment proceedings which might

have escaped your notice. The fact is clear from reply to query No.2 of notice dated 11.02.2013. The copy of the reply filed is enclosed. However, another copy of the plans is also enclosed for your kind perusal.

(v) It may be clarified that the additions and alternations were made within the boundary wall and the management was advised that no sanction or permission from the Municipal Corporation Authorities was required. However, to substantiate the fact certificate from the Architech under whose supervisions the work was carried out is enclosed alongwith the photographs of the new and altered structures.

(vi) It is incorrect to say that the names and addresses of persons/contractors.

(vii) Who were engaged in the construction of the building were not supplied. In fact the details were filed twice, copies of which are again enclosed. It may be reminded that some of the artisans were also called for examination by your office. It may be further submitted that tax was deducted at source from the payments made to them. Copies of the TDS returns filed for different quarters are enclosed. Almost all the artisans are regular income-tax assesseees and their PAN's have been mentioned on the returns filed before the respective wing of the Department.

(viii) It is admitted that the expenditure to the tune of Rs.6,14,08,881/- was incurred on construction. Almost all the payments to various artisans are made by account by account payee cheques which can be verified from the books of account produced and also the bank account therein. The inference that that no construction was done involving the expenditure of the volume shown by the assessee is perverse to the facts on record which are enumerated below:-

(ix) Copies of the plans drawn by Mr. L.R. Gupta, Architect.

- a) Copies of various bills of material purchased.*
- b) Certificate from the Architect that he made the plans and supervised the construction.*
- c) Copies of account of various artisans to whom the payments were made.*
- d) The payments to the artisans were made by account payee cheques.*
- e) That the payments so made are verifiable from the copy of bank account called for by your office from the banker.***
- f) The TDS returns showing payments made to various artisans containing their PAN's.***
- g) The books of account maintained in the regular course of business.***

The newly constructed buildings are still there. Your goodself is most welcome to inspect the same. Even otherwise, the inspection of the building by your goodself does not depend on the invitation of the assessee. It can be done under the provisions of law.

(ix) The vehicles owned are either buses or cars meant for the purpose of carrying out the activity of the Schools. It has already been stated that the assessee operates through three educational institutions and the internal control mechanism is such that the misuse of the vehicles is not possible. However, it is not possible to maintain the log books as it would require deployment of the employees causing avoidable expenditure. It may be noticed from the books of account, audit report and above discussion that the

institution is purely charitable institution and no employee would bungle the charity.

In view of the above discussion, the inference that the construction was not carried out and that the application income was not for the objects of the institution is completely misplaced and in the interest of equity, good conscious and facts on record, the claim of the assessee may kindly be allowed, more so, when on the same facts and circumstances, the claims have been allowed in earlier years also. Although the principle of res-judicata is not applicable in income-tax proceedings, yet similar decision on the similar facts cannot be disturbed on whims and fancies."

Findings of AO

17. The Ld. AO based on **above factual matrix** has given the findings which are as below:

1. No books of account were produced on the occasion of any of the earlier hearings for the reasons best known to the assessee.

2) (i) The assessee was specifically asked to prove the genuineness of the purchases of various items claimed to have been utilized by it for the construction of building but it has not been able to do so. During the course of assessment proceedings, the statement of Sh. Naresh Jain, Prop. Vardhman Steels Patiala was recorded on 4-3-2013 from whom the assessee has claimed to have made most of the purchases consisting of TMT Bar, Cement, MS Pipes etc. He could not specifically explain as to at what place the material was delivered to the assessee. He could not prove the payment to any party or person on account of cartage/transportation alleged to have been paid by the assessee. Mr. Naresh Jain even could not prove as to whether he had stock available of the goods sold to the assessee on respective days as no stock register or stock statements on day to day basis in respect of various items claimed to have been purchased by the assessee.

ii) In response to the summons issued to the M/s Aman Sanitary store, Patiala were issued. In compliance thereto, Sh Avtar Singh", Prop. Of the concern, has filed the date wise and narration- wise of Budha Dhall, Public School and Sikh Education Society for the financial year 2009-10, as appearing the account only. He could not prove the availability of stock of items sold by him to the assessee on various dates as neither the purchase bills in support of his stock availability on the respective dates, nor stock register or stock statement have been filed. He even could not prove the payments to any person on account of cartage or transportation. The assessee could not offer any explanation as to why the bills of the same items claimed to have been purchased by it bear the names of the Stations such as Mohali, Fatehgarh Sahib and Damdama Sahib. It means the same material has been diverted to these places and the assessee could not substantiate as to how the same can be attributed to the application of income for the purpose of its charitable activities.

(iii) Except claiming that the material reached the premises of the assessee, the assessee could not bring anything on record to substantiate the same. No stock register/gate register or name of the person delivering the material at the site has been disclosed.

3. The copies of the plans of school building as prepared by the architect filed in no way establishes the fact of making addition to building account by the assessee. The perusal of the plans submitted by the assessee reveal that the assessee has claimed the following additions to the building account during Asstt. Year 2010-11:-

1	Administrative Block single storey, Patiala Ground Floor Plan	3464.0 sq.ft
2	Budha Dal Public School (Sr. Branch, PTA DG Set	881.26 Sq.ft.
3	Plan after additions / alterations at Ground Floor	193.08 Sq. ft
4	Class room Block (Jr. Branch, Patiala) Ground Floor	5222.6 Sq. ft
5	Class room Block (Jr. Branch, Patiala) First Floor Plan	5150.0 sq. ft
6	Class room Block (Jr. Branch, Patiala) Second Floor Plan	5236.0 sq. ft
7	Class room block (Jr. Branch, Patiala) Third Floor Plan	5236.0 sq. ft
8	Ground Floor Plan (Existing buildings)	1060.0 sq. ft
9	First Floor Plan (Budha Dal School, Samana) (Proposed)	16591.00
10	First Floor Plan (Proposed) dt. 14.03.2012 (No description of place)	1060.0 sq. ft
11	Class room Block (Jr. Branch, Zirakpur) First Floor plan	6658.33 sq. ft
12	Class room block (Jr. Branch, Zirakpur) Second Floor Plan	6658.33 sq. ft

The plea of the assessee that additions and alterations were made within the boundary wall and the management was advised that no sanction or permission from the Municipal Corporation Authorities was required suffer from the following infirmities and contradictions and hence can not be accepted vis-à-vis evidence available on record as discussed below:-

(i) The assessee could not adduce any documentary evidence as to who advised the management of the school that no permission was required from the Municipal Authorities.

(ii) The assessee's contention that only alterations, additions were made within the boundary wall is self-contradictory on the facts discernible from the plans submitted by the assessee. The plans show that the assessee has made got sketch plan for 25,189.86 sq.ft. at Patiala and 13,316.66 sq.ft. at Zirakpur. When the information was called for from Municipal Corporation, Patiala and Zirakpur, they confirmed that no building plan has been got approved by the assessee during the year under consideration. It is needless to mention that approval for construction, alternation Addition and structural modification is mandatory as per Town Planning ACT and the assessee in way is exempted from the same.

4. The perusal of the materials purchased, claimed by the assessee reveal the following serious infirmities which belie the version of the assessee of having claimed addition to building account:-

4.1 The assessee has claimed to have purchased tiles of Rs. 1,17,303/- from M/s Ashwani Goyal & Co., which means at the rate of Rs. 50 sq. ft., the

area to be tiled comes to mere 2346 sq. ft. There is no evidence on record to substantiate the use of any other flooring material such as tile or marbles.

4.2 The perusal of the depreciation chart annexed to the Audit Report reveals that the assessee was able to put to use the building claimed to be constructed during the year itself. The assessee was asked to furnish the details of number of students on roll of the school at Patiala and Zirakpur during the last four years which the assessee till date has not furnished willfully as that would belie its claim of addition to building of the schools, the plans submitted that the assessee has claimed to have constructed 18 class rooms at Patiala and 14 class rooms at Zirakpur. At the rate of 25 students per room there should be increase in the strength of the students by atleast 800. By this estimate, the student strength of the schools of the assessee must have steeply increased but the assessee willfully did not furnish information about the number of students on its rolls during the last four years before the year under consideration.

5. Further the purchases of materials and their quantities reveal very serious infirmities and discrepancies which clearly establish that the assessee in fact has not made any addition to the building account. The details of these infirmities are as under:-

a. There is always the chronological order of consumption of raw material for the construction of the building. In the ordinary course of contraction, Bricks are purchase first, then Sand/ Stone, cement and TMT bars. In the instant case, the assessee was going to construct a building at the cost of Rs.6,14,08,881/- aggregating to 38,506.52 sq. ft of covered area. The first material it purchased on 7-4-09 was Cement for Rs. 51,000/-. Similarly, the second item i.e. TMT Bars were purchased on 14-4-09 for Rs. 4,62,400/-.

b. The bricks of Rs. 1,21,000/- were purchased by the assessee on 1-5-2009 which @ Rs. 3000 per 7000 works out to be 40,333 in number i.e just sufficient for the construction 4033 sq.ft. of covered area @ 10 bricks per sq.ft.

c. Though the assessee has claimed to have made addition of 38,506.52 sq. ft of covered area but expenditure claimed on account of electrical fitting is just mere Rs. 4664 i.e just not sufficient for even a single room.

d. The assessee has claimed to have purchased cement but no purchase of sand has been shown. It is not explained by the assessee that in the absence of sand, how the construction was carried out.

e. No purchase of store or bazari again sine quo non for any type of ceiling and flooring has been shown.

f. The assessee has claimed have made alternation and modification but no expenditure on account of labour to the person who dismantled the old structures has been shown.

g. The photograph produce by the assessee show a well and beautiful painted building and well laid down lawns but no expenditure on account of paint, varnish, palsing and landscaping has been shown.

h. The assessee has shown the total purchase or TMT bars at Rs.7,68,460/- for 1 sq. ft. covered area atleast TMT bars of Rs. 140/- is required, the

expenditure shown by the assessee is just sufficient to add 5489 sq.ft. of covered area.

i. The expenditure of account of cement has been claimed by the assessee aggregates to Rs. 11,36,425/- which @ Rs. 250/- per bag comes to Rs. 5 per kg which can be used for construction not more than 11,364 sq. ft of covered area @ 20Kg. per Sq ft.

j. The assessee has shown payment of Rs. 14,322/- on account of marble fitting to Chunni Lal but no purchases of marble has been shown by it.

k. Further no purchase of timber has been shown. The assessee has shown purchase of plywood for Rs. 2,09,595/- which again is not sufficient to account for the construction of 38,506.52 sq. ft. of covered area.

l. The assessee has claimed to have constructed 13,316.66 sq. ft of covered area at Zirakpur but it is astonishing that no material has been shown to have been purchase from Zirakpur. No explanation furnished how the material was transported from Patiala to Zirakpur.

6. During the course of assessment proceedings, **the statement of Shri L.R. Gupta, was recorded on 30-03-2013** u/s 131 of the Income-tax Act, 1961 in which he had deposed that he has planned and supervised the school building as per details given below:

<i>Budha Dhall Public School, Patiala. (Senior Wing)</i>		
Administrative Block	Covered Area in Sq. feet	5000
Date of commencement.	2009	
Date of completion	2010 and 2011	
Front Office (after adulteration)	Covered Area in Sq.feet	3200
Date of commencement.	2011, 2012	
Date of Completion	2012 end.	
Transformer and Generator Set Room.	Covered Area in Sq. feet	1200
Date of commencement.	2009	
Date of completion	2010 & 2011	
<i>Junior Wing at Patiala.</i>		
Construction Area. (Canteen) Two Floor above and one lower floor.	3000 sq. Ft.	
Date of Start.	Dec. 2011	
Date of Completion	Dec. 2012	
<i>Academic Block Four Storey Building.</i>		
Ground Floor	: 20000 Sq. Feet.	
Date of Start.	: 2010-11	
Date of Completion	: 2011-12	
Construction Area at Samana	: 7700 Sq. Feet approximate.	
Date of Start.	: 2010	
Date of Completion	: 2012	
Construction Area at Zirakpur (1st and 2 nd Floor)	: 7000 Sq. Feet approximate	
Date of Start	: 2009-10	

He has further deposed that the approximate rate of construction of building was between Rs. 600 to 700/- per sq. Feet. He was taken to the site and identified the buildings supervised by him during the construction thereof.

In view of the above discussions, the covered area of the building constructed by it during the year under consideration is worked out as under :-

Budha Dhall Public School, Patiala.(Senior Wing)		
Administrative Block	Covered Area in Sq. feet	5000
Date of commencement.	2009	
Date of Completion	2010 and 2011	
Transformer and Generator Set Room.	Covered Area in Sq. feet	1200
Date of commencement	2009	
Date of Completion	2010 & 2011	
Construction Area at Samana : 7700 Sq. Feet approximate. (50% area of the building i.e. 3850 sq. feet is deemed to be constructed by the assessee during the financial year 2009-10 as completion took place in the financial year 2012)		
Date of Start	:	2010
Date of Completion	:	2012
Construction Area at Zirakpur : 7000 Sq. Feet approximate.		
(1st and 2 nd Floor)		
Date of Start	:	2009-10

As per above chart, the total allowable constructed area during the financial year works out to **17050 sq. Feet**. **Shri L.R. Gupta** has deposed in this statement that the approximate rate of construction of the building under his supervision was between **Rs. 600 to 700 per sq. feet**. However, for the sake of natural justice and equity , I estimate the cost of construction of buildings in questions, by applying the rate of Rs. 800/- sq. feet. Therefore, the allowable expenditure during the financial year 2009-10, for the purpose of section 11 of the Income-tax Act, 1961 comes to **Rs. 1,36,40,000/-** on account of application of income for the construction **of building**.

vii) "The assessment records reveals that the assessee has not applied for in Form No. 10 as prescribed in Section 11(2) of the Income Tax Act, 1961 before the A.O. to accumulate and set apart of its funds in the succeeding years.

Core Findings of AO

viii) a) The Ld. AO further has held "**Without prejudices to the above**, as discussed in the preceding paragraphs, against the claim of capital expenditure of **Rs. 6,33,47,767/-** on **account of construction of buildings**, the actual expenditure have been **found to Rs. 1,36,40,000/-** . Hence, it is held that the capital expenditure of Rs. 4,97,07,767/- (6,33,47,767/- - 1,36,40,000/-) has actually

not been applied for the purposes of construction of buildings and to avail the benefit of section 11 of the I.T. Act, 1961..”

b) Expenditure not eligible for exemption on account of donation paid by the society:

During the course of assessment proceedings, it was noticed that the assessee society has debited an amount of **Rs. 46,000/-** in the Income and Expenditure Account under the head **donation account**. As per details of the donation account, the assessee has paid donation of **Rs. 31,000/- for water cooler to Smt. Harjit Kaur** and donation of **Rs. 15,000/- to M/s Hrinder of AAKAR Foundation, Chandigarh. The donation paid by the society is not related to the expenditure incurred for Education Purposes.** There is no provisions **in the bye laws of the society that it will make donation to the other persons.** As the expenditure is not incurred to achieve the Aims and Objects of the society, therefore, this expenditure of **Rs. 46,000/- is not a allowable expenditure. The same is accordingly disallowed and added to the income of the assessee.**

c) Addition on account of conveyance allowance:

During the course of assessment proceedings, it was noticed that the assessee debited the expenditure of Rs. 12,70,000/- to the Income and Expenditure Account under the head 'Conveyance Allowance'. The perusal of details of conveyance allowance furnished by the assessee during the course of assessment proceedings, revealed that it had paid conveyance allowance of Rs. **6,70,000 to Mrs. Sukhdvinerjit Kaur, Member of the AOP and President of the Society and Rs.3,36,000 to Smt. Paraminderjit Kaur Brara, Member of the AOP and Administrative Officer of the Society.** According to the provisions of Section 13(I)(c)(ii) of the Income-tax Act, 1961, the provisions of section 11 of the Income-tax Act, 1961 are not applicable to the cases where any part of the income directly or indirectly paid to the persons specified in Sub-section 3 of Section 13 of the I. T. Act, 1961. The relevant provisions of section are reproduced 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-

(a) --

(b)--

(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 ensures, 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), in so far as such use or application relates to any period before the 1st day of June, 1970;

Provisions of Section 13(3) are reproduced as under:

(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely:-

(a) the author of the trust or the founder of the institution;

(b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;

(c) where such author, founder or person is a Hindu undivided family, a member of the family;

(cc) any trustee of the trust or manager (by whatever name called) of the institution;

(d) any relative of any such author, founder, person, member, trustee or manager as aforesaid;

(e) any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest.

Since both the above noted persons namely Mrs. Sukhdvinerjit Kaur, Member of the AOP and President of the Society and Smt. Paraminderjit Kaur Brara, Member of the AOP and Administrative Officer of the Society, are a specified persons in view of the provisions of section 13(3) of the Income-tax Act, 1961, as such the expenditure of Rs. 10,06,000/- debited by the assessee under the Head 'Conveyance Allowance' is not allowable for the purpose of Section 11 of the Income-tax Act, 1961. Therefore, the amount of Rs. 10,06,000/- is disallowed and added to the income of the assessee.

ix) Disallowance of expenditure claimed by the Assessee under the head depreciation on account of building under construction :

The perusal of the depreciation Chart furnished by the assessee during the course of assessment proceeding reveals that it claimed depreciation on the buildings under construction as per details given below :-

Buildings in the books of :

Society	30992365
Buda Dal public, Patiala	269576
Buda Dal public, Zirakpur	560901
Buda Dal public, Samana	255181
Buda Dal public, Patiala (Primary Building, Patiala)	110704
	Rs. 3,21,88,727/-

As the assets/ buildings are not put to use in the year under consideration, therefore, this amount of Rs. 3,21,88,727/- is reduced from the expenditure incurred for the purposes of section 11 of the Income-tax Act, 1961 and accordingly the same is disallowed.

Keeping in view, the above facts, the income of the Society for the purpose of section 11 is computed as under :-

	Particulars		Income
1.	Gross receipts		113416023
2.	Expenditure- Total expenditure 75474465/- Rs. 3,21,88,727/- (Depreciation claimed on building under construction)	43285738	70130285
3.	85% of Rs. 11,34,16,023/-		Rs. 9,64,03,619/-
4.	Amount utilized by the Society		Rs. 4,32,85,738/-
5.	Difference		Rs. 5,31,04,881/-
6.	Less allowable capital expenditure other than buildings under construction as shown by the assessee.	49,38,863	
7.	Buildings under construction as discussed above.	1,36,40,000	
	Total Capital Expenditure	1,86,33,863/-	1,86,33,863/-
			Rs. 3,44,71,018/-
8.	Addition on account donations as discussed above.		Rs. 46,000/-
9.	Addition on account of conveyance allowance as discussed above.		Rs. 10,06,000/-
10.	Total Income		Rs. 3,55,23,018/-

x) “ Rejection of claim of the assessee u/s 11 of the I.T. Act, 1961”

There are conditions prescribed u/s 12A of the Income Tax Act, 1961 for the applicability of the section 11 & 12 of the Income Tax Act, 1961 i.e. for claiming exemption u/s 11 of the Income Tax Act, 1961. According to sub-clause 1(b) of section 12A of the Income Tax Act, 1961. The assessee was required to furnish alongwith the return of income, the report of Auditor mentioned in sub-section (2) of section 288 of the Income Tax Act, 1961 in the prescribed form duly signed and verified by such accountant. The relevant provisions of section 12A (1)(b) are reproduced as under:-

Conditions for applicability of section 11 and 12.

12A(1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:-

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any

previous year the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

According to rule 17B, of the Income-tax Rules, 1962, the report is required to be furnished in Form 10B prescribed in the Rules. The relevant provision of this section Rule is reproduced as under :-

Audit report in the case of Charitable or religious Trust etc.

17B. The report of the audit of the accounts of Trust or institution which is required to be furnished under clause (b) of Section 12A shall be in Form No. 10B.

The assessee has furnished in the Income-tax Return in the ITR-7 on 15-10-2010. The assessee has not enclosed the audit report of the Chartered Accountant in the prescribed form 10B alongwith other particulars required in that form. The perusal of the return reveals that the column relating to number of documents/ statements attached has been left blank. The assessee was asked to file a copy of prescribed Audit report for the relevant year as per notice issued u/s 142(1) of the I. T.Act, 1961 by the Income-tax Officer, Ward-I, Patiala. Again, the ITO Ward-I,Patiala has requested to submit the Audit report vide notice dated 18.4.2012. Again, the A.O., made request to the assessee vide letter dated 16-7-2012 to submit the copy of audit report. The assessee has not made compliance to the notices/letter issued by the A.O. Vide this office notices dated 29-8-2012, the assessee was asked to furnish the audit report. However, on 7-9-2012, the assessee has submitted the audit report on form no. 3CB under section 44AB of the Income-tax Act, 1961 prepared by Sh. Ajay Kumar Garg, and Associates, Chartered Accountants, Patiala on 22-9-2010. Since, the assessee claimed the Exemption under section 11 of the Income-tax Act, 1961, as such it was required to furnish the Prescribed Audit report of the Chartered Accountant in the prescribed form 10B as discussed supra. The assessee has also not filed the audit report in the prescribed form No. 10B during the course of assessment proceedings. Therefore, according to the provisions of section 12A(1) (b) of the Income –tax Act, 1961, the provisions of section 11 are not applicable in the case of the assessee . Accordingly, the claim of the assessee for exemption u/s 11 and 12 are hereby rejected.

Without prejudice to the above, against the gross receipts of Rs. 11,34,16,023/- the assessee has claimed to have utilized Rs. 7,54,74,465/- for the purpose of application of funds . 85% of the gross receipts works out to be Rs. 9,64,03,619/- which means the assessee has accumulated Rs. 2,09,29,154/- in excess of 15% of its gross receipts which is liable to be taxed as the assessee has not given any notice to the concerned Assessing Officer in form No. 10 before the expiry of time allowed under section 139(1) in respect of any income accumulated or set apart in excess of 15% of the gross receipts of the assessee earned during the year under consideration.

Keeping in view the facts stated above, the taxable income of the society is computed as under :-

1	Income as per Income and Expenditure account of the Society	3,66,78,419/-
2	Add: Depreciation on building under construction as discussed above	3,21,88,727/-
3	Addition on account donations as discussed above	Rs. 46,000/-
4	Addition on account of conveyance allowance as discussed above.	Rs. 10,06,000/-
5	Total assessed income.	Rs. 6,99,19,146/-

Order under section 154 of the Income Tax Act, 1961

18. Upon application of the assessee on 03/04/2013 following rectification order was passed :

7. Keeping in view of the above discussion, the addition on account of depreciation on building under construction is required to be made at Rs. 72,33,282/- instead of Rs. 3,21,88,727/-. With this observation, the income of the assessee society is recomputed as under :-

1	Income as per Income and Expenditure account of the Society.	Rs. 3,66,78,419/-
2	Add: Depreciation on building under construction as discussed above.	Rs. 72,33,282/-
3	Addition on account donations as disused above.	Rs. 46,000/-
4	Addition on account of conveyance allowance as discussed above.	Rs. 10,06,000/-
5	Total assessed Income.	Rs. 4,49,63,701/-

The application of the filed by the assessee u/s 154 on 3-4-2013 is partly accepted.

Proceedings before CIT(A)

19. Being aggrieved by the aforesaid AO's order, the assessee moves before Ld. CIT(A) and interalia set forth facts as under:

i) Return of income was filed claiming NIL income after availing exemption u/s 11 of the Income Tax Act, 1961. The exemption claimed under section 11 was denied for reasons recorded in AO's order.

ii) Assessment under section 143(3) on net income of Rs. 6,99,19,150/-.

iii) In arriving at assessed income, expenditure on construction of school building claimed at Rs. 6,14,08,881/- has been restricted to Rs. 1,36,40,000/- and the balance amount of Rs. 4,77,68,881/- has been ignored for purpose of application of the income for the objects of the trust for purposes of Section

11. The exemption is denied for more than one reason i.e; less than 85% application for the objects of the Trusts, Non filing of Form No. 10 etc.

The income has consequently been worked out under the provisions of Sections 28 to 44 of the Income Tax Act-1961 at Rs. 6,99,19,150/-. The depreciation on building under construction has been worked out on page 32 of the AO's order by taking the figure of the same in society at **Rs. 3,09,92,365/-** against correct figure of Rs. 60,36,920/-. In fact total **claim of depreciation** has been made in the books of account at **Rs. 1,45,34,972/-** which comprises depreciation on building as such and building under construction aggregating to Rs. 1,00,74,990. An application for rectification is pending. **Disallowance of donation** made by assessee to a charitable institution at Rs. 46,000/- conveyance allowance paid to employees has been curtailed by Rs. 10,06,000/-. Hence appeal before the Ld. CIT(A).

20. Grounds of appeal before CIT(A) read as under:

1. *The assessment as it stands is bad in law and against the facts of the case.*
2. *That the assessment is liable to be annulled as the Ld. A.O. has relied upon the statements of S/Shri Naresh Jain, Avtar Singh and L.R. Gupta without confronting the same to the assessee or allowing right of cross examination.*
3. *That without prejudice to above, the Ld. A.O was not justified in holding that the exemption u/s 11 is not allowable in the case of the assessee.*
4. *That the Ld. A.O has erred in working out the amount applied for the objects of the institution as the expenditure on construction of building to the extent of Rs. 4,77,68,881/- has been held to be not allowable.*
5. *That the Ld. A.O is not justified in bringing to charge the income of Rs. 6,99,19,150/-.*
6. *That without prejudice to above, the working of income is incorrect.*
7. *That the Ld. A.O was not justified in disallowing donations made to charitable institution which are within the objects of the institution.*
8. *That the Ld. AO is not justified in disallowing claim of conveyance allowance to the extent of Rs. 10,06,000/- departing from the past history of the case.*

21. The Ld. CIT(A) has identified ground of appeal no. 1 and 6 as general and ground nos. 5 & 6 as consequential, ground no. 3 is taken after disposing other grounds as it involves to denial of deduction u/s 11 of the Act; ground

no. 2 is a question of fact on recording of statement on which separate finding is given. Ground nos. 4,5,6 are taken up separately.

22. the Ld. CIT(A) has crystallised the case of the assessee and that of the AO's order and further AO's comments on submission of the assessee at para 4 of the impugned order as follows:

04. The appellant is a society registered in Punjab with the Registrar of Societies under the Societies Registration Act, 1860, formed with the stated dominant object of imparting education and runs three schools at three schools at Patiala, Samana and Zirakpur. The appellant filed a return of income on 15-10-2010 returning Nil Income. The case was selected for scrutiny with issue of notice u/s 143(2) on 27-09-2011. The appellant showed gross receipts of Rs. 6,04,44,999/- in the receipt & expenditure account with a net income/surplus of Rs. 3,66,78,419/- which has been claimed as exempt.

4.1 As per the assessment order, the appellant has, during the impugned previous year, dealt with shown Capital Expense as under:

- a. Rs. 6,61,52,498/- (para 2 - page 3 of Assessment Order)
- b. Rs. 6,33,47,647/- (para 3 - page 3 of Assessment Order from a table)
- c. Rs. 6,14,08,881/- (para 7 page 5 of the Assessment order— Capital Expense on which show cause of disallowance issued for disallowing (refer pg. 8) additions to school buildings at Patiala, Samana & Zirakpur-construction of 76,760 sq. feet of construction @ Rs. 800 per square foot)

4.2 Next at page 3 & 4 of assessment order the Ld. AO mentions the total Receipts of the trust and the utilization summarized as under:

Description	Amount in INR
Total Receipts	11,34,16,023
85% thereof	9,64,03,619
Less actually spent	7,54,74,765,
Balance unutilized	2,09,29,154

4.3 A show cause seeking a number of explanations on the points mentioned below was issued dated 22-03-2013 details as mentioned thereon to be submitted by 26th March 2013 at 3.30 pm along with, it is stated a "car load of Books of Accounts". The queries and the response vide letter dated 25-03-2013 therein are summarized as under:

AO's reasons	Appellants submission
For the construction of buildings at Patiala, Samana & Zirakpur where utilization on account of Capital expense is claimed, there are no approvals from the competent authority, Municipal Corporation of Patiala	Site Plan for the same have been prepared by an architect LR Gupta & he planned, designed & supervised building. Additions alterations made within boundary walls, hence no permission from Municipal authority needed
Failed to produce Books	Books Produced and shown to Inspector Kapil Kumar. In December Vouchers and Bill produced. Three separate schools of the

	society and books of each are maintained and being produced (car load)
Instead of Books only Bills and Vouchers produced: Bills of goods had no mode of transportation.	Goods were procured FOR destination hence no mode of transportation was necessary. A statement showing the Bills received qua each site and transportation charges debited to each account submitted
No name of purchaser on the Bills only name of station was given such as Mohali, Fatehgarh, Damdama etc	The purchase is duly supported by Bills, seller may have mentioned name of station used as purchaser is one; but goods reached the premise.
Approved plan of architect not shared	Given on 11-02-2013 Certificate Architect submitted again.
No details of Name & Address of contractors, electricians, painters etc. Submitted	Denied; claimed details were submitted twice and re-submitted with the letter. TDS deducted on these payments copies of TDS statements filed; payments by Account payee cheques. Inference that no construction done perverse. Following submitted a. Bills of material purchased b. Copies of accounts of Artisans c. Details of account payee cheques/ bank accounts d. TDS returns of Artisans containing their PAN e. Books of Accounts of
For additions to Buildings of Rs. 6,14,08,881/- (pg. 8 of Assessment Order) no documentary evidence of having made payments submitted. Construction should have been in the region of 76,700 square feet (estimated at Rs. 800 per sq. foot. No inspection of construction afforded.	Gave offer to inspect the buildings / could have been done anytime as permitted by law
No Log Book for cars indicating their use enclosed	Assessee operates three different schools; and has strong internal control mechanism to prevent misuse of vehicles. Maintaining log books not feasible would involve unnecessary expense

4.4 The Learned AO gives his findings thereon (from pages 16 to 38 of the Assessment Order) where he does not address each of the submissions of the appellant which are summarized as under:

i. No Books were produced on earlier occasions for reasons best known to the Appellant

ii. During the course of Assessment proceedings

a. statement of one Shri Naresh Jain proprietor Vardhaman Steel, Patiala; supplier of Steel Bars, cement, MS etc was recorded on 04-03-2013 (recorded before the date of issue of Show cause mentioned supra) and he

could not explain as to what place the material was delivered to the Appellant. Further could not prove cartage or the availability of stock in the form of purchase bills and stock register etc.

b. One Avtar Singh, Aman Sanitary, Patiala supplier of Sanitary items to the Appellant supplied in response to summons only account of supply of goods but could not account for availability of stock with the suppliers as purchase bills/ stock register etc could not explain the goods supplied as stock register/purchase bills were not submitted to the AO. Could not establish cartage payments and as to why same items purchased by it contain names of stations such as Mohali, Fatehgarh Sahib, Damadama Sahib etc. This leads to the AO to conclude that the same item has been diverted to these places and thus no evidence of application of Income is adduced.

iii. Except claiming that material reached the site no stock register/ gate register, details of person , receiving material has been produced by Appellant

iv. The claim that no approval was needed form the Municipal Authorities suffers from infirmities that no details of who advised the management that no approval was needed; approval was actually needed as per Town Planning Act

v. Purchase of material has infirmities as tiles purchased account for only 2346 sq. foot (an issue not raised in the Show Cause Notice)

vi. The Depreciation Chart of the Appellant shows that the Appellant was able to put to use the buildings constructed during the same year as the construction. Details of Additional students for whom class rooms constructed not provided by the Appellant.

vii. Other infirmity in purchase details establish no construction actually done these are

a. To justify a capital expense of Rs. 6,14,08,881/- (implying construction of 38,506 fee). The chronology of purchase of first cement; then TMT is odd; amount of bricks purchased, wiring material received etc too are very low compared to a finished building of more than 38 thousand square foot (40,333 bricks and only Rs. 4644/-worth of Electric fittings)

b. While purchase of cement exists no evidence of purchase of sand adduced

c. A number of other material infirmities in the Building account have been pointed out on pages 23-24 of the assessment Order.

viii. During the course of the assessment proceedings, the statement of Shri. L.R Gupta who planned and supervised the school building was recorded on 30-03-2013 (the day of passing the order) who deposed that the cost of construction of the buildings worked out to between Rs. 600-700 per square foot and the area covered at 17,050 square feet. The Ld. AO, reasonably taking the cost of at Rs. 800 estimates the total construction that may have been carried out at Rs. 1,36,40,000/- as against a claimed capital expenditure of Rs. 633,47,766/-. (The confusion of actual Capital expenditure discussed supra persists.

4.5 The AO disallowed certain expenditure such as donation, conveyance allowance, depreciation claimed and treats the trust as an AOP and also disallowed exemption u/s 11 of the Act.

4.6 The reasons why the Ld. AO disallowed the exemption u/s 11 of the Act and made additions and the response of the appellant in the assessment order are summarized as under:

i. The Appellant failed to file an audit report as required by Section 288(2) of the Act r/w Rule 17B of the Income Tax Rules 1962: (hereinafter called the Rules) in the prescribed form 10B either with the Return of Income or during the course of Assessment proceedings; instead during assessment proceedings Audit report in Form 3CB u/s 44AB alone was submitted, i

ii. The Appellant failed to utilize 85% of the receipts as discussed above with Rs. 2,09,29,154 remaining unutilized and no notice to the Assessing Officer as required under the Act has been given in prescribed Form No. 10 before the expiry of the time allowed u/s 139(1) of the Act.

4.7 The Assessment was completed on 30-03-2013 where after denying exemption u/s 11 due to reasons recorded in the Assessment order, assessment was concluded at an assessed Income of Rs. 6,99,19,146/-. Aggrieved the Appellant trust is in appeal.

23. The Ld. CIT(A) has further stated in the impugned order that during the course of the proceedings assessee submitted a paper book (page 1 to 137) on 27th Oct 2015 which interalia contained written submission, **audit report (in Form 3CB)** and final accounts, **application for rectification u/s 154, order u/s 154**, details of goods etc. The order of rectification was passed by the Ld. AO on 12/06/2013 reduces depreciation disallowed from **Rs. 3,21,88,727/-** to **Rs. 72,33,282/-** based on mistakes apparent from record.

24 It is also recorded in the impugned order of CIT(A) that written submission of the assessee was remanded to the Ld. AO to seek his comments thereon and has been reproduced as below:

[5.2 The written submission of the appellant was remanded to the Ld. AO to seek his comments thereon, which are reproduced as under :-

" The Assessee is an educational society duly registered under the Societies Act, 1860. Return of income in this case was filed declaring therein nil income after availing exemption u/s 11 of the Income-tax Act (hereinafter referred to as the 'Act'). The exemption claimed u/s 11 was denied for the reasons recorded in the order of assessment. The Ld. A.O then proceeded to make the assessment under the provisions of the act and framed the assessment u/s 143(3) on net income of Rs. 6,99,19,150/- In arriving at the assessed income, the expenditure on construction of school buildings claimed at Rs. 6,14,08,881/- has been restricted to Rs. 1,36,40,000/- and the balance amount of Rs. 4,77,68,881/- been ignored for the purpose of application of the income

for the objects of the trust for the purposes of section 11. The exemption was denied for more than one reason less than 85% application for the objects of the trust, non-filing of Form No. 10 etc. The income has, consequently, been worked out under the provisions of sections 28 to 44 of the Income-tax Act, 1961 at Rs. 6,99,19,150/-. The depreciation on building under construction has been worked out on page 32 of the assessment order by taking the figure of the same in 'Society' at Rs. 3,09,92,365/- against the correct figure of Rs. 60,36,920/-. In fact, total claim of depreciation has been made in the books of account at Rs. 1,45,34,972/- which comprises of depreciation on building as such and building under construction aggregating to Rs. 1,00,74,990/-. An application for rectification was filed before the A.O which has since been decided vide order dated 12.06.2013 (Copy enclosed) and, as a result, the net assessed income has been reduced to Rs. 4,49,63,701/-. He has further disallowed donations made by the Assessee to charitable institutions at Rs. 46,000/-. Conveyance allowance paid to employees has been curtailed by Rs. 10,06,000/-. All these actions of the Id. A.O have been contested in appeal. The grievances arising out of the order of the Id. A.O have been projected through 8 grounds of appeal; comments on which are offered as under:-

GROUND NO. 1: This ground is of general nature and hence no comments are offered.

GROUND NO. 2: The grievance of the Assessee in this ground is that the assessment is liable to be annulled as the Id. A. O has relied upon the statements of S/Shri Naresh Jain, Avtar Singh and L.R.Gupta without confronting the same to the Assessee or allowing right of cross examination.

It would be notice from the assessment order that the Id. A.O., for drawing various inferences he has relied upon the statements of the person named above but neither the same were confronted to the Assessee nor any right of cross examination was allowed. The Assessee was never asked to cross examine them. The additions are, therefore, based on the statements without providing the Assessee the right to cross examination. The same could not, therefore, be made in view of the decision of Hon' ACTT v. Geetanjali Education Society (2008) 114 TTJ 697: (Appeal of the Department dismissed in [2008] 174 Taxman 440

"Not providing the opportunity of cross examination is a serious lacuna and not technical lapse. An unscrutinised statement is not a statement at all and cannot be used against a person who was not given an opportunity to cross examine the deponent. In this case no such opportunity was given. Therefore, the observations so made by the CIT(A) are amended and this ground of cross objection of the Assessee is allowed."

Reliance in this regard is also placed on the decision of Hon'ble Gujrat High Court in the case of Heirs and legal Representatives of Late Laxmanbhai S. Patel v. CTT: [2008] 174 Taxman 206:327 TTR 290.

".....It is found that statement of witness *R', on which heavy reliance was placed by Assessing officer while making addition, was neither referred to in assessment order nor a copy thereof was given to Assessee nor Assessee was given an opportunity of cross examining said 'R'- Whether on facts, addition was justified - Held No."

The issue stands clinched by the decision of Hon'ble Jurisdictional High Court in the case of CIT v. Sham Lai, reported in (1981) 127 TTR 816. The ratio of the decision is reproduced below:-

"..... The finding of the Tribunal that the revenue could not place reliance on the material which was brought on the record at the back of the Assessee is also unexceptional. The Assessee is, in law, entitled to rebut the material placed before him if he so chooses and any material placed on the record without notice to the Assessee cannot be relied upon by the revenue. It would thus be seen that the finding of the Tribunal that material placed on the record in violation of the principles of natural justice could not be relied upon and that there was no material to come to the conclusion that the Assessee was a partner in the firm, the only correct course open to the Tribunal was to annul the assessment order passed by the ITO."

Reliance is also placed on the decision of Hon'ble Jurisdictional High Court in the case of CIT v. National Rice & General Mills, reported in (1979) 124 TTR 39 in which the following decision of the Hon'ble Tribunal was upheld:-

"In the present case there is absolutely no material on record to prove that the loans in question were really fictitious. The department merely relies upon the statement dated August 18, 1969, of Shri Swaraj Singh. But this statement cannot be accepted because the same was never recorded in the presence of the Assessee. Since the Assessee did not get a chance to cross-examine Shri Swaraj Singh, the statement recorded at its back cannot be used against it. The principles of natural justice having not been followed, the loans in question cannot be considered to be fictitious simply on the basis of the uncorroborated statement of Shri Swaraj Singh. We, therefore, reject the contention of the learned representative of the department."

As per the case law discussed above, the Id. A.O was not justified in making the impugned additions on the basis of the statements recorded behind the back of the Assessee and allowing it the right of cross examination of the witnesses of the Department. It is, therefore, requested that the additions made may kindly be deleted.

GROUND NOS. 3,4,5 and 6: The grounds taken in the memorandum of appeal are as under:-

a) That without prejudice to above, the Id. A.O was not justified in holding that the exemption u/s 11 is not allowable in the case of the Assessee.

b) That the Id. A.O has erred in working out the amount applied for the objects of the institution as the expenditure on construction of building to the extent of Rs. 4,77,68,881/- has been held to be not allowable.

c) That the Id. A.O is not justified in bringing to charge the income of Rs. 6,99,19,150/-.

d) That without prejudice to above, the working of income is incorrect. As regards (d) above an application for rectification of mistake was filed which has since been carried out, the grievance of the Assessee therein stands redressed. In respect of (a), (b) & (c), the facts of the case are that during the course of

assessment proceedings first notice u/s 143(2) dated 22.09.2011 was issued which was served on the Assessee on 27.09.2011 which was only a formal notice without any questionnaire. Then a questionnaire was issued along with notice u/s 143(2) dated 29.08.2012 in response to which reply dated 07.09.2012 was filed.

The Id. A.O., thereupon, noticed as per para 8 to 9 of the assessment order at pages 3 & 4 that the gross receipts shown by the Assessee are to the tune of Rs. 11,34,16,023/- against which the revenue expenditure was incurred at Rs. 7,54,74,465/-. 85% of the total receipts was worked out at Rs. 9,64,03,619/-. Leaving behind surplus of Rs. 2,09,29,154/-. It was further noticed that the amount applied for the purpose of the trust for acquisition of capital assets i.e. building was also incurred at Rs. 6,33,47,767/-, leaving behind no surplus of income.

It was further noticed by the Id. A.O. that for construction of new buildings and carrying out extensions to the existing ones, no permission was sought from the concerned local bodies. On the basis of which show cause notice dated 22.03.2013 was issued to the Assessee as to why the expenditure on the building at Rs. 6,14,08,881/- be not disallowed. A detailed questionnaire dated 22.03.2013, reproduced at pages 5 to 10 of the assessment order. The allegations were that books of account and vouchers were not produced by the Assessee, approved plans of construction were not filed, that no permission was sought from the local authorities for expansions and extensions in the building, the detail of contractors, artisans, interior decorators etc. were not filed. That no documentary evidence was filed evidencing the payments to various persons engaged in the carrying out construction and that records of building construction have not been maintained. On the basis of these imputations the expenditure on building was proposed to be disallowed. The explanation of the Assessee was sought and the case was fixed for hearing for 26.03.2013 on which date a detailed reply was filed, which is reproduced below:-

"Kindly refer to your notice dated 22.03.2013. Various queries raised therein, allegations made out and information called are furnished as under:-

2. (i). It is incorrect to say that the books of account have not been produced. It is a fact that the case was fixed many a times and the information filed was examined vis a vis the books of account by Mr. Kapil Kumar, Inspector, to whom the dealing with the proceedings was entrusted. The undersigned appeared before your goodself in the month of December, 2012 when various vouchers were examined qua the books of account. It may be submitted that the Assessee is an educational society and operates through three schools; Budha Dal Public School, Patiala, Samana and Zirakpur. Separate books of account for each institution are maintained. A chart showing the book of account maintained in each institution is separately enclosed. The car load of books of account is being produced for necessary examination.

2(ii) A very general statement has been given in the query vide **A.** which it is noted that on most of the vouchers the mode of transportation of material has not been mentioned. No such bill has been pointed out in the notice. The goods are purchased FOR destination in some cases in which case there is no

requirement of any bill of transportation. A statement showing the bills received in connection with material supplied and transportation charges debited to the respective account is enclosed. The fact can be verified from the books of account produced for your examination in 2(i) above.

2(iii) The purchases of material made is supported by duly drawn bills, detail of which is enclosed separately. To cut short, the seller of the goods might have mentioned the name of the station only but it is a fact that the material reached the premises and used on construction of the building.

2(iv) Copies of the plans of school building as prepared by the architect were supplied during the course of assessment proceedings which might have escaped your notice. The fact is clear from reply to query No. 2 of notice dated 11.02.2013. The copy of the reply filed is enclosed. However, another copy of the plans is also enclosed for your kind perusal.

2(v) It may be clarified that the additions and alternations were made within the boundary wall and the management was advised that no sanction or permission from the Municipal Corporation Authorities was required. However, to substantiate the fact certificate from the Architect under whose supervisions the work was carried out is enclosed alongwith the photographs of the new and altered structures.

2(vi) (vii) It is incorrect to say that the names and addresses of persons/contractors who were engaged in the construction of the building were not supplied. In fact the details were filed twice, copies of which are again enclosed. It may be reminded that some of the artisans were also called for examination by your office. It may be further submitted that tax was deducted at source from the payments made to them. Copies of the TDS returns filed for different quarters are enclosed.

Almost all the artisans are regular income-tax assesseees and their PAN's have been mentioned on the returns filed before the respective wing of the Department.

2(viii) It is admitted that the expenditure to the tune of Rs. 6,14,08,881/-was incurred on construction. All most all the payments to various artisans are made by account by account payee cheques which can be verified from the books of account produced and also the bank account therein. The inference that that no construction was done involving the expenditure of the volume shown by the Assessee is perverse to the facts on record which are enumerated below:-

- a) Copies of the plans drawn by Mr. L.R. Gupta, Architect.
- b) Copies of various bills of material purchased.
- c) Certificate from the Architect that he made the plans and supervised the construction.
- d) Copies of account of various artisans to whom the payments were made.
- e) The payments to the artisans were made by account payee cheques.
- f) That the payments so made are verifiable from the copy of bank account called for by your office from the banker.

g) The TDS returns showing payments made to various artisans containing their PANs.

h) The books of account maintained in the regular course of business. The newly constructed buildings are still there. Your goodself is most welcome to inspect the same. Even otherwise, the inspection of the building by your goodself does not depend on the invitation of the Assessee. It can be done under the provisions of law.

2(ix) The vehicles owned are either buses or cars meant for the purpose of carrying out the activity of the Schools. It has already been stated that the Assessee operates through three educational institutions and the internal control mechanism is such that the misuse of the vehicles is not possible. However, it is not possible to maintain the log books as it would require deployment of the employees causing avoidable expenditure. It may be noticed from the books of account, audit report and above discussion that the institution is purely charitable institution and no employee would bungle the charity.

In view of the above discussion, the inference that the construction was not carried out and that the application of income was not for the objects of the institution is completely misplaced and in the interest of equity, good conscious and facts on record, the claim of the Assessee may kindly be allowed, moreso, when on the same facts and circumstances the claims have been allowed in earlier years also. Although the principle of res-judicata is not applicable in income-tax proceedings, yet similar decision on the similar facts cannot be disturbed on whims and fancies.

The explanation furnished by the Assessee was rejected on the grounds mentioned in para 9 at page 16 to 27 of the assessment order; comments on which are offered in detail as under:-

Sr. No.	Particulars		
9.	I have carefully considered the written submissions of the Assessee submitted as mentioned supra. The version of the Assessee is not acceptable at all in view of the discussion made in the succeeding paragraphs.		As discussed in the following paragraphs, the Id. A.O did not have any reason to disbelieve the explanation filed by the Assessee.
9.1	No books of account were produced on the occasion of any of the earlier hearings for the reasons best known to the Assessee.		It is incorrect to say that the books of account and vouchers were not produced. The books were produced from time to time and examined by the inspector of the Id. A.O. Vide Sr. No. 7 of letter dated 07.09.2012 the books were produced with salaries, admission registers. Again in para 2(i) of letter dated 25.03.2012 vide which it was pointed out that the books were examined qua the vouchers in the month of December,

			2014 and that even on the date of hearing on 26.03.2013 car load of books was produced, as mentioned in the reply but the Id. A.O is wrong in holding that the books of account were not produced.
9.2(i)	<p>The Assessee was specifically asked to prove the genuineness of the purchases of various items claimed to have been utilized by it for the construction of building but it has not been able to do so.</p> <p>During the course of assessment proceedings, the statement of Sh. Naresh Jain, Prop. Vardhman Steels, Patiala was recorded on 4-3-2013 from whom the Assessee has claimed to have made most of the purchases consisting of TMT Bar, Cement, and MS Pipes etc. He could not specifically explain as to at what place the material was delivered to the Assessee. He could not prove the payment to any party or person on account of cartage/transportation alleged to have been paid by the Assessee. Mr. Naresh Jain even could not prove as to whether he had stock available of the goods sold to the Assessee on respective days as no stock register or stock statements on day to day basis in respect of various items claimed to <u>have been purchased by the Assessee.</u></p>		<p>It is incorrect to say that the vouchers were not produced. It is apparent from the contents of the assessment order that the Id. A.O took notice of various vouchers.</p> <p>The statement of Naresh Jain recorded at the back of the Assessee without allowing right of cross examination or supplying the gist of the enquiries made. Even otherwise, the inference drawn from his statement is perverse. The fact admitted by him is that the material was supplied to the Assessee FOR. Various sales were made by him to the Assessee and off hand he is not supposed to remember the spot of delivery for each transaction of sale.</p>
9.2(ii)	<p>In response to the summons issued to the M/s Aman Sanitary store, Patiala were issued. In compliance thereto, Sh. Avtar Singh, Prop. Of the concern, has filed the date wise and narration-wise of Budha Dhall, Public School and Sikh Education Society for the financial year 2009-10, as appearing the account only. <i>He could not prove the availability of stock of items sold by him to the Assessee on various dates as neither the purchase bills in support of his stock availability on the respective dates, nor stock register or stock statement have been filed. He even could not prove the payments to any person on account of cartage or transportation. The Assessee could not offer any explanation as to why the bills of the same items claimed to have been purchased by it bear the names of the Stations such as Mohali, Fatehgarh Sahib and Damdama Sahib. It</i> means the same material has been f c jiverfett to .these places and the Assessee could not substantiate as to how the same can be attributed to the application of income for the purpose of its charitable activities.</p>		<p>The statement of Naresh Jain recorded at the back of the Assessee with allowing right of cross examination or supplying the gist of the enquiries made. Even otherwise, the inference drawn from his statement is perverse. The fact admitted by him is that the material was supplied to the Assessee FOR. Various sales were made by him to the Assessee and off hand he is not supposed to remember the spot of delivery for each transaction of sale.</p> <p>The Assessee is not concerned as to the acquisition of stock by the seller or the purchase bills of his stock. The <u>mentioning of the names of stations is best known to him.</u> The fact remains that the goods were supplied by him FOR</p>
9.2(iii)	<p>Except claiming that the material reached the premises of the Assessee, the Assessee could not bring anything on record to substantiate the same. No stock register/gate register or name of the person delivering the material at the site has been disclosed.</p>		<p>Copies of account of the suppliers and detail of bills concerning FOR delivery of the material were supplied and, in fact, various comments have been given on the same and the issues arising will be discussed in the following</p>

				paragraphs
9.3	The copies of the plans of school building as prepared by the architect filed in no way establish the fact of making addition to building account by the Assessee. The perusal of the plans submitted by the Assessee reveal that the Assessee has claimed the following additions to the building account during Asstt. Year 2010-11:-			It is admitted that the plans made by the architect in isolation will not prove the factum of construction, but, at the same time the plans supported by purchase of material, engaging of artisans, payments made to them by account payee cheques and deduction of tax at source from the payments made to them are certain facts which make the inference of the Id. A.O perverse to the evidence on record.
	1	Administrative Block single storey, Patiala Ground Floor Plan	3464.0 Sq.Ft.Sq.Ft.	Admitted
	2	Budha Dal Public School (Sr. Branch, PTA) DG Set	881.26 Sq. ft.	Admitted
	3	Plan after additions / alterations at Ground Floor	1923.08 sq.ft.	Admitted
	4	Class room Block (Jr. Branch, Patiala) Ground Floor	5221.6 sq.ft.	Admitted
	5	Class room Block (Jr. Branch, Patiala) First Floor Plan	5150.0 sq.ft.	Admitted
	6	Class room Block (Jr. Branch, Patiala) Second Floor Plan	5236.0 sq.ft.	Admitted
	7	Class room block (Jr. Branch, Patiala) Third Floor plan	5236.0 sq.ft.	Admitted
	8	Ground Floor Plan (Existing buildings)	1060.0 sq.ft.	Admitted
	9	First Floor Plan (Budha Dal School, Samana) (Proposed)	16591.00	Admitted
	10	First Floor Plan (Proposed) dt. 14.03.12 (No description of place)	1060.0 sq.ft.	Admitted
	11	Class room Block (Jr. Branch, Zirakpur) First Floor Plan	6658.33sq. ft.	Admitted
	12	Class room block (Jr. Branch, Zirakpur), Second Floor Plan	6658.33 sq.ft.	Admitted
		Total area	59140.60	
	The plea of the Assessee that additions and alterations were made within the boundary wall and the management was advised that no sanction or permission from the Municipal Corporation Authorities was required suffer from the following infirmities and contradictions and hence can not be accepted vis-a-vis evidence available on record as discussed below:-			
9.3(i)	The plea of the Assessee that additions and alterations were made within the boundary wall and the management was advised that no sanction or permission from the Municipal Corporation Authorities was required suffer from the following infirmities and contradictions and hence can not be accepted vis-à-vis evidence available on record as discussed below:-			It was explained before the Id. A.O that the additions and alterations in building account were since made within the boundary wall, no permission from Local Authorities taken as advised by the devotees. But, however, how the fact is relevant to the facts of the case in the face of books of account, vouchers maintained, artisan engaged, payment to them by account payee cheques and TDS made? In the ultimate analysis it has been admitted by the Id. A.O that the construction was carried out though the

			extent thereof was disputed.
9.3(ii)	The assessee's contention that only alterations, additions were made within the boundary wall is self-contradictory on the facts discernible from the plans submitted by the Assessee. The plans show that the Assessee has made got sketch plan for 25,189.86 sq.ft. at Patiala and 3,316.66 sq.ft. at Zirakpur. When the information was called for from Municipal Corporation, Patiala and Zirakpur, they confirmed that no building plan has been got approved by the Assessee during the year under consideration. It is needless to mention that approval for construction, alternation Addition and structural modification is mandatory as per Town Planning ACT and the Assessee in way is exempted from the same.		Same reply as above. Even if the Assessee has violated Local Body laws concerning permission for construction, the fact of construction has not been denied by him. The Assessee also filed photographs of newly constructed buildings, copies of which also form these submissions
9.4	The perusal of the materials purchased claimed by the Assessee reveal the following serious infirmities which belie the version of the Assessee of having claimed addition to building account:-		The so called 'infirmities' are nothing but mis appreciation of the facts of the case. Vide para 2(H) it was explained that certain bills in respect of which cartage charges were not debited were received FOR of which detail was called for and filed. The Id. A.O has drawn inferences from this detail as if it were the list of entire material purchased during the year. The fact remains that the during the year various purchase were made. Headwise/ material wise detail of such purchases is enclosed.
9.4.1	The Assessee has claimed to have purchased tiles of Rs. 1,17,303/- from M/s Ashwani Goya/ & Co., which means at rate of Rs. 50 sq. ft., the area to be tiled comes to mere 2346 sq. ft.. There is no evidence on record to substantiate the use of other flooring material such as tile or marbles.		Vide para 2(H) it was explained that certain bills in respect of which cartage charges were not debited were received FOR of which detail was called for and filed. The Id. A.O has drawn inferences from this detail as if it were the list of entire material purchased during the year. The fact remains that the during the year various purchase were made. Headwise/ material wise detail of such purchases is enclosed.
9.4.2	The perusal of the depreciation chart annexed to the Audit Report reveals that the Assessee was able to put to use the building claimed to be constructed during the year itself. The Assessee was asked to furnish the details of number of students on roll of the school at Patiala and Zirakpur during the last four years which the Assessee till date has not furnished willfully as that would belie its claim of addition to building of the schools, the plans submitted that the Assessee has claimed to have constructed 18 class rooms at Patiala and 14 class rooms at Zirakpur. At the rate of 25 students per room there should be increase in the strength of the students by at/east 800. By this estimate, the student strength of the schools of the Assessee must have steeply increased but the Assessee willfully did not furnish information about the number of students on its rolls during the last four years before the year under consideration.		The detail of students was since filed with the reply dated 07.09.2012 in para 4 the objection of the Id. A.O is not tenable. It may be added that in the process of imparting education the size of building would not solely depend upon number of students but the day by day improvement in quality and providing facilities.
9.5	Further the purchases of materials and their quantities reveal very serious infirmities and discrepancies which clearly establish that the Assessee in fact has not made any addition to the building account. The details of these infirmities are as under:-		The finding in contradictory as in the later part of the order the Id. A.O has categorically held that the building was constructed but he has just disputed the extent of the outlay on

			additions and alterations.
9.5.a	There is always the chronological order of consumption of raw material for the construction of the building. In the ordinary course of contraction, Bricks are purchase first, then Sand/ Stone, cement and TMT bars. In the instant case, the Assessee was going to construct a building at the cost of Rs.6,14,08,881/- aggregating to 38,506.52 sq. ft of covered area. The first material it purchased on 7-4-09 was Cement for Rs. 51,000/-. Similarly, the second item i.e. TMT Bars were purchased on 14-4-09 for Rs. 4,62,400/-.		The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.
9.5.b	The bricks of Rs. 1,21,000/- were purchased by the Assessee on 5-5-2009 which @ Rs. 3000 per 7000 works out to be 40,333 in number i.e just sufficient for the construction 4033 sq.ft. of covered area @ 10 bricks per sq. ft.		The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.
9.5.c	Though the Assessee has claimed to have made addition of 38,506.52 sq. ft of covered area but expenditure claimed on account of electrical fitting is just mere Rs. 4664 i.e just not sufficient for even a single room.		The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.
9.5.d	The Assessee has claimed to have purchased cement but no purchase of sand has been shown. It is not explained by the Assessee that in the absence of sand, how the construction was carried out.		The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.
9.5.e	No purchase of store or bazari again sine quo non for any /F/type of ceiling and flooring has been shown.		The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.
9.5.f	The Assessee has claimed have made alternation and modification but no expenditure on account of labour to the person who dismantled the old structures has been shown.		The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.
9.5.g	The photograph produce by the Assessee show a well and beautiful painted building and well laid down lawns but no expenditure on account of paint, varnish, polishing and landscaping has been shown.		The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.
9.5.h	The Assessee has shown the total purchase or TMT bars at Rs.7,68,460/- for 1 sq. ft. covered area at/east TMT bars of Rs. 140/- is required, the expenditure shown by the Assessee is just sufficient to add 5489 sq.ft. of covered area.		The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.
9.5.i	The expenditure of account of cement has been claimed by the Assessee aggregates to Rs. 11,36,425/- which @ Rs. 250/- per bag comes to Rs. 5 per kg which can be used for		The inference has been drawn from detail of FOR supply of

	construction not more than 11,364 sq. ft of covered area @ 20Kg. per Sq ft.			goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.
9.5.j	The Assessee has shown payment of Rs. 14,322/- on -, Recount of marble fitting to Chunni Lai but no purchases of marble has been shown by it.			The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.
9.5.k	Further no purchase of timber has been shown. The Assessee has shown purchases of plywood for Rs. 2,09,595/- which again is not sufficient to account for the construction of 38506.52 sq. feet of covered area.			The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue. It may be further added that most of the joinery in the rooms is made of iron and some part also of aluminum.
9.5.l	The Assessee has claimed to have constructed 13,316.66 sq. ft of covered area at Zirkipur but it is astonishing that no material has been shown to have been purchase from Zirkipur. No explanation furnished how the material was transported from Patiala to Zirkipur			Since regular and trusted supplier are stationed at Patiala, it is always the endeavour of the Assessee to order the material to these supplier.
9.6	During the course of assessment proceedings, the statement of Shri L.R. Gupta, was recorded on 30-3-2013 u/s 131 of the Income-tax Act, 1961 in which he had deposed that he has planned and supervised the school building as per details given below :-			The statement of Sh.L.R.Gupta was not recorded in the presence of the Assessee and was used against the Assessee without right of cross examination. No reliance could be placed on the same, moreso, when the drawings containing total area as prepared by Mr. Gupta were supplied during the course of assessment proceedings. It is also apparent that the statement was recorded without the records which have not been referred in the statement, copy of which was obtained after assessment order was passed.
	Budha Dhall Public School Patiala(Senior Wing)			
	Administrative Block	Covered Area in Sq. feet	5000	Not relevant in view of reply to para 9.6above.
	Date of commencement.	2009		Not relevant in view of reply to para 9.6 above.
	Date of Completion	2010 and 2011		Not relevant in view of reply to para 9.6 above.
	Front Office (after adulteration)	Covered Area in Sq. feet	3200	Not relevant in view of reply to para 9.6 above.
	Date of commencement.	2011, 2012		Not relevant in view of reply to para 9.6above.
	Date of Completion	2012 end.		Not relevant in view of reply to para 9.6 above.
	Transformer and Generator Set Room.	Covered Area in Sq. feet	1200	Not relevant in view of reply to para 9.6above.
	Date of commencement.	2009		Not relevant in view of reply to para 9.6 above.

	Date of Completion	2010& 2011			Not relevant in view of reply to para 9.6 above.
	Junior Wing at Patiala				
	Constructed Area. (Canteen) Two Floor above and one lower floor.	3000 sq. Ft.			Not relevant in view of reply to para 9.6above.
	Date of Start.	Dec. 2011			
	Date of Completion	Dec. 2012			
	Academic Block Four Storey Building				
	Ground Floor: Date of Start. Date of Completion	20000 Sqt. Feet. 2010-11 2011-12.			Not relevant in view of reply to para 9.6 above.
	Construction Area atSamana Date of Start: Date of Completion:	7700 Sq. Feet approximate. 2010 2012.			Not relevant in view of reply to para 9.6above.
	Construction Area atZirakpu (1stand'2 nd Floor) Date of Start:	7000 Sq. Feet approximate. 2009-10			Not relevant in view of reply to para 9.6 above
	He has further deposed that the approximate rate of construction of building was between Rs. 600 to 700/- per sq. Feet. He was taken to the site and identified the buildings supervised by him during the construction thereof.				Not relevant in view of reply to para 9.6 above
	In view of the above discussions, the covered area of the building constructed by it during the year under consideration is worked out as under :-				Not relevant in view of reply to para 9.6above
	Budha Dhall Public School, Patiala (Senio Wing)				
	Administrative Block	-Covered Area in Sq. feet	5000		Not relevant in view of reply to para 9.6 above
	Date of commencement.	2009			Not relevant in view of reply to para 9.6 above
	Date of Completion	2010 and 2011			Not relevant in view of reply to para 9.6 above
	Transformer and Generator Set Room.	Covered Area in Sq. feet	1200		Not relevant in view of reply to para 9.6 above
	Date of commencement.	2009			Not relevant in view of reply to para 9.6 above
	Date of Completion	2010 &2011			Not relevant in view of reply to para 9.6above
	Construction Area at Samana: 7700 Sq. Feet approximate. (50% area of the building i.e. 3850 sq feet is deemed to be constructed by the Assessee during the financial year 2009-10 as completion took place in the financial year 2012). Date of Start : 2010 Date of Completion : 2012.				Not relevant in view of reply to para 9.6above
	Construction Area at Zirakpur: 7000 Sq. Feet approximate. (1st and 2 nd Floor) Date of Start : 2009-10				Not relevant in view of reply to para 9.6 above
	As per above chart, the total allowable constructed area during the financial year works out to 17050 sq. Feet. Shri L.R. Gupta has deposed in this statement that the approximate rate of construction of the building under his supervision was between Rs. 600 to 700 per sq. feet. However, for the sake of natural justice and equity , I estimate the cost of construction of buildings in questions, by applying the rate of Rs. 800/- sq. feet. Therefore, the allowable expenditure during the financial year 2009-10, for the purpose of section 11 of the Income-tax Act, 1961 comes to Rs. 1,36,40,000/- on account of application of income for the construction of building.				Not relevant in view of reply to para 9.6 above
	The perusal of the assessment record reveals that the Assessee has not applied for in form No. 10 as prescribed in section 11(2) of the Income-tax Act, 1961 before the A.O. to accumulate and set apart of its funds in the succeeding years.				As per the returned version since the application for the objects of the trust was more than the income, form No. 10 was not required to be obtained from the auditors.
	Without prejudices to the above, as discussed in the				The decision on the issue would

	preceding paragraphs, against the claim of capital expenditure of Rs. 6,33,47,767/- on account of construction of buildings, the actual expenditure have been found to Rs. 1,36,40,000/-. Hence, it is held that the capital expenditure of Rs. 4,97,07,767/- (6,33,47,767/- - 1,36,40,000/-) has actually not been applied for the purposes of construction of buildings and to avail the benefit of section 11 of the I. T. Act, 1961.		depend on the other issues involved.
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From the above chart it would transpire that the Id. A.O has built up his case on the following issues:-

- (i) That the Assessee has not produced the books of account.
- (ii) That the Assessee has not been able to reconcile purchases of various items.
- (iii) Statements of Naresh Jain of Vardhman Steels and Avtar Singh of Aman Sanitary Stores do not support the version of the Assessee.
- (iv) No stock register has been maintained to show that material purchased reached the hands of the Assessee.
- (v) That no permission for construction was obtained from Local Authorities on the pretext that the construction within the boundary wall will not call for any such permission.
- (vi) There are serious infirmities in the quantities of materials and volume of actual construction.
- (vii) That the statement of the architect was recorded on the basis of which the construction of the building works out to 17050 sq. feet against 59140 sq. feet as claimed by the Assessee.
- (viii) That the expenditure on building as per covered area would work out to Rs. 1,36,40,000/- as against Rs. 6,33,47,767/-

The above issues have been elaborately dealt with in the table give above. But however, these are again discussed in detail as under:-

That the Assessee has not produced the books of account.

The allegation of the Id. A.O is not supported by records. Regular books of account are maintained and got audited from the Chartered Accountant. The audit report was filed and forms part of the record. The books were produced from time to time and examined by the inspector of the Id. A.O. Vide Sr. No. 7 of letter dated 07.09.2012 the books were produced with salaries, admission registers. Again in para 2(i) of letter dated 25.03.2014 vide which it was pointed out that the books were examined qua the vouchers in the month of December, 2014 and that even on the date of hearing on 26.03.2013 car load of books was produced, as mentioned in the reply but the Id. A.O is wrong in holding that the books of account were not produced.

That the Assessee has not been able to reconcile purchases of various items. Statements of Naresh Jain of Vardhman Steels and Avtar Singh of Aman Sanitary Stores do not support the version of the Assessee.

It is incorrect to say that the vouchers were not produced. It is apparent from the contents of the assessment order that the Id. A.O took notice of various vouchers.

The statement of Naresh Jain recorded at the back of the Assessee with allowing right of cross examination or supplying the gist of the enquiries

made. Even otherwise, the inference drawn from his statement is perverse. The fact admitted by him is that the material was supplied to the Assessee FOR. Various sales were made by him to the Assessee and off hand he is not supposed to remember the spot of delivery for each transaction of sale.

The Assessee is not concerned as to the acquisition of stock by the seller or the purchase bills of his stock. The mentioning of the names of stations is best known to him. The fact remains that the goods were supplied by him FOR

No stock register has been maintained to show that material purchased reached the hands of the Assessee.

It would be too much to expect the Assessee to maintain stock register in respect of the construction and material received from various persons.

i) That no permission for construction was obtained from Local Authorities on the pretext that the construction within the boundary wall will not call for any such permission.

ii) That the books of account were not produced by the Assessee during the course of assessment proceedings.

iii) There are serious infirmities in the quantities of materials and volume of actual construction.

iv) That the statement of the architect was recorded on the basis of which the construction of the building works out to 17050 sq. feet against 59140 sq. feet as claimed by the Assessee.

v) That the expenditure on building as per covered area would work out to Rs. 1,36,40,000/- as against Rs. 6,33,47,767/-

The explanation to these findings of the Id. A.O is contained in the table given above.

In the light of that each aspect is discussed below in detail:-

That no permission for construction was obtained from Local Authorities on the pretext that the construction within the boundary wall will not call for any such permission.

It is a fact that no permission for construction of the buildings was obtained from local authorities. The question arose during the assessment proceedings and it was explained that the Assessee was advised that if the construction is carried out within the boundary wall. The view held by the Assessee may be wrong but permission or no permission from the local authorities, the fact of construction could not be denied. In fact, the same is apparent from the copies of drawings on record, the statement of the architect and even the ultimate finding of the Id. A.O in which the factum of construction has not been denied, though the volume thereof was disputed. In view of these facts it cannot be denied that the construction was carried out. The fact was also proved by filing photographs of the structures added and renovated. The also form part of these submissions.

That the books of account were not produced by the Assessee during the course of assessment proceedings.

The inference is patently incorrect as the books of accounts were produced from time to time. The same were examined by Mr. Kapil, Inspector who has been dealing with the proceedings all along. The entries in the order sheet would reveal that same were made in the hand writing of the Inspector. It was only on last hearing that the case was heard by the Id. A.O. It will be seen from the reply filed before him as also in the reply to the very first notice that the books of account are being produced. There is nothing on record to suggest that the contents of the letter were not correct. Copies of both the letters showing the production of books are enclosed for your ready reference. In view of these facts, the inference that the books of account were not produced is perverse.

There are serious infirmities in the quantities of materials and volume of actual construction.

The Id. A.O has pointed out various infirmities in the quantities of material and volume of actual constructions. The fact is that during the course of assessment proceedings certain bills were noticed in respect of which the carriage and transportation charges were not debited in the books of account. In the explanation it was claimed that the goods covered by such bills were delivered FOR site. The Assessee was, thereupon, asked to file detail of all such bills of purchase in which goods were delivered FOR. The same was supplied. The inferences drawn are from this list only which is a tip of the iceberg. The actual purchase of material is much more. Head wise, item wise and date wise details of material consumed are enclosed which will make the issue clear. In the light of these lists there will be no infirmity. The confusion arose because the proceedings were taken up by the Id. A.O only on the last date of hearing of the case without consulting the records.

Reference to the statements of two suppliers, though not legally tenable in evidence as the same were recorded behind the back of the Assessee, without a right of cross examination, the inferences drawn cannot be used against the Assessee. Even otherwise having made the sales to the Assessee how is the non-maintenance of stock register by the supplier or any other lapse in maintenance of their accounts could be detrimental to the case of the Assessee. These persons are admittedly doing business, the bills issued by them are during the regular course of business, they are maintaining their books of account and filing VAT returns. Under these facts and circumstances of the case it will be too much to question the conduct of the Assessee for any defect in the maintenance of the books of account by the supplier.

That the statement of the architect was recorded' on the basis of which the construction of the building works out to 17050 sq. feet against 59140 sq. feet as claimed by the Assessee.

The so-called statement was recorded by the Id. A.O at the back of the Assessee without the records of the architect. On its part the Assessee filed copies of duly signed plans of the proposed building by the same architect, books of account and vouchers in support of the expenditure incurred. The books of account are audited and all the information was filed before the Id. A.O. It is apparent from the order of assessment that the books of account maintained in the regular course of business have not been rejected. In the absence of which resort to estimations is not permitted as held by the Hon'ble Jurisdictional Tribunal in the case of Ganesh Rice Mills v. ITO, Barnala, reported in (2006) 280 ITR 409. In these facts and circumstances of the case the statement of Sh. L.R.Gupta cannot be read in evidence and no defect having been pointed out in the books of account, the same could not be rejected and, consequently, the Id. A.O cannot be allowed to resort to estimations.

In view of the above discussion the Id. A.O had no case for restricting the expenditure incurred on the construction of building. It is, therefore, requested that the addition made on this account at Rs. 4,77,68,881/- may kindly be deleted and treating it as additions in the building account depreciation due may also be allowed.

GROUND NO. 7: The grievance projected through this ground is that the Id. A.O was not justified in disallowing donations made to charitable institutions which are within the objects of the institution.

A copy of the objects of the institution is enclosed. It will be noticed that the objects include donations to charitable institutions. This being so, the Id. A.O was not justified in disallowing such donations made at Rs. 46,000/-.]

25. The Ld. CIT(A) has recorded in the impugned order that the matter was remanded to the Ld. AO with the written submission on 02/11/2015 which was responded by the Ld. AO by reply dated 25/04/2016. To which the Ld. AR for the assessee responded with his comments thereon on 06/05/2016 and a subsequent supplementary submission before him during the course of hearing on 19/03/2018. The Ld. CIT(A) has tabulated the significance of points raised in written submission and remand report as under:

5.4 Significance of Points raised in Written Submission & Remand Report :
The Remand report responded to the main grounds of Appeal and other issues raised in the written submission, the response to the main grounds of Appeal remarks/ implications thereon are as under:

Grounds of the Assessee	Comments of the A. O.	Remarks /Implications
Ground No. 1	General nature no comments.	
Ground No. 2	The facts that A.O has relied upon only on statements of Sh. Naresh Jain, Sh. Avtar Singh and Sh. L.R. Gupta only, is not true because A.O. has given detailed reasoning in its order to not accept the view of the Assessee. it is matter of record that A.O. has recorded the statements of these persons and not provide the opportunity of cross examination to Assessee, the reason was because there was no necessity of the same.	The matter is discussed in detail in adjudicating the ground of appeal 2
Ground No. 3,4,5,6	Ground nos. 3,4,5,6 are matter of records.	
Ground No. 7,8	No comments. Assessee has submitted paper book, in this paper book Sr. No. 1 and 8 are not part of the Assessee of the A.O. file, balance Sr. nos are part of the record.	

26. The Ld. CIT(A) has further recorded that a detailed response of assessee's submission to para 9 of the Ld. AO's order which were findings are tabulated as below:

Sr. No.	Stated in Assessment order	Stated in the Written submission by Appellant	Response of the Ld. AO in the Remand Report	Remarks/Implications
9.	I have carefully considered the written submissions of the Assessee submitted as mentioned supra. The version of the Assessee is not acceptable at all in view of the discussion made in the succeeding paragraphs:-	As discussed in the following paragraphs, the Id. A.O did not have any reason to disbelieve the explanation filed by the Assessee.	Not commented upon	
9.1	No books of account were produced on the occasion of any of the earlier hearings for the reasons best known to the Assessee.	It is incorrect to say that the books of account and vouchers were not produced. The books were produced from time to time and examined by the inspector of the Id. A.O. Vide Sr. No. 7 of letter dated 07.09.2012 the books were produced with salaries, admission registers. Again, in para 2(i) of letter dated 25.03.2012 vide which it was pointed out that the books were examined qua the vouchers in the month of December, 2014 and that even on the date of hearing on 26.03.2013 car load of books was produced, as mentioned in the reply but the Id. A.O is wrong in holding that the books of account were not produced.	Matter of Record no Comment But explanations regarding Show Cause notice and para at page 16-27 not accepted.	The Ld. AO does not rebut that the boos have been produced and states that it is matter of record but only disputed the views of the AR on AOs findings on pages 16 to 27
9.2(i)	The Assessee was specifically asked to prove the genuineness of the purchases of various items claimed to have been utilized by it for the construction of building but it has not been able to do so. During the course of assessment proceedings, the statement of Sh. Naresh Jain, Prop. Vardhman Steels, Patiala was recorded on 4-3-2013 from whom the Assessee has claimed to	It is incorrect to say that the vouchers were not produced. It is apparent from the contents of the assessment order that the Id. A.O took notice of various vouchers. The statement of Naresh Jain recorded at the back of the Assessee without allowing right of cross examination or supplying the gist of the enquiries made. Even otherwise, the inference drawn from his statement is perverse. The fact admitted by him is that the	Matter of Record. Regarding statements cross examination this has already been discussed at above mentioned para 2	It is taken up in ground of appeal 2

	<p>have made most of the purchases consisting of TMT Bar, Cement, and MS Pipes etc. He could not specifically explain as to at what place the material was delivered to the Assessee. He could not prove the payment to any party or person on account of cartage/ transportation alleged to have been paid by the Assessee. Mr. Naresh Jain even could not prove as to whether he had stock available of the goods sold to the Assessee on respective days as no stock register or stock statements on day to day basis in respect of various items claimed to have been purchased by the Assessee.</p>	<p>material was supplied to the Assessee FOR. Various sales were made by him to the Assessee and off hand he is not supposed to remember the spot of delivery for each transaction of sale.</p>		
9.2 (ii)	<p>In response to the summons issued to the M/s Aman Sanitary store, Patiala were issued. In compliance thereto, Sh. Avtar Singh, Prop. Of the concern, has filed the date wise and narration-wise of Budha Dhall, Public School and Sikh Education Society for the financial year 2009-10, as appearing the account only. He could not prove the availability of stock of items sold by him to the Assessee on various dates as neither the purchase bills in support of his stock availability on the respective dates, nor stock register or stock statement have been filed. He even could not prove the payments to any person on account of cartage or transportation. The Assessee could not offer any explanation as to why the bills of the same items claimed to have been purchased by it bear the names of the Stations such as Mohali, Fatehgarh Sahib and Damdama Sahib. It means the same material has been purchased to these places and the Assessee could not substantiate as to how the same can be attributed to the application of income for the purpose of its charitable activities.</p>	<p>The statement of Naresh Jain recorded at the back of the Assessee with allowing right of cross examination or supplying the gist of the enquiries made. Even otherwise, the inference drawn from his statement is perverse. The fact admitted by him is that the material was supplied to the Assessee FOR. Various sales were made by him to the Assessee and off hand he is not supposed to remember the spot of delivery for each transaction of sale.</p> <p>The Assessee is not concerned as to the acquisition of stock by the seller or the purchase bills of his stock. The mentioning of the names of stations is best known to him. The fact remains that the goods were supplied by him FOR</p>	<i>Matter of record so no comments</i>	Is taken up in ground of Appeal 2

9.2. (iii)	Except claiming that the material reached the premises of the Assessee, the Assessee could not bring anything on record to substantiate the same. No stock register/gate register or name of the person delivering the material at the site has been disclosed.	Copies of account of the suppliers and detail of bills concerning FOR delivery of the material were supplied and, in fact, various comments have been given on the same and the issues arising will be discussed in the following paragraphs	Matter of Record during Remand Report Proceedings on 13/04/16 the counsel for the Assessee has submitted ledger, bills and vouchers of capital investments and same were examined verified . with regard to Capital investment in buildings	That bills, and vouchers prima facie exists and have been tallied vis a- vis the investment shown in the books of accounts
9.3	The copies of the plans of school building as prepared by the architect filed in no way establish the fact of making addition to building account by the Assessee. The perusal of the plans submitted by the Assessee reveal that the Assessee has claimed the following additions to the building account during Asstt. Year 2010-11:-	It is admitted that the plans made by the architect in isolation will not prove the factum of construction, but, at the same time the plans supported by purchase of material, engaging of artisans, payments made to them by account payee cheques and deduction of tax at source from the payments made to them are certain facts which make the inference of the Id. A.O perverse to the evidence on record.	Matter of Record	The existence of plans for buildings & The fact that payments to contractors are by account payee cheques and TDS has been deducted established
	The plea of the Assessee that additions and alterations were made within the boundary wall and the management was advised that no sanction or permission from the Municipal Corporation Authorities was required suffer from the following infirmities and contradictions and hence cannot be accepted vis-à-vis evidence available on record as discussed below:			
9.3 (i)	The plea of the Assessee that additions and alterations were made within the boundary wall and the management was advised that no sanction or permission from the Municipal Corporation Authorities was required suffer from the following infirmities and contradictions and hence can not be accepted vis-a- vis evidence available on record as discussed below:-	It was explained before the Id. A.O that the additions and alterations in building account were since made within the boundary wall, no permission from Local Authorities taken as advised by the devotees. But, however, how the fact is relevant to the facts of the case in the face of books of account, vouchers maintained, artisan engaged, payment to them by account payee cheques and TDS made? In the ultimate analysis it has been admitted by the Id. A.O that the construction was carried	No reply / Matter of Record	It's a matter of Fact and discussed in decision on grounds 3& 4

		out though the extent thereof was disputed.		
9.3(ii)	The assessee's contention that only alterations, additions were made within the boundary wall is self-contradictory on the facts discernible from the plans submitted by the assessee. The plans show that the assessee has made got sketch plan for 25,189.86 sq. at Patiala and 3,316.66 sq. at Zirakpur. When the information was called for from Municipal Corporation, Patiala and Zirakpur, they confirmed that no building plan has been got approved by the assessee during the year under consideration. It is needless to mention that approval for construction, alteration, addition and structural modification is mandatory as per Town Planning ACT and the assessee in way is exempted from the same.	Same reply as above. Even if the assessee has violated Local Body laws concerning permission for construction, the fact of construction has not been denied by him. The assessee also filed photographs of newly constructed buildings, copies of which also form these submissions	NO comments regarding photographs of the building matter of record	Same as above
9.4	The perusal of the materials purchased claimed by the assessee reveal the following serious infirmities which belie the version of the assessee of having claimed addition to building account:-	The so called 'infirmities' are nothing but mis-appreciation of the facts of the case. Vide para 2(H) it was explained that certain bills in respect of which cartage charges were not debited were received FOR of which detail was called for and filed. The Id. A.O has drawn inferences from this detail as if it were the list of entire material purchased during the year. The fact remains that during the year various purchases were made. Headwise/ material wise detail of such purchases is enclosed.	NO comments not relevant	
9.4.1	The assessee has claimed to have purchased tiles of Rs. 1,17,303/- from M/s Ashwani Goyal & Co., which means at rate of Rs. 50 sq. ft., the area to be tiled comes to mere 2346 sq. ft.. There is no evidence on record to substantiate the use of other flooring material such as tile or marbles.	Vide para 2(H) it was explained that certain bills in respect of which cartage charges were not debited were received FOR of which detail was called for and filed. The Id. A.O has drawn inferences from this detail as if it were the list of entire material purchased during the year. The fact remains that during the year various purchases were made. Headwise/ material wise detail of such purchases is enclosed.	The Reply of the assessee is not accepted because the AO gave detailed reasoning in his assessment on the basis of documents supplied by the assessee. Assessee has neither taken this plea in the assessment order nor in the reply to Show cause notice	The Appellant has replied to point in the Show cause notice; this was never raised in the show cause.

9.4.2	<p>The perusal of the depreciation chart annexed to the Audit Report reveals that the Assessee was able to put to use the building claimed to be constructed during the year itself. The Assessee was asked to furnish the details of number of students on roll of the school at Patiala and Zirakpur during the last four years which the Assessee till date has not furnished willfully as that would belie its claim of addition to building of the schools, the plans submitted that the Assessee has claimed to have constructed 18 class rooms at Patiala and 14 class rooms at Zirakpur. At the rate of 25 students per room there should be increase in the strength of the students by atleast 800. By this estimate, the student strength of the schools of the assessee must have steeply increased but the assessee willfully did not furnish information about the number of students on its rolls during the last four years before the year under consideration.</p>	<p>The detail of students was since filed with the reply dated 07.09.2012 in para 4 the objection of the Id. A.O is not tenable. It may be added that in the process of imparting education the size of building would not solely depend upon number of students but the day by day improvement in quality and providing facilities.</p>	<p>No comments. Reply dated 07.09.2012 is on record, but there is no details regarding students for earlier years and this year. It is also a fact that investment in building is required when the space is not sufficient for present student structure</p>	<p>While the strength of students over the years is not provided; its relevance is discussed separately in the determination of Grounds 3 & 4</p>
9.5	<p>Further the purchases of materials and their quantities reveal very serious infirmities and discrepancies which clearly establish that the Assessee in fact has not made any addition to the building account. The details of these infirmities are as under:-</p>	<p>The finding in contradictory as in the later part of the order the Id. A.O has categorically held that the building was constructed but he has just disputed the extent of the outlay on additions and alterations.</p>	<p>Matter of Record no comments</p>	
9.5.a	<p>There is always the chronological order of consumption of raw material for the construction of the building. In the ordinary course of contraction, Bricks are purchase first, then Sand/ Stone, cement and TMT bars. In the instant case, the Assessee was going to construct a building at the cost of Rs.6,14,08,881/- aggregating to 38,506.52 sq. ft. of covered area. The first material it purchased on 7-4-09 was Cement for Rs. 51,000/-. Similarly, the second item</p>	<p>The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.</p>	<p>AO has rightly drawn the conclusion on the basis of details submitted by the Assessee</p>	<p>The AO does not contradict that the vouchers establish consumption at variance with what the Id. AO has shown in the Assessment Orders. In remand report AO has confirmed all vouchers for Capital investment produced and verified.</p>

	i.e. TMT Bars were purchased on 14-4-09 for Rs. 4,62,400/-.			
9.5.b	The bricks of Rs. 1,21,000/- were purchased by the Assessee on 5-2009 which @ Rs. 3000 per 7000 works out to be 40,333 in number i.e. just sufficient for the construction 4033 sq. of covered area @ 10 bricks persq.	The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.	AO has rightly drawn the conclusion on the basis of details submitted by the Assessee	The AO does not contradict that the vouchers establish consumption at variance with what the Ld. AO has shown in the Assessment Orders. In remand report AO has confirmed all vouchers for Capital investment produced and verified.
9.5.c	Though the Assessee has claimed to have made addition of 38,506.52 sq. ft. of covered area but expenditure claimed on account of electrical fitting is just mere Rs. 4664 i.e. just not sufficient for even a single room.	The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.	AO has rightly drawn the conclusion on the basis of details submitted by the Assessee	The AO does not contradict that the vouchers establish consumption at variance with what the Ld. AO has shown in the Assessment Orders. In remand report AO has confirmed all vouchers for Capital investment produced and verified.
9.5.d	The Assessee has claimed to have purchased cement but no purchase of sand has been shown. It is not explained by the Assessee that in the absence of sand, how the construction was carried out.	The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.	Not accepted as Assessee failed to submit any specific reason during assessment proceedings	The AO does not contradict that the vouchers establish consumption at variance with what the Ld. AO has shown in the Assessment Orders. In remand report AO has confirmed all vouchers for Capital investment produced and verified.
9.5.e	No purchase of stone or bazari again sine quo non for any IF/type of ceiling and flooring has been shown	The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.	Not accepted as Assessee failed to submit any specific reason during assessment proceedings	
9.5.f	The Assessee has claimed have made alternation and modification but no expenditure on account of labour to the person who dismantled the old structures has been shown.	The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.	Not accepted as Assessee failed to submit any specific reason during assessment proceedings	The AO does not contradict that the vouchers establish consumption at variance with what the Ld. AO has shown in the Assessment Orders. In remand report AO has confirmed all vouchers for Capital investment produced and verified.
9.5.g	The photograph produced by the Assessee show a well and beautiful painted building and well laid down lawns but no expenditure on account of paint, varnish, polishing and landscaping has been shown.	The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.	Not accepted as Assessee failed to submit any specific reason during assessment proceedings	
9.5.h	The Assessee has shown the total purchase of TMT bars at Rs.7,68,460/- for 1 sq. ft. covered area at least TMT bars of Rs. 140/- is required, the expenditure shown by the Assessee is just sufficient to add 5489 sq. of covered area.	The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.	Not accepted as Assessee failed to submit any specific reason during assessment proceedings	
9.5.i	The expenditure of account of cement has been	The inference has been drawn from detail of FOR	Not accepted as Assessee failed	

	claimed by the Assessee aggregates to Rs. 11,36,425/- which @ Rs. 250/- per bag comes to Rs. 5 per kg which can be used for construction not more than 11,364 sq. ft. of covered area @ 20Kg. per Sq ft.	supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.	to submit any specific reason during assessment proceedings	
9.5.j	The Assessee has shown payment of Rs. 14,322/- on 7 Recount of marble fitting to Chunni Lai but no purchases of marble has been shown by it.	The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue.	Not accepted as Assessee failed to submit any specific reason during assessment proceedings	
9.5.k	Further no purchase of timber has been shown. The Assessee has shown purchases of plywood for Rs. 2,09,595/- which again is not sufficient to account for the construction of 38506.52 sq. feet of covered area.	The inference has been drawn from detail of FOR supply of goods. Otherwise, the material consumed is much more. Item wise detail of consumption of material is enclosed which would clarify the issue. It may be further added that most of the joinery in the rooms is made of iron and some part also of aluminum.	Not accepted as Assessee failed to submit any specific reason during assessment proceedings	
9.5.l	The Assessee has claimed to have constructed 13,316.66 sq. ft. of covered area at Zirakpur but it is astonishing that no material has been shown to have been purchase from Zirakpur. No explanation furnished how the material was transported from Patiala to Zirakpur	Since regular and trusted supplier are stationed at Patiala, it is always the endeavor of the Assessee to order the material to these suppliers.	No comments	No contradiction to Appellants remarks
9.6	During the course of assessment proceedings, the statement of Shr. L.R. Gupta, was recorded on 30-3-2013 u/s 131 of the Income-tax Act, 1961 in which he had deposed that he has planned and supervised the school building as per details given below:-	The statement of Sh.L.R. Gupta was not recorded in the presence of the Assessee and was used against the Assessee without right of cross examination. No reliance could be placed on the same, more so, when the drawings containing total area as prepared by Mr. Gupta were supplied during the course of assessment proceedings. It is also apparent that the statement was recorded without the records which have not been referred in the statement, copy of which was obtained after assessment order was passed,	Matter of record	Taken up in Ground No. 1 of Appeal

27. The Ld. CIT(A) in respect of Ground No. 2 of appeal has stated as under:

Ground No. 2 of Appeal relates to the recording of the statements of Shri Naresh Jain, Avtar Singh and L.R. Gupta behind the back of the Appellant and that they were not confronted to the appellant. This issue was responded to in the remand report submitted by the Ld. AO dated 25.04.2016 to my predecessor and it was as under:

"The facts that the AO relied upon the only statements of S/shri Naresh Jain, Avtar Singh and L.R. Gupta only is not true, because AO has given detailed reasoning in is order to not accept the view of the Assessee. It is a matter of record that the AO recorded the statements of these persons and did not provide an opportunity of cross examination to the Assessee, the reason was there was no necessity of the same"

6.1 It is an admitted fact that the above-mentioned statements were recorded and an opportunity of cross examination not given to the Appellant. This in some way diminishes their evidentiary value; though not reducing them to naught as during the Appeal proceedings the Appellant has had sufficient opportunity in the written submissions and in the counter to the remand report to respond to the *statements*. Thus, in the proceeding hereinafter the weight given to these statements in determining the level of proof of preponderance of probabilities shall be on the low. This ground does not involve any impact on the financial burden of the Appellant and is thus disposed off.

28. The Ld. CIT(A) in respect of Ground No. 3 & 4 of appeal has stated as under:

07. Ground No. 3 & 4 of Appeal

This ground relates to the working out the amount applied for the objects of the institution as the expenditure on construction of building to the extent of Rs. 4,77,68,881/- has been held to be not allowable. The Assessment order in this point has been discussed in detail supra. The Assessing Officer in this case received a lot of information on 26th March 2013 and actually recorded a statement on the day of the order. Further, many of the issues raised in the Show cause have which were responded to by the Appellant in their written submission dated 25-03-2013, are not part of the reasoning for the additions made and denial of Section 11 exemption where other statements / reasons are used. Be that as may, the Appellant through the remand proceedings and written submissions has had sufficient opportunity to present their case and on this ground of Appeal they have submitted as under during the supplementary submission which are reproduced as under :-

"The Assessee is a society formed on 12/08/1985 with the pre-dominant object of imparting education. It is registered with the Registrar of Societies under the Societies Registration Act, 1860. To achieve the objective of imparting education to the students, the Assessee has since established three schools at Patiala, Samana and Zirakpur. These schools are affiliated with Central Board of Secondary Education (CBSE) for delivering quality education.. Registration under section 12 of the Income Tax Act, 1961, was sought and had been

granted in the year 1993. The Assessee has complied with all the provisions of law for getting exemptions under the Act, *ibid.* since then.

2. During the F. Y. 2009-10 relevant to AY 2010-11, the total receipts of Assessee society, while running the above Schools at Patiala, Samana and Zirakpur, collectively stood at Rs. 11,34,16,023/-. The receipts were applied for achieving the above objective of imparting education, by way of the expenses incurred on staff salary, administrative expenses etc. which amounted to Rs. 7,54,74,465/- (as per the Receipt and Expenses Account) and further amount of Rs. 6,14,08,881/- was also applied by undertaking construction of new school buildings at Patiala, Samana and Zirakpur (within the boundary walls of existing schools). All these above amounts applied during the period under reference, including the amounts applied towards construction of building, are duly supported by relevant bills/expenses vouchers and most of the payments thereof have been made through banking channels. These expenses/ amounts applied for the above purpose, have been duly recorded in the regular books of accounts maintained by the Assessee. These books of accounts/relevant records, were audited by Chartered Accountants and no contravention of law had been reported by them in their Audit Report. Return of Income after claiming exemption u/s 11, on the basis of financial statements extracted by the Chartered Accountants from the books of accounts, was filed on 15/10/2010.

3.1 The assessment proceedings u/s 143(3) of the Act, *ibid.* had been initiated and had been taken over by the Ld. Joint/Additional Commissioner of Income Tax, Patiala Range, Patiala. During the course of assessment proceedings, books of accounts and other relevant records were duly produced for his examination, certain details and copies of certain records, including purchase invoices relating to construction of buildings, were filed and explanations on the issues raised by the Ld. A.O. had been tendered by way of written submissions. While responding to the allegation that the Assessee had failed to produce the books of accounts, although ironically the A.O. had chosen to get the accounts/records examined through his Inspector, it was also specifically brought to his notice vide reply dated 25/03/2013 that he himself had chosen to get these records examined through his Inspector, Sh. Kapil Kishore and it was not a case of failure on the part of Assessee (this fact has not been denied by the Ld. AO at any stage). The Ld. AO had summoned some suppliers of building material and some artisans who undertook the construction activity. These persons had admitted the fact of supplying the material or carrying out the construction-labour activity during the period under reference and further receiving the payments against such supply/ work while some of these parties were examined by the A.O. at the back of the Assessee. As there was no evidence available with the AO for contradicting the above fact, he has chosen not to make any observation on the same. It is imperative to note that the Assessee was never given the opportunity to cross examine those parties during the assessment proceedings which is against the provisions of law as upheld by various Hon'ble Courts as submitted earlier also before this Hon'ble Court. Rather the perusal of entire process followed by the Ld. A.O. shall reflect that he was working with pre-mindset so much so that the impugned order has been passed on 30.03.2013 while taking cognizance of statement of Shri L.R. Gupta, Architect recorded on that date itself and apparently this statement has been utilized for quantifying the extent of construction.

Although the fact of application of the above mentioned amounts including the amount applied towards construction of buildings at Patiala, Samana

and Zirakpur stood established, yet the Ld. AO has chosen to deny the legitimate exemptions available to the Assessee, as contained in section 11(i)(a) of Act, ibid, which simply envisages application of income. While reducing the quantum of amounts actually applied by the Assessee during the period under reference towards construction of buildings, he initially moved on the premise that no construction activity had taken place and then he raised a presumption that only 17050 Sq. Ft. had been constructed/ completed against the master plan prepared for construction of Appr. 59140.60 Sq. Ft. as had been worked out by the Assessee, duly supported by the detailed records and accounts maintained by it.

This unwarranted action of A.O. of substituting the application of amounts by linking it with completion of buildings, has resulted in passing of impugned order

and assessing the net taxable income at Rs. 4,49,63,701 (after the original assessment order had been rectified by the Ld. AO himself vide his order dated

12/06/2013 on application as had been moved by the Assessee).

3.3 The reasons for assessing the income at Rs. 4,49,63,701/- and subjecting it to tax is alleged failure on the part of the Assessee to apply 85% of its receipts during the period under consideration and for drawing this conclusion, following uncalled observations have been made by the Ld. AO:

a) Building Plans for construction of new building was not approved by Municipal Authorities before the start of construction activity.

b) Insufficient purchase of tiles (seems to be referring to flooring tiles) by referring to purchases made from Ashwani Goyal & Co., Patiala, who deals in flooring tiles.

c) Purchase of Building material in non-chronological order and insufficient purchase of certain building materials such as Electrical Fittings, Paint, Cement etc.

d) Presumption that there should have been corresponding increase in strength of students after construction of new school buildings.

4. The disallowances made by the Ld. AO are not tenable in the eyes

of law as already submitted and at the cost of repetition, is being explained hereinafter:

a) Building Plans for construction of new buildings was not approved by Municipal Authorities, before the start of construction activity.

The Assessee had furnished the copies of plan layouts for construction of school buildings at Patiala, Samana and Zirakpur, during the assessment proceedings (a fact recorded by A.O. at Para 5 of Page 4 of the impugned order). It is a fact that no separate plans were got sanctioned / approved from the local authorities before constructing these buildings. The school premises at Samana were outside the Municipal Limits and the management was also under this impression that there is no such requirement as school buildings had already been constructed in the past and were being run for a very long time without any approvals and further that there is no such stipulation/requirement for such educational institutions to get the plans sanctioned. It is also a fact that there was no such reaction from the Local Authorities requiring submission of plans for approval. Such impression of the management that there is no such requirement finds support from the

observations of Ld. A.O. as recorded in Para 3.2 at Page 20 of the impugned order, as reproduced hereunder, in his own words

"It is needless to mention that approval for construction, alteration, addition, and structural modification is mandatory as per Town Planning Act and the Assessee in way is exempted from the same."

Pertinent to mention here is a fact situation that construction of a building without getting approval from local authorities may attract action on their end, yet the fact of such construction having actually taken place cannot be denied.

Although the building plans for Patiala and Zirakpur were not got approved from the Municipal Authorities yet this sole factor cannot and does not belie the claim of actual construction of school buildings in view of the irrefutable documentary evidence available with the Assessee and admittedly produced during the course of assessment proceedings. All the details and relevant purchase / expenses vouchers towards building material and construction-labour expenses, totalling Rs. 6,14,08,881/- had been duly produced and copies / details thereof were placed on record. The AO had taken note of these records while issuing show cause notice dated 22/03/2013. It is worth mentioning here that all these documents and details thereof as recorded in the books of accounts, are available on assessment file as has been observed by the Ld. DR during remand proceedings. The fact of construction actually having taken place, has been endorsed even by Architect concerned (There may be some difference in measurements relating to exact area as narrated by the Architect which must have been provided ex-tempore during the recording of his statement at the back of the Assessee and this statement was neither confronted to the Assessee nor any clarification was sought thereon.).

Without prejudice to the above claim of the Assessee that building construction activity had been initiated and completed during the period under reference, even if for the sake of arguments the above observation of construction measuring 17050 Sq. ft. had reached completion on the basis of deposition of Architect is taken as true, the only inference that could be drawn was regarding the completion of all buildings at three places and in no manner towards actual application of money for the purposes of exemption under section 11(i)(a) of the Act, *ibid*-

A plain reading of Section 11(1)(a) of the Act, *ibid*, supports the submission of Assessee that it stipulates the application of funds towards the objectives of the Assessee and further that such application of funds must exceed 85% of the total receipts during particular period. The Ld. AO has apparently misapplied Section 11(1)(a) by wrongly inferring that only the completion of building will mean application of money and not mere spending the amount thereon during the relevant period. The Assessee finds support from following judicial pronouncements wherein it has been held, "It is not correct to equate the word 'applied' with the word 'spent'. If the legislature intended that the amounts should actually be spent, there was nothing preventing it from that word. CFT vs Trustees of H.EH. The Nizam's Charitable Trust (1981) 131TTR 497(AP)."

It has also been held that, "the word applied does not necessarily mean spent. Even if the amount has been earmarked for the purposes of the

institution and allocated, it may be deemed to have been applied. "CIT vs Radhaswami Satsang Sabha (1954) 25UR 472(All).

b) Alleged purchase of Building material in non-chronological order and insufficient purchase of certain building materials such as Electrical Fittings, Paint, Cement etc..

The Ld. AO has wrongly observed that building materials were not purchased in chronological order to his satisfaction. The Ld. AO has seemingly perused the details which had been separately listed as per the separate set of accounts maintained for the Assessee society and three schools individually. He has overlooked the further fact that these details had been prepared on the basis of relevant entries of such purchases made in the accounts books obviously on receipt of relevant purchase invoices. It is worth mentioning here that the goods like Bricks etc. are supplied by the BKO's as per day to day requirement of the purchaser and the invoices are raised periodically. On the other hand, the Ld. AO had made enquiries from some of the suppliers of his own by issuing summons under section 131 of the Act, *ibid*, and the suppliers had confirmed the supply of such building materials as well as receiving the payments thereof through banking channels of course. It is worth mentioning that the Assessee society was denied the right to cross examine during the assessment proceedings and the Ld. A.O. did not even deem it necessary to confront such statements recorded at the back of the Assessee.

c) Alleged insufficient purchase of tiles (seems to be referring to flooring tiles) by referring to purchases made from M/s. Ashwani Goyal & Co., Patiala, who deal in flooring tiles.

Another observation is of the presumption relating to nonavailability of tiles for construction of Buildings, based on the sole instance of purchase of 'Tiles' from M/s Ashwani Goyal & Co., Patiala amounting to Rs.1,17,303/-. First of all, the Assessee has in total purchased such materials amounting to Rs.32,71,732/- and not Rs.1,17,303/- as alleged by the AO in the impugned assessment order. The detailed information by way of copies of all purchase bills including for the purchase of above materials, had been furnished during assessment proceedings and a consolidation thereof in Chart Form had also been furnished during remand proceedings as has been recorded by the Ld. D.R. at Page 2 as Point No. 9.2(iii) endorsing the fact of verification having been made by him with respect to the capital investments in the buildings.

Kind attention is further drawn to the fact that the tiles and marble etc. are required only to give finishing touch to the building and not for initiating the construction thereof. Another important fact that has been overlooked while raising uncalled for observations is that marble and tile flooring is always made in certain specific utility areas such as administrative block, wash rooms etc. The AO forgot that it was a construction of school building and not a residential complex having Administrative Block, D G Set room, Class rooms etc. where floors are not made of tiles but are cement oriented. The Assessee society was neither designing a very high-profile school building which may be the modern day commercial concept for grooming high headed citizens but to provide education to civic society in general.

Certain details relating to various types of building materials, which had been purchased during the period under reference, but ignored by the Ld. A.O., as these did not suit his illogical conclusions, are being brought to your honours kind notice.

It is relevant to mention that the Assessee society has spent Rs.9,39,736/- on electric goods whereas the AO in the assessment order has stated that the Assessee society has spent Rs 4,664/- only for electrical fittings which establishes the fact that the assessment has been framed in a casual manner with vindictive mind. (Refer para 5 (c) Page 22 of the assessment order)

It is pertinent to mention that the Assessee society has purchased the sand for construction purposes and all the relevant bills / vouchers in this connection were duly produced before the AO during the course of assessment proceedings. However, item wise detail of material and labour etc. was duly furnished during assessment proceedings. (Refer para 5 (d) Page 22 of the assessment order).

It is relevant to mention that the Assessee society has incurred Rs.3,94,938/- on paints and white wash and all the relevant bills/ vouchers in this connection were duly produced before the AO during the course of assessment proceedings which he ignored while framing the assessment order for the reasons unknown. (Refer para 5 (g) Page 23 of the assessment order).

It is relevant to mention that the Assessee society has incurred Rs. 59,84,449/- on steel and all the relevant bills / vouchers in this connection were duly produced before the AO during the course of assessment proceedings whereas the AO has stated that the Assessee has spent Rs 7,68,480/- only for TMT bars which establishes the fact that the assessment has been framed in a casual manner with a preset mind. (Refer para 5 (h) Page 23 of the assessment order).

It is relevant to mention that the Assessee society has incurred Rs. 36,21,805/- on cement and all the relevant bills / vouchers in this connection were duly produced before the AO during the course of assessment proceedings whereas the AO has stated that the Assessee has spent Rs 11,36,425/- only for cement specifically when all the bills were produced before the AO during assessment proceedings. Your Honor, this proves the manner in which assessment has been framed. (Refer para 5 (i) Page 23 of the assessment order).

It is relevant to mention that the Assessee society has incurred Rs.34,71,748/- on wooden material including hardware and all the relevant bills/ vouchers in this connection were duly produced before the AO during the course of assessment proceedings whereas the AO has stated that the Assessee has spent Rs 2,09,595/- only for wooden material which establishes the fact that the assessment has been framed with a casual approach. (Refer para 5 (k) Page 24 of the assessment order)

d) Presumption that there should have been corresponding increase in strength of students after construction of new school buildings.

The AO has worked out the envisaged increased strength of students on the basis of new class rooms which were constructed during the year under reference. First of all, the Assessee is / was not carrying the above activity with some commercial consideration of having more students resulting in more revenue. Further, new admissions take place only in the month of April i.e. at the start of new academic session and not throughout the year. On the other hand, the Ld. AO has worked out the proportionate increase in number of students which should increase as a result of addition of new class rooms as

if it is a case of manufacturing unit where increased production capacity leads to increased turnover. It is pertinent to note that every educational institute gains its repute very slowly for attracting new admissions and there is no such mechanism that addition of a classroom will result in immediate increase in number of students as inferred by the Ld. A.O.

5. It is, therefore, prayed that in view of the judicial and factual circumstances of the case explained above, the additions have been wrongly made. The impugned order passed by the Ld. Assessing Officer deserves to be set-aside and/or modified to the extent that the additions made to the returned income may please be deleted as the amount applied as per the requirements of Sec. 11(i)(a) is more than 85% of the total receipts during the period under consideration. All the oral submissions and written submissions made earlier are also reiterated.

AO initially moved on the premise that no construction activity had taken place and then he raised a presumption that only 17050 Sq. Ft. had been constructed/ completed against the master plan prepared for construction of Appr. 59140.60 Sq. Ft. as had been worked out by the Assessee, duly supported by the detailed records and accounts maintained by it. failure on the part of the Assessee to apply 85%

a) Building Plans for construction of new building was not approved by Municipal Authorities before the start of construction activity.

b) Insufficient purchase of tiles (seems to be referring to flooring tiles) by referring to purchases made from Ashwani Goyal/ 8i Co., Patiala, who deals in flooring tiles.

c) Purchase of Building material in non-chronological order and insufficient purchase of certain building materials such as Electrical Fittings, Paint, Cement etc.

d) Presumption that there should have been corresponding increase in strength of students after construction of new school buildings.

no separate plans were got sanctioned / approved from the local authorities before constructing these buildings. The school premises at Samana were outside the Municipal Limits.

Such impression of the management that there is no such requirement finds support from the observations of Ld. A.O. as recorded in Para 3.2 at Page 20 of the impugned order, as reproduced hereunder, in his own words

"It is needless to mention that approval for construction, alteration, addition, and structural modification is mandatory as per Town Planning Act and the Assessee in way is exempted from the same." building plans for Patiala and Zirakpur were not got approved from the Municipal Authorities yet this sole factor cannot and does not belie the claim of actual construction of school buildings the details and relevant purchase / expenses vouchers towards building material and construction-labour expenses, totalling Rs. 6,14,08,881/- had been duly produced and copies / details thereof were placed on record; recorded in show cause notice dated 22/03/2013. construction actually having taken place, has been endorsed even by Architect concerned (There may be some difference in measurements relating to exact area as narrated by the Architect which must have been provided extempore during the recording of his statement at the back of the Assessee and this statement was neither confronted to the Assessee nor any clarification was sought thereon.). construction measuring 17050 Sq. ft. had reached completion on the basis of deposition of Architect is taken as true, the only inference that could be drawn was regarding the completion of all

buildings at three places and in no manner towards actual application of money for the purposes of exemption under section 11(i)(a) of the Act, *ibid.* AO has apparently misapplied Section 11(1)(a) by wrongly inferring that only the completion of building will mean application of money and not mere spending the amount thereon during the relevant period. The Assessee finds support from following judicial pronouncements wherein it has been held, "It is not correct to equate the word 'applied' with the word 'spent'. If the legislature intended that the amounts should actually be spent, there was nothing preventing it from that word. CIT vs Trustees of H.E.H. The Nizam's Charitable Trust (1981) 131 ITR 497(AP)."

It has also been held that, "the word applied does not necessarily mean spent. Even if the amount has been earmarked for the purposes of the institution and allocated, it may be deemed to have been applied." CIT vs Radhaswami Satsang Sabha (1954) 25 ITR 472(All). entries of such purchases made in the accounts books obviously on receipt of relevant purchase invoices the Ld. A.O. did not even deem it necessary to confront such statements recorded at the back of the Assessee.

'Tiles' from M/s Ashwani Goya/ & Co., Patiala amounting to Rs.1,17,303/-. First of all, the Assessee has in total purchased such materials amounting to Rs.32,71,732/- and not Rs.1,17,303/- as alleged by the AO in the impugned assessment order. remand proceedings as has been recorded by the Ld. D.R. at Page 2 as Point No. 9.2(iii) endorsing the fact of verification having been made by him with respect to the capital investments in the buildings.

Kind attention is further drawn to the fact that the tiles and marble etc. are required only to give finishing touch school building and not a residential complex having Administrative Block, D G Set room, Class rooms etc. where floors are not made of tiles but are cement oriented.

Assessee society has spent Rs.9,39,736/- on electric goods whereas the AO in the assessment order has stated that the Assessee society has spent Rs 4,664/- only for electrical fittings which establishes the fact that the assessment has been framed in a casual manner with vindictive mind. (Refer para 5 (c) Page 22 of the assessment order)

It is pertinent to mention that the Assessee society has purchased the sand for construction purposes and all the relevant bills / vouchers in this connection were duly produced before the AO during the course of assessment proceedings. However, item wise detail of material and labour etc. was duly furnished during assessment proceedings. (Refer para 5 (d) Page 22 of the assessment order).

It is relevant to mention that the Assessee society has incurred Rs.3,94,938/- on paints and white wash and Assessee society has incurred Rs. 59,84,449/- on steel and all the relevant bills / vouchers in this connection were duly produced before the AO during the course of assessment proceedings whereas the AO has stated that the Assessee has spent Rs 7,68,480/- only for TMTbars

It is relevant to mention that the Assessee society has incurred Rs. 36,21,805/- on cement and all the relevant bills / vouchers in this connection were duly produced before the AO during the course of assessment proceedings whereas the AO has stated that the Assessee has spent Rs 11,36,425/- only for cement specifically when all the bills were produced before the AO during assessment proceedings. Your Honor, this proves the manner in which assessment has been framed. (Refer para 5 (i) Page 23 of the assessment order).

It is relevant to mention that the Assessee society has incurred Rs.34,71,748/- on wooden material including hardware and all the relevant bills / vouchers in this connection were duly produced before the AO during the course of assessment proceedings whereas the AO has stated that the Assessee has spent Rs 2,09,595/- only for wooden (Refer para 5 (k) Page 24 of the assessment order) ,the Ld. AO has worked out the proportionate increase in number of students which should increase as a result of addition of new class rooms as if it is a case of manufacturing unit where increased production capacity leads to increased turnover. It is pertinent to note that every educational institute gains its repute very slowly for attracting new admissions and there is no such mechanism that addition of a classroom will result in immediate increase in number of students as inferred by the Ld. A. O..

5. It is, therefore, prayed that in view of the judicial and factual circumstances of the case explained above, the additions have been wrongly made. The impugned order passed by the Ld. Assessing Officer deserves to be set-aside and/or modified to the extent that the additions made to the returned ncome may please be deleted as the amount applied as per the requirements of Sec.11(i)(a) is more than 85% of the total receipts during the period under consideration. All the oral submissions and written submissions made earlier are also reiterated."

7.1 Of the total admitted receipts of Rs. 11,34,16,023, Rs. 7,54,74,465/-were admitted to have been spent for revenue expenditure covered by the objectives of the trust by way of the expenses incurred on staff salary, administrative expenses (as per the Receipt and Expenses Account) and Appellant is claimed to have spent Rs. 6,14,08,881/- as Capital expenditure towards construction of new school buildings at Patiala, Samana and Zirakpur. The books of accounts/relevant records are admittedly audited by Chartered Accountants under 44AB.

7.2 The Appellant claims that during assessment proceedings, books of accounts and other relevant records were duly produced by them, while the AO holds that books were not produced; the Appellant argues that in the submission dated 25/03/2013 books were produced for examination and were examined , as per the AOs instructions by Income Tax Inspector, Sh. Kapil Kishore. This issue has been examined through remand proceedings and the opinion of the Ld. AO obtained thereon as has been discussed supra.

7.3 The Ld. AO recording of statements of suppliers and confronting these to the Appellant was a serious defect which was sought to be rectified through the written submissions and the remand report proceedings where the Ld. AO agrees that statements of select suppliers were recorded and not given to the Appellant before relying on them in the Assessment order. This seriously dents the evidentiary value; though not completely extinguishing the same. These suppliers had, while admitting to supplying the material / carrying out the construction-labour activity during the impugned Assessment year and having received payments for the goods/ services. It is also on record that impugned order has been passed on 30.03.2013 and statement of Shri L.R. Gupta, Architect was recorded on the same date was statement was not confronted to the Appellant, the statement of Shri Gupta does have some evidentiary value (as he was working for the appellant and had given the Architect's Certificate) in Income Tax proceedings where strict rules of evidence do not apply.

7.4 From the Assessment Order, it appears that the Ld. AO's Initial Show cause suggested that little/ or no construction had taken place, the appellants reply to the show Cause Notice suggested that while construction was undertaken, the lack of a municipal approval raised doubts about the extent and the Ld. AO tried to complete the assessment within the limited time left before limitation by collecting additional evidence in the form of the Architect's statement with which he did not confront the appellant.

7.5 The appellants has argued that the Ld. AO has instead of considering application of amounts linked the allowability on the completion of buildings rather than money spent in construction/ purchase of material. To adjudicate the issue, it is material to examine the following observation of the Ld. AO in the Assessment order in the light of the appellant's submissions and the Remand Report.:

a. Building Plans for construction of new buildings was not approved :

The fact that the Appellant had submitted plan layouts for construction of school buildings at Patiala, Samana and Zirakpur, is recorded by A.O. at Para 5 of Page 4 of the impugned order. The Appellant submits that premises at Samana were outside the Municipal Limits and that the management were under this impression that there is no such requirement as school buildings had already been constructed in the past and were being run for a very long time without any approvals. It is thus an admitted fact on record that master plan was prepared for construction of Appr. 59140.60 Sq. Ft. but it also a fact that no approval was taken from the municipal body. The appellant's submission that even for the initial construct no approval was taken as the Schools were outside the municipal limits may carry some weight, it does raise a doubt about the extent of construction especially when Patiala and Zirakpur lie within the municipal limits.

The appellant claims that details and relevant purchase / expenses vouchers towards building material and construction-labour expenses, totalling Rs. 6,14,08,881/-had been duly produced and copies / details thereof were placed on record. The AO too has taken note thereof while issuing show cause notice dated 22/03/2013. The Learned AR submits that "for the sake of arguments the above observation of construction measuring 17050 Sq. ft. had reached completion on the basis of deposition of Architect is taken as true, the only inference that could be drawn was regarding the completion of all buildings at three places and in no manner towards actual application of money for the purposes of exemption under section 11(i)(a) of the Act" . If the Assessment order is examined; it mentions on page 26 that " of the construction area of 7700 square feet, 50% area of the building is deemed constructed" at Samana, further in other buildings too, the area taken up for the calculation is are of completed construction; thereby lending some credence to the appellant's submission

b. Alleged purchase of Building material in non-chronological order and insufficient purchase of certain building materials

The appellant has averred that Ld. AO has wrongly observed that there were some issues with regards to the building materials not being purchased in

chronological order as relevant entries of such purchases have been made in the accounts books on receipt of relevant purchase invoices rather than the receiving of material. He has mentioned that bricks etc. are supplied on a day to day basis and bills raised periodically. Even the suppliers summoned, it is argued admitted to have supplied the material. During the remand report the Ld. AO has confirmed that the bills, vouchers, payments through account payee cheque and deduction of the same have been produced examined and tallied with the expenses claimed.

c. Insufficient purchase of tiles from M/s. Ashwani Goyal & Co.,

As against the AO's finding that the sole instance of purchase of Tiles' was from M/s Ashwani Goyal & Co., Patiala for Rs. 1,17,303/- (@ Rs 50 per square ft.) the Appellant has stated that they have purchased flooring material of Rs.32,71,732/- and not Rs.1,17,303/- and submitted copies of purchase bills to the Ld. AO, a fact confirmed in the Remand proceedings where a consolidation thereof in Chart Form had furnished as has been recorded by the Ld. AO. at Point No. 9.2(iii). The fact that alternate flooring material could have been used and that such materials are used at a finishing stage, as submitted by the appellant do carry weight.

Further that the appellant claimed that he has spent Rs.9,39,736/- on electric goods, Rs.3,94,938/- on paints and Rs. 59,84,449/- on steel and Rs. 36,21,805/- on cement and Rs.34,71,748/- on wood as against the Ld. AO's finding that Rs 4,664/-, nil, Rs. 7,68,460, Rs.1,36,245/- and Rs.2,09,505/- on these heads; facts that have not been contradicted by the Ld. AO in the remand proceedings. The Ld. AOs held that audit Report in Form 10 B was not filed with return, the same is attached the Audit Report u/s 44AB submitted with the paper book.

The presumption that addition to the number of students would underlie construction is partly fallacious appellant's submission on this point carries weight. The Ld. AR has argued that while completion would amount to "spent" the expenditure on account of material would amount to 'applied' as required u/s 11 and cites CIT v Trustees of H.E.H. The Nizam's Charitable Trust (1981) 131 ITR 497(AP) & CIT vs Radhaswami Satsang Sabha (1954) 25 ITR 472(All) to buttress his point."

The appellant's alternate argues that at best 17,050 Sq. Ft. may have been constructed/ completed as stated in the architect/s statement against the master plan of around 59140.60 Sq. Ft. while funds applied were what was disclosed by the appellant. However, if attention is drawn to the addition to the block of assets highlighted by the Ld. AO, almost Rs. 3,21,88,727/- has been added to the block of Assets for building **which would imply that the building has been put to use and hence completed.** That the buildings were not inspected at the time of making the assessment cannot be rectified at this stage.

7.6 I have considered the entire gamut of submissions of the Led. AR, the Remand Report and the other material on record. The Ld. AO failed to / was unable to make the necessary enquiries to establish that only construction measuring 17,050 Sq. ft. had done based on the statement of the Architect which was not confronted to the Appellant. However even if this represents only the completion; the addition to fixed assets remains unexplained.

However, the alternate contention that bills, vouchers vouching the payments and expenses including TDS on payments to contractors have been submitted and verified in the Remand Proceedings remains largely un-counteracted. However, going by the Architects suggestion and the learned AOs estimate, the cost of constructing the entire 59,140.60 sq. of building would be only Rs. 4,73,12,000/(' Admittedly, only part of the building stands completed therefore reasonably assuming that 70% is completed expenditure allowable for this purpose is estimated at Rs. 3,31,18,400. The AO is therefore directed to modify the calculation of Income and allowable deduction u/s 11 to this extent. The consequential disallowance of depreciation of Rs. 72,33,282/- too stands modified. On these grounds of Appeal, the Appellant succeeds in part.

29. The Ld. CIT(A) in respect of **ground no. 7** of the appeal which relates to the disallowance of Rs. 46000/- paid on account of donation for the stated purpose of education. **Since making donation is part of the objectives of the Trust as per copy submitted by the assessee, addition on this ground is directed to be deleted. On this ground of appeal, the assessee succeeds.**

30. The Ld. CIT(A) in respect of **ground no. 8** of the appeal which relates to disallowance of total amount of Rs. 10,06,000/- on account of conveyance allowance paid to one Sukhvinder Ji Kaur Member of AOP& President of assessee society and Mrs. Paraminderjit Kaur Brara, Member of AOP and AO on ground that **they are persons specified under section 13** of the Act. The Ld. CIT has observed and has given categorical finding in para 9.2 and 9.3 of his order which is as under:

9.2 *The contention of the Appellant that the addition was made without giving a show cause notice and seeking the Appellants version to prima facie cover. The appellant submits that the conveyance allowance was in the nature of a reimbursement of actual expense of persons and do not come within payments in the nature of a benefit to persons who were neither founders, trustees but serving in administrative position.*

9.3 *In view of the facts mentioned above, I am of the considered view that reimbursement of payments for those working in administrative posts and not within the definition of persons u/s 13(3) do not come within the ambit of a "benefit". The addition on this account is directed to be deleted. The Appellant succeeds on this point.*

Recording of Personal Hearing

31. The personal hearing before us took place on 08/05/2024 when both the parties were heard at length elaborately, on merits of the case.

32. At the outset and threshold the Ld AR brought to our notice that Sikh Educational Society is a society duly registered under local laws of Punjab. It has three schools at Samana, Patiala and Zirakpur. For the AY 2010-11 return of income was filed declaring NIL income after availing exemption under section 11 of the Income Tax Act. The exemption claimed under section 11 was denied for the reasons as recorded in the AO's order. The Ld. AO then proceeded to make the assessment under the provisions of the Act and framed the assessment under section 143(3) on net income of Rs. 6,99,19,150/-. In arriving at the assessed income, the expenditure on construction of school buildings claimed at Rs. 6,14,08,881/- has been restricted to Rs. 1,36,40,000/- and balance amount of Rs. 4,77,68,881/- has been ignored for the purpose of application of income for the objects of the Trust for the purposes of section 11. The exemption was denied for more than one reason i.e; less than 85% application for the objects of the trust, non filing of Form No. 10 etc. The income has consequently, been worked out under the provisions of Sections 28 to 44 of the Income Tax Act, 1961 at Rs. 6,99,19,150/-.

Depreciation

33. The depreciation on building under construction has been worked out on page 32 of the AO's by taking the figure of same in society at Rs. 3,09,92,365/- against the correct figure of Rs. 60,36,920/-. In fact total claim of depreciation has been made in the books of account at Rs. 1,45,34,972/- which comprises of depreciation on the building as such and building under construction aggregating to Rs. 1,00,74,990/-.

34. An application for rectification u/s 154 was filed before AO which has been decided as a result the net assessed income has been reduced to Rs. 4,49,63,701/-.

Donations

35. Disallowance towards donations of Rs. 46,000/-.

36. Conveyance allowance paid to employee has been curtailed by Rs. 10,06,000/-.

Admitted Revenue Exp.

37. The Ld. AR then took us through the impugned order of CIT(A) at para 7.1 (44/50) wherein he emphasized that total admitted receipts is of Rs. 11,34,16,023/-. The amount of Rs. 7,54,74,465/- were admitted to have been spent for revenue expenditure which are covered by the objectives of the Trust by way of expenses incurred on staff salary, administrative expenses (as per receipt and expenses account).

Amount spent on construction of School Buildings capital expenditure

38. Assessee has claimed to have spent Rs. 6,14,08,881/- as capital expenditure towards construction of new school buildings at Patiala, Samana and Zirakpur.

Books of Accounts

39. The books of accounts are admittedly audited by CA under section 44AB.

40. The learned AR of the assessee then took us to para 7.2, 7.3, 7.4, 7.5 abc of the impugned order of CIT(A). [page 44 to 47 of the CIT(A) order]

41. Thereafter he laid emphasis on Para 7.6 of the impugned order of the Ld. CIT(A) in support of his grounds of appeal wherein CIT(A) has give following findings:

7.6 I have considered the entire gamut of submissions of the Ld. AR, the Remand Report and the other material on record. The Ld. AO failed to / was unable to make the necessary enquiries to establish that only construction measuring 17,050 Sq. ft. had done based on the statement of the Architect which was not confronted to the Appellant. However even if this represents only the completion; the addition to fixed assets remains unexplained. However, the alternate contention that bills, vouchers vouching the payments and expenses including TDS on payments to contractors have been submitted and verified in the Remand Proceedings remains largely uncountered. However, going by the Architects suggestion and the learned AOs estimate, the cost of constructing the entire 59,140.60 sq. of building would be only Rs. 4,73,12,000/(' Admittedly, only part of the building stands completed therefore reasonably assuming that 70% is completed expenditure allowable for this purpose is

estimated at Rs. 3,31,18,400. The AO is therefore directed to modify the calculation of Income and allowable deduction u/s 11 to this extent. The consequential disallowance of depreciation of Rs. 72,33,282/- too stands modified. On these grounds of Appeal, the Appellant succeeds in part.

42. The Ld. AR said donation of Rs. 46,000/- is allowed by CIT(A).

43. The Ld. AR said disallowance of Rs. 10,06,000/- on account of conveyance allowance **is allowed** as it is by way of reimbursement of payments for those working in administrative posts and not within the definition of persons u/s 13(2) and also do not come within the **amit** of a "benefit".

44. First appeal thus is partly allowed as aforesaid.

45. The Ld. AR in finally submitted before us a brief synopsis wherein summation of his arguments has been done. The same was filed on date of hearing before us i.e. 08/05/2024.

45.1 **Basis the statement of facts as tendered we also record following brief facts:**

(i) The assessee is a society running three schools at Patiala, Samana and Zirakpur.

(ii) The core issue is regarding application of income in construction of school building at Patiala, Samana and Zirakpur belonging to assessee society.

(iii) Primarily **three additions** were made by Ld. AO during the assessment under section 143(3).

Issues / Grounds on which addition made	Amount added by AO
a) Disallowed income applied on account of construction of building	4,77,68,881
b) Disallowed depreciation on building (figure after rectification u/s154)	72,33,282
c) Disallowed donations made to trusts	46,000
d) Disallowed conveyance allowance	10,06,000
Total disallowance	5,60,54,163/-

The order passed under section 143(3) were rectified by Ld. AO vide order passed under section 154 dt. 12/06/2013 (page 97 to 100 of paper book) wherein depreciation disallowed was corrected by AO.

(iv) Ld. CIT(A) deleted **two additions completely i.e; Rs. 46,000/- and Rs. 10,06,000/-** and estimated the cost of construction and further estimated the **completion of building upto 70% for depreciation purposes.**

(v) The assessee is against the additions upheld by the Ld. CIT(A) i.e; **only on the estimation of the income applied on construction of building by the assessee society and estimation of completion of building at 70% for recomputing the depreciation of building.**

(vi) **Core observation of Ld. AO:-**

The disallowance was made after estimating the construction expenditure @ Rs. 800 per sq. feet and taking the constructed area at 17050 sq. feet **on the basis of a statement of Shri L.R. Gupta Architect recorded on 30/03/2013 at the back of the assessee and that too on same date on which the assessment order was passed.**

(vii) **Core observation of CIT(A):-**

a) Ld. CIT (A) tabulated the SCN dated 22.03.2023 issued by AO and the reply filed by appellant in para-4.3 of his order (please refer to page -8 to 9 of the appeal book) giving a clear picture of the queries raised by AO and replies filed by appellant during assessment.

b) Ld. CIT (A) summarizes the findings of AO in para-4.4 of his order and specifically quotes in the heading that **the AO did not address each of the submissions made by the appellant.** (Please refer page 10 -11 of appeal book).

c) Appellant filed written submissions and along with paper book & an Application for rectification **u/s 154.** AO passed Rectification order reducing the depreciation disallowed from **Rs 3,21,88,727/- to Rs 72,33,282/-.** Written submissions filed by the appellant are reproduced by the Ld. CIT (A) in para-5.2 of his order (please refer to page 12 to page 27 of the appeal book).

d) Remand report was sought from AO on the written submissions filed by appellant. Ld. CIT (A) tabulated the issues in assessment order, as stated in written submissions by the appellant, response by the AO in the remand

report and CIT(A)'s remarks in para-5.4 (please refer from page 11 to page 39 of the appeal book).

e) The Ld. CIT (A) observed in clear words in para-6 (please refer page 39 of the appeal book) that the statements of Sh. Naresh Jain, Sh. Avtar Singh and **Sh. LR Gupta were recorded and an opportunity of cross examination was not given to the appellant.**

f) Further in para-7 of the order Ld. CIT (A) observed as under:

"The Assessing Officer in this case received a lot information on 26th March, 2013 and actually recorded statement on date of the order. Further, many of the issues raised in the Show Cause have which were responded to by the Appellant in their written submission dated 25.03.2013, are not part of the reasoning for the additions made and denial of Section 11 exemption where other statements / reasons are used."

And further observes that 'the appellant through remand proceedings and written submissions has had sufficient opportunity to present their case' and reproduces the supplementary submissions (please refer page 40 to page 49 of the appeal book).

h) Further, Ld. CIT (A) has given his detailed observations from para-7.1 to 7.6 (please refer page-49 to page-53 of appeal book). Ld. CIT (A) has rejected all the objections raised by the AO and accepted the pleadings made by the appellant on all issues but at the end has erred in estimating the cost of construction at Rs4,73,12,000/- (i.e. 59,140 sq ft @ 800 per sq ft) and further erred in assuming 70% of estimated cost of Rs4,73,12,000/- which comes to Rs. 3,31,18,400/-.

Pleadings before the Hon'ble Bench:

6. The Ld. CIT (A) has passed a detailed order, after considering the written submissions made by appellant, sought remand report from AO on the submissions & then also considered supplementary submissions made by the appellant and made detailed observations where he rejected all the objections raised by the AO and accepted the pleadings made by appellant but then construction cost of very surprisingly estimated the building and also estimated the completion of building at 70% for depreciation purposes totally against his own findings and observations.

7. The entire assessment was framed with a prejudiced mind, which is quite clear from the recording of statement on the date of order and one statement recorded before issuing show cause notice but did not mention anything about the statement in the show cause notice. The statement recorded by the AO was not even reproduced in **the assessment order nor the same was confronted to the appellant and opportunity to cross examine was never provided.** Each and every objection raised by the Ld. AO has been rebutted by the appellant and was accepted by the Ld. CIT(A).

The Ld. Counsel for the Assessee in his statement of fact which we have recorded as aforesaid has simultaneously tendered a statement showing application of funds for the F.Y 2009-10 corresponding to A.Y. 2010-11 for purpose of present appeal which we reproduce as below:

THE SIKH EDUCATIONAL SOCIETY SHIROMANI BUDHA DAL PUNJWAN TAKHAT (REGD.)						
LOWER MALL, PATIALA PAN : AADTS3991B for SECTION 12AA EXEMPTION						
STATEMENT SHOWING APPLICATION OF FUNDS DETAILS FOR THE FINANCIAL YEAR 2009-10 (AY 2010-11)						
Sr.No.	Particulars	Society	BDPS Patiala	BDPS Samana	BDPS Zirakpur	TOTAL
A	A. Receipts :					
1	Fees Receipts	-	83,324,215	18,736,790	2,223,660	104,284,665
2	Bank Interest on Saving Accounts	80,915	184,666	191,285	12,872	469,738
3	Bank interest on FDRs	5,804,349	42,376	26,057	-	5,872,782
4	Rental Income	215,226	-	-	-	215,226
5	Other Receipts	440,373	525,967	-	414,860	1,381,200
		6,540,863	84,077,224	18,954,132	2,651,392	112,223,611
B	B. Application of Funds :					
1	Revenue Expenditure	23,044,895	37,699,750	11,427,470	3,373,077	75,545,192
	Less :					
	Depreciation	10,767,498	1,955,024	605,862	1,206,588	14,534,972
	Net Expenditure Excluding Dep.	12,277,397	35,744,726	10,821,608	2,166,489	61,010,220
2	Purchase of Capital Fixed Assets					
(i)	Building	46,838,055	8,758,302	632,238	5,180,286	61,408,881
(ii)	Others Fixed Assets	638,667	811,882	498,049	2,896,300	4,844,898
		47,476,722	9,570,184	1,130,287	8,076,586	66,253,779
	Total Application of Fund	59,754,119	45,314,910	11,951,895	10,243,075	127,263,999
C	Net Income / Surplus	-53,213,256	38,762,314	7,002,237	-7,591,683	-15,040,388
D	%age of Application	914	54	63	386	113
E	%age of Surplus	-814	46	37	-286	-13
	Net Surplus with depreciation	-16,504,032	46,377,474	7,526,662	-721,685	36,678,419
	Net Surplus without depreciation	-5,736,534	48,332,498	8,132,524	484,903	51,213,391

46. The Ld. AR has relied upon few orders and judgments in support of his contentions which when seen from core point of view is that Ld. CIT(A) while rejecting all the contentions and objections of AO and by accepting the pleadings of the assessee on all issues at fag end of the impugned order erred in estimating the cost of construction at Rs. 4,73,12,000/- [i.e. 59,140 sq.

ft @ 800 per sq. ft] and further erred in assuming 70% of estimated cost of Rs. 4,73,12,000/- which comes to Rs. 3,31,181,400/-. The entire assessment was framed with a prejudicial mind which is quite clear from the recording of statement on the date of order and one statement recorded before issuing show cause notice with no mention of it in the show cause notice. The statement are all behind the back, against which no opportunity is given to the assessee for purposes of rebuttal and of the cross examination. Hence entire assessment of AO and CIT(A) is illegal and bad in law.

47. Per contra Department has too filed appeal which is independently no. as ITA No. 874/Chd/2018 wherein they interalia has contended following grounds of appeal against the impugned order of CIT(A):

- i. That the order of Ld. CIT (A) is defective both in law and facts of the case.
- ii. That on the facts and circumstances of the case, the Ld.CIT(A) has erred in law in calculating the cost of construction & allowing the depreciation of Rs. 72,33,282/- to the assessee by ignoring the fact that assessee had actually not applied Rs. 6,33,47,767/- for construction of buildings.
- iii. That on the facts and circumstances of the case, the Ld. CIT (A) has erred in law by assuming that 70% of the Building stands completed and allowing the expenditure of Rs. 3,31,18,400/-.
- iv. That on the facts and circumstance of the case, the Ld. CIT (A) has erred in law in allowing the claim of donation of Rs. 46,000/- paid by the assessee by ignoring the fact that donation paid was not for educational purposes.
- v. That on the facts and circumstances of the case, the Ld. CIT (A) has erred in law in deleting the addition of Rs. 10,06,000/- on account of conveyance allowance paid by the assessee by ignoring the fact that the conveyance allowance was actually paid to members of the AOP who are covered under specified persons u/s 13(3) of the Income Tax Act, 1961.
- vi. That the appellant craves to leave, add or amend the grounds of appeal on or before the appeal heard and disposed off.

48. During the course the Ld. DR with regard to core issue of building construction at Patiala, Samana and Zirakpur and other additions like

donation and conveyance allowance which has been brought to tax net by calculating assessed income as Rs. 6,99,19,146/- as per AO's order should be sustained and Ld. CIT(A) has erred in law by giving leeways. In calculating capital expenses assumption 70% of building completion is wrong and not acceptable which is quantified as Rs. 3,31,18,400/-. Donation is wrongly allowed of Rs. 46,000/- and so also deletion of Rs. 10,06,000/- towards conveyance allowance. In brief they have contended CIT(A) impugned order should not be sustained at all and AO's order should be upheld.

Findings and Conclusions

49. In the elaborate premises as set out above, we now examine the legality and validity of the impugned order of CIT(A) in a manner known to law. We have to adjudge and adjudicate the present second appeal under section 253 of the Act based upon the reasons and finding given in the impugned order dt. 28/03/2018 passed under section 250(6) of the Income Tax Act, 1961.

50. At the threshold and outset we say that construction industry in India is a highly fragmented industry as there are several stakeholders in it. Contracting, sub contracting and sub sub contracting civil works including finishing work is very common. It is not a one man or one person's industry. Even assuming but not conceding that if all the responsibilities are assigned to one person from start to finish it is impossible for such person / entity to do all and diverse works in the field of civil works / civil engineering. Such a person be it an individual or a corporate entity has to fall back upon several stakeholders which are admittedly far too many in number. It is also required to be noted that civil works i.e; construction of 3 buildings as aforesaid including addition / modification of existing one's in rural areas of Punjab besides being herculean task is a difficult job where there are both known and unknown evils in the system. The workers and worker's gang for different segments of civil works like ceiling, terraces, plinth level, ground level, upper levels have their own menace and at times no menace at all depending

upon ground realities. Sourcing raw materials basics like bricks, sand, steel, timber blocks too is/are herculean task due to fragmentation of industry. Be that as it may it is not comfortable or delightful situation of happiness and the real pleasure comes only upon completion and inauguration. Income Tax Laws on ground too faces such a awkward situation when it comes to implementation due to fragmented nature of industry which is known to one and all. It is indeed difficult to make and easy to break in civil work industry.

51. The assessment and appeal in assessment where constructions are in rural areas beyond municipal limits of towns / cities has its own issues from start to finish. Income Tax Laws compliances strictly in rural areas are far too little even though technology has improved. One cannot and one should not expect a perfection situation or a perfectionist approach in civil engineering sector particularly so when civil works are involved at construction stage.

52. Moving forward we notice that total admitted receipts of the society is Rs. 11,34,16,023/-. The amount of Rs. 7,54,74,465/- are admittedly spent on as Revenue expenditure covered by the objectives of the Trust as and by way of expenses incurred on staff salary, administrative expenses which is as per receipt and expense account.

53. The assessee has spent Rs. 6,14,08,881/- as capital expenditure towards constructions of new school buildings at Patiala, Samana and Zirakpur.

54. The books of accounts / relevant records are admittedly audited by CA under section 44AB. In brief same have remained undisputed and not rejected by AO and CIT(A).

55. The Ld. CIT(A) has held that statement of select suppliers were recorded and were not given to the assessee before relying upon them in the assessment order. Its evidentiary value against assessee gets dented. But

however these suppliers have admitted that they have supplied the materials to the school buildings and were paid. Simultaneously suppliers of construction labour's have agreed for deployment and have carried out construction labour activity at sites and that they have received payments. Therefore payment for both suppliers of material and suppliers / contractors of labour have received consideration amounts both for goods and services. In brief this too is admitted position in his impugned order. Observation of Ld. CIT(A) is of importance in this regard as below:

7.3 The Ld. AO recording of statements of suppliers and confronting these to the Appellant was a serious defect which was sought to be rectified through the written submissions and the remand report proceedings where the Ld. AO agrees that statements of select suppliers were recorded and not given to the Appellant before relying on them in the Assessment order. This seriously dents the evidentiary value; though not completely extinguishing the same. These suppliers had, while admitting to supplying the material / carrying out the construction-labour activity during the impugned Assessment year and having received payments for the goods/ services. It is also on record that impugned order has been passed on 30.03.2013 and statement of Shri L.R. Gupta, Architect was recorded on the same date statement was not confronted to the Appellant, the statement of Shri Gupta does have some evidentiary value (as he was working for the appellant and had given the Architect's Certificate) in Income Tax proceedings where strict rules of evidence do not apply.

56. The Ld. CIT(A) has held that AO's order is dt. 30/03/2013

57. The Ld. CIT(A) has also held that statement of architect Shri L.R. Gupta was recorded on 30/03/2013 and that the same was not confronted to the assessee. However it has some evidentiary value as he was assessee's own architect and had given architect certificate as evidence. The evidence Act is however not applicable to the proceedings under the Income Tax Act, 1961.

58. The Ld. CIT(A) has attempted to justify a bit the architect statement relied upon by AO as AO had limited time left before limitation. The crucial and core finding in conclusive manner of Ld. CIT(A) is reproduced once again at the cost of repetition as below:

7.3 The Ld. AO recording of statements of suppliers and confronting these to the Appellant was a serious defect which was sought to be rectified through the written submissions and the remand report proceedings where the Ld. AO agrees that statements of select suppliers were recorded and not given to the Appellant before relying on them in the Assessment order. This seriously dents the evidentiary value; though not completely extinguishing the same. These suppliers had, while admitting to supplying the material / carrying out the construction-labour activity during the impugned Assessment year and having received payments for the goods/ services. It is also on record that impugned order has been passed on 30.03.2013 and statement of Shri L.R. Gupta, Architect was recorded on the same date statement was not confronted to the Appellant, the statement of Shri Gupta does have some evidentiary value (as he was working for the appellant and had given the Architect's Certificate) in Income Tax proceedings where strict rules of evidence do not apply.

7.4 From the Assessment Order, it appears that the Ld. AO's Initial Show cause suggested that little/ or no construction had taken place, the appellants reply to the show Cause Notice suggested that while construction was undertaken, the lack of a municipal approval raised doubts about the extent and the Ld. AO tried to complete the assessment within the limited time left before limitation by collecting additional evidence in the form of the Architect's statement with which he did not confront the appellant.

59. In view of what is stated in para 52, 53, 54, 55, 56, 57 & 58 (supra), we are of the considered view that the impugned order dt. 30/03/2013 and further sustained by the Ld. CIT(A) even partly is nullity in the eyes of law as same is passed in total disregard to the principles of natural justice as it was just incumbent upon the AO's who is discharging the quasi judicial function while making assessment first not to have relied upon the statement of architect Shri L.R. Gupta while making AO and further ought not to have recorded the statement on last day of assessment order without affording any opportunity to the assessee **even though he was architect of assessee**. The Ld. CIT(A) therefore has grossly erred in law. The Ld. CIT(A) has attempted to **blow hot and cold; which is not permissible in law**. The Assesee AR has rightly relied upon the judgment of Hon'ble P&H High Court in case of CIT Vs. Shamlal in IT Ref No. 3 & 4 of 1975 dt. 28/04/1980 wherein Hon'ble Divisional Bench of jurisdictional High Court at para 4 has held that :

4. *After hearing the learned counsel for the parties and going through the orders of the AAC and the Tribunal, we are of the opinion that the*

question referred to us has to be answered in the affirmative, i.e., against the Revenue and in favour of the assessee. The AAC, after examining the whole material on the record and adjudging the merits of the case, recorded a categorical finding that Shri Sham Lai was never the partner in the firm and that Shri Bheem Singh and Dwaraka Dass had implicated him and had shown him as a partner in order to reduce their tax liability during the settlement. The AAC, therefore, came to the conclusion on merits that Shri Sham Lai could not be treated as a partner in the firm. This finding of fact was affirmed by the Tribunal. The Tribunal held that, apart from the fact that these assessments are against the principles of natural justice, at the same time they are based on no facts and material. It would thus be seen that, in view of the facts and circumstances of this case, the Tribunal did not think it proper to set aside the assessments and to order reassessment on remand. The finding of the Tribunal that the Revenue could not place reliance on the material which was brought on the record at the back of the assessee is also unexceptional. The assessee is, in law, entitled to rebut the material placed before him if he so chooses and any material placed on the record without notice to the assessee cannot be relied upon by the Revenue. It would thus be seen that the finding of the Tribunal that the material placed on the record in violation of the principles of natural justice could not be relied upon and that in fact there was no material to come to the conclusion that the assessee was a partner in the firm, the only correct course open to the Tribunal was to annul the assessment order passed by the ITO.

The Ld. AR has further relied upon the order of ITAT Mumbai in ITA No. 6301/Mum/2018 in case of DCIT Circle-6(3) Vs. Shri Manoj M. Desai which we have perused and applies to the facts of the present case in so far as there is breach of the principles of natural justice.

The Ld. AR has further relied upon the judgment of Hon'ble Gujarat High Court in case of Heirs and LR's of late Laxmanbhai S Patel Vs. CIT dt. 22/07/2008 in ITA Ref No. 41 of 1997 wherein the Hon'ble Divisional Bench has held in para 24 as under:

*"The legal effect of the statement recorded behind the back of the assessee and without furnishing the copy thereof to the assessee or without giving an opportunity of cross-examination, if the addition is made, the same is required to be deleted on the ground of violation of the principles of natural justice. This is clearly stated by the **Hon'ble Supreme Court in the case of Kishinchand Chellaram vs. CIT (supra)** wherein it is stated that before the IT authorities could rely upon it, they were bound to produce it before the assessee so that the assessee could controvert the statements contained in it by asking for an opportunity to cross-examine."*

In para 25 the Hon'ble Court has held as under:

"25. Considering the entire facts and circumstances of the case and applying the correct principles of law to the facts found on record, we are of the view that all the

three authorities have committed an error in arriving at the conclusion that the addition of Rs. 8,78,358 is rightly made in the hands of the assessee. We, therefore, quash and set aside the **orders of the authorities** below on this point and hold that Tribunal was not right in law in upholding the addition of Rs. 8,78,358 in the hands of the assessee. We, therefore, answer the question referred to us in negative, i.e., in favour of the assessee and against the Revenue."

60. The Ld. CIT(A) having observed at para 7.5 of his impugned order as below:

7.5 The appellants has argued that the Ld. AO has instead of considering application of amounts linked the allowability on the completion of buildings rather than money spent in construction/ purchase of material. To adjudicate the issue, it is material to examine the following observation of the Ld. AO in the Assessment order in the light of the appellant's submissions and the Remand Report.:

a. Building Plans for construction of new buildings was not approved :

The fact that the Appellant had submitted plan layouts for construction of school buildings at Patiala, Samana and Zirakpur, is recorded by A.O. at Para 5 of Page 4 of the impugned order. The Appellant submits that premises at Samana were outside the Municipal Limits and that the management were under this impression that there is no such requirement as school buildings had already been constructed in the past and were being run for a very long time without any approvals. It is thus an admitted fact on record that master plan was prepared for construction of Appr. 59140.60 Sq. Ft. but it also a fact that no approval was taken from the municipal body. The appellant's submission that even for the initial construct no approval was taken as the Schools were outside the municipal limits may carry some weight, it does raise a doubt about the extent of construction especially when Patiala and Zirakpur lie within the municipal limits.

The appellant claims that details and relevant purchase / expenses vouchers towards building material and construction-labour expenses, totalling Rs. 6,14,08,881/-had been duly produced and copies / details thereof were placed on record. The AO too has taken note thereof while issuing show cause notice dated 22/03/2013. The Learned AR submits that "for the sake of arguments the above observation of construction measuring 17050 Sq. ft. had reached completion on the basis of deposition of Architect is taken as true, the only inference that could be drawn was regarding the completion of all buildings at three places and in no manner towards actual application of money for the purposes of exemption under section 11(i)(a) of the Act" . If the Assessment order is examined; it mentions on page 26 that " of the construction area of 7700 square feet, 50% area of the building is deemed constructed" at Samana, further in other buildings too, the area taken up for the calculation is are of completed construction; thereby lending some credence to the appellant's submission

b. Alleged purchase of Building material in non-chronological order and insufficient purchase of certain building materials

The appellant has averred that Ld. AO has wrongly observed that there were some issues with regards to the building materials not being purchased in chronological order as relevant entries of such purchases have been made in the accounts books on receipt of relevant purchase invoices rather than the receiving of material. He has mentioned that bricks etc. are supplied on a day to day basis and bills raised periodically. Even the suppliers summoned , it is argued admitted to have supplied the

material. During the remand report the Ld. AO has confirmed that the bills, vouchers, payments through account payee cheque and deduction of the same have been produced examined and tallied with the expenses claimed.

c. Insufficient purchase of tiles from M/s. Ashwani Goyal & Co.,

As against the AO's finding that the sole instance of purchase of Tiles' was from M/s Ashwani Goyal & Co., Patiala for Rs. 1,17,303/- (@ Rs 50 per square ft.) the Appellant has stated that they have purchased flooring material of Rs.32,71,732/- and not Rs.1,17,303/- and submitted copies of purchase bills to the Ld. AO, a fact confirmed in the Remand proceedings where a consolidation thereof in Chart Form had furnished as has been recorded by the Ld. AO at Point No. 9.2(iii). The fact that alternate flooring material could have been used and that such materials are used at a finishing stage, as submitted by the appellant do carry weight.

Further that the appellant claimed that he has spent Rs.9,39,736/- on electric goods, Rs.3,94,938/- on paints and Rs. 59,84,449/- on steel and Rs. 36,21,805/- on cement and Rs.34,71,748/- on wood as against the Ld. AO's finding that Rs 4,664/-, nil, Rs, 7,68,460, , Rsl 1,36,245/- and Rs.2,09,505/- on these heads; facts that have not been contradicted by the Ld. AO in the remand proceedings. The Ld. AOs held that audit Report in Form 10 B was not filed with return, the same is attached the Audit Report u/s 44AB submitted with the paper book.

The presumption that addition to the number of students would underlie construction is partly fallacious appellant's submission on this point carries weight. The Ld. AR has argued that while completion would amount to "spent" the expenditure on account of material would amount to 'applied' as required u/s 11 and cites CIT v Trustees of H.E.H. The Nizam's Charitable Trust (1981) 131 ITR 497(AP) & CIT vs Radhaswami Satsang Sabha (1954) 25 ITR 472(All) to buttress his point."

The appellant's alternate argues that at best 17,050 Sq. Ft. may have been constructed/ completed as stated in the architect/s statement against the master plan of around 59140.60 Sq. Ft. while funds applied were what was disclosed by the appellant. However, if attention is drawn to the addition to the block of assets highlighted by the Ld. AO, almost Rs. 3,21,88,727/- has been added to the block of Assets for building **which would imply that the building has been put to use and hence completed.** That the buildings were not inspected at the time of making the assessment cannot be rectified at this stage.

61. The Ld. CIT(A) thereafter having held at para 7.6 as below:

7.6 I have considered the entire gamut of submissions of the Led. AR, the Remand Report and the other material on record. The Ld. AO failed to / was unable to make the necessary enquiries to establish that only construction measuring 17,050 Sq. ft. had done based on the statement of the Architect which was not confronted to the Appellant. However even if this represents only the completion; the addition to fixed assets remains unexplained. However, the alternate contention that bills, vouchers vouching the payments and expenses including TDS on payments to contractors have been submitted and verified in the Remand Proceedings remains largely uncountered. However, going by the Architects suggestion and the learned AOs estimate, the cost of constructing the entire 59,140.60 sq. of building would be only Rs. 4,73,12,000/(' Admittedly, only part of the building stands completed therefore reasonably assuming that 70% is completed expenditure allowable for this purpose is estimated at Rs. 3,31,18,400. The AO is therefore directed to modify the calculation of Income and allowable deduction u/s 11 to this extent. The consequential disallowance of depreciation of Rs. 72,33,282/- too stands modified. On these grounds of Appeal, the Appellant succeeds in part.

Ought to have set aside the AO's order **in entirety**, on building construction as the Ld. CIT(A) has attempted to blow hot and cold. Admittedly architect Shri L. R. Gupta was examined on last day of order dt. 30/03/2013 behind back of the assessee with no opportunity whatsoever in rebuttal (supra). We also hold that non observance of principles of natural justice by lower authorities in so far as the statement of Shri L.R. Gupta Architect is concerned is a serious lacuna. Basis of order of lower authority is this statement recorded on 30/03/2013 the day the original assessment order was passed. This statement was not disclosed to the assessee society despite reliance by both the lower authorities i.e; CIT(A) and AO. Consequently the assessee society has a grievance as a natural corollary. Reliance on such statement entails a serious civil consequences to the assessee society. The assessee society has right of rebuttal and to set up a defence which are all inherent rights. The stand of the authorities below that such a statement should not make a difference as matter was dealt with at length by the assessee during the course of the proceedings is wrong and incorrect. Merely because observance of principles of natural justice would not make a difference is no ground to deny the assessee his substantial and inherent right to set up a defence in rebuttal thereof. The assessee society was entitled in law to have such a statement in hand and non furnishing of the same has indeed caused a deep prejudice to the assessee society an approach wholly untenable in law (S.L. Kapoor Vs. Jagmohan 1981 AIR 136 relied upon). Further we rely upon another judgment of Hon'ble Supreme Court of India in case of Kishan Chand Chela Ram Vs. CIT (1980) 125 ITR 713 wherein it is held that before IT Authorities rely upon any letters, documents / materials they are duty bound to produce it before the assessee so that assessee could controvert the statements contained in it by asking for an opportunity to cross examine with reference to statement made by him. Therefore in view of judgment cited above(supra) the AO's order and so also order of CIT(A) is bad in law, illegal and is set aside in entirety.

62. The Department appeal No. 874/Chd/2018 too **fails** in view of our findings and conclusions as aforesaid.

ORDER

63. We set aside entire order of Ld. CIT(A) on all counts and dispose of appeals of assessee as allowed and that of Department as dismissed. We hope and trust that the Ld. AO based on our findings and conclusions (supra) will give full effect to our order in the file as soon as possible so that assessment records of the society gets corrected and as basis thereon the subsequent years account/s are regularised and updated for limited purpose of accounting by the assessee society. The assessee society is expected to be more cautious in future while placing any orders including that of construction as they are custodian of public money. It is expected that they would fully comply with the provisions of Section 11 and 12 of the Income Tax Act, in times to come.

Order pronounced in the open Court on 21/06/2024

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar