

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA Nos. 39 & 41/JP/2025
निर्धारण वर्ष / Assessment Year : 2013-14 & 2014-15

Institute Management Committee ITI Jhalawar, RICO Road, Kota	बनाम Vs.	ITO, Ward Jhalawar
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AACF17228L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Shrawan Kumar Gupta, Adv.
राजस्व की ओर से / Revenue by: Sh. Gautam Singh Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 19/03/2025
उदघोषणा की तारीख / Date of Pronouncement : 05/05/2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

On being aggrieved by the order of the National Faceless Appeal Centre, Delhi [for short CIT(A)] dated 25/11/2024 the above named assessee preferred the present appeal. The dispute relates to the assessment years 2013-14 & 2014-15. The said order of the Id. CIT(A) arises because the assessee has challenged the assessment order dated 21.03.2022 passed under section 144 r.w.s. 147 of the Income Tax Act,

1961 [for short “Act”] passed by National Faceless Assessment Centre [for short AO].

2. Since the issues involved in these appeals in ITA Nos. 39 & 41/JP/2025 for A.Ys 2013-14 & 2014-15 are inter related, identical on facts and are almost common, except the difference in figure disputed in each year, therefore, these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the Id. AR has submitted that the matter in ITA No. 39/JP/2025 may be taken as a lead case for discussions. Before moving towards the facts of the case we would like to mention that the assessee in this appeal has raised the following grounds;

ITA no. 39/JP/2025

1. The impugned order u/s 147/148 rws 144B dated 21.03.2022, as well as the action taken u/s 147/148 and notices are bad in law, illegal, invalid, void-ab-intio on facts of the case, for want of jurisdiction, without proper approval and satisfaction of higher authorities u/s 151 of the Act, and also barred by limitation and various other reasons and hence the same may kindly be quashed.

2. Rs.28,50,637/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 28,50,637/- made by the Id. AO by denying the claim/exemption u/s 10(23C)(iiiad) for which the assessee is or was entitled, also erred in not considering the material available on record in their true perspective and sense. Hence the claim so denied or disallowed by the Id. AO is being totally contrary to the provisions of law and facts on the record and hence the same may kindly allowed and the addition may kindly be deleted in full.

3. The Id. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234 A,B,C. The appellant totally denies it liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.

4. The appellant prays your honors indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing.

Whereas in ITA No. **41/JP/2025** for A.Y 2014-15 the assessee has raised the following grounds ;

1. The impugned order u/s 147/148 rws 144B dated 21.03.2022, as well as the action taken u/s 147/148 and notices are bad in law, illegal, invalid, void-ab-intio on facts of the case, for want of jurisdiction, without proper approval and satisfaction of higher authorities u/s 151 of the Act, and also barred by limitation and various other reasons and hence the same may kindly be quashed.

2. Rs.27,47,673/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 27,47,673/- made by the Id. AO by denying the claim/exemption u/s 10(23C)(iiiad) for which the assessee is or was entitled, also erred in not considering the material available on record in their true perspective and sense. Hence the claim so denied or disallowed by the Id. AO is being totally contrary to the provisions of law and facts on the record and hence the same may kindly allowed and the addition may kindly be deleted in full.

3. The Id. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234 A,B,C. The appellant totally denies it liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.

4. The appellant prays your honors indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing.

ITA no. 39/JP/2025

4. Succinctly, the fact as culled out from the records is that the Assessee is an AOP(Trust). In this case, the department had information in its possession that the Assessee had income chargeable to tax has

escaped assessment. Therefore, there were reasons to believe that the Assessee has not disclosed fully and truly all material facts necessary for his assessment for that Assessment year. After recording satisfaction "reasons to believe" and obtaining the prior approval of the competent authority, notice u/s 148 of the Act was issued on 24/03/2021. In the instant case, the record reveals that the assessee has received an interest income of Rs.26,94,361/- during the year, however, the assessee has not filed return of income for the year under consideration. Therefore, an assessee by issuance of notice u/s. 148 was required to file the ITR within a month of receipt of the notice. In response, the Assessee filed its return of income on 23.04.2021. Thereafter statutory notices were issued to the assessee. Ld. AO noted that the assessee filed a return of income declaring nil income after claiming exemption u/s.10. During the year, the assessee is in receipt of Income from other sources of Rs 28,50,637/- and the same was claimed exempt u/s. 10 of the Act. By virtue of section 139(4C) every educational institution referred to in sub-clause (ad) or sub-clause (vi) of Section 10(23C) whose total income in respect of which such institutions is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and

verified in the prescribed manner and setting forth such particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1). In this regard, the assessee was specifically asked to furnish the copy of trust deed and copy of certification of registration u/s 12A and/or 10(23C) and to explain why the claim of exemption should not be denied as they have not filed the return of income within the due date as stipulated u/s.139(1) of the Act. In response to the letter issued, the assessee replied on 27.12.2021, relevant portion is produced as under-

"We hereby inform that the society was formed for execution of memorandum of agreement between the President of India. The governor/administrator of the State Rajasthan and as Industrial partner for "upgradation of government industrial Training Institute (ITI) Jhalawar under "Public Private Partnership: (PPP). We further inform that a certain fund was given to IMC by Central Govt as Interest free loan for obtaining the purpose of the aforesaid PPP Scheme, IMC made the FDR of the amount received from the Govt. and interest earned on it was utilized for the objects of the society. DEPAR

During the year under consideration, the assessee society is eligible for exemption u/s.10(23C)(iiiad) of the Act, provides that the income earned by any university or educational institution existing solely for educational purposes and not for the purposes of profit, shall be exempt from tax so assessee is also eligible to take benefit of exemption as its income is exempt from tax, so there is no fraudulent intention behind not filing return of income within the due date as stipulated u/s 139(1) of the Act. Hence we have filed return of income u/s. 148 of the Act, so kindly consider the return as return filed u/s. 139(1) of the Act and treat the return as valid return by providing exemption u/s. 10(23C) (iiiad)".

Ld. AO noted that in respect of the above section, exemption shall not be allowed beyond doubt if Income Tax Return is not filed within stipulated time permitted under section 139(1) of the Income Tax Act, 1961. The assessee's trust was granted registration u/s. 12AA of the Act vide Reg.No.CIT Exemption, Jaipur/12AA/2018-19/A/10496 only on 19.02.2019. Thus, ld. AO noted that no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under section (1) of Section 139. Since the return of income for the Assessment Year 2013-14 filed by the assessee after due date i.e., on 30/03/2019, the exemption claimed under section 10 amounting Rs.28,50,537/- was not considered as allowable.

Based on that contention ld. AO prepared the draft assessment order and sent to the assessee to show cause why the assessment should not be completed based on those observations vide show cause dated 12.03.2022. In response thereto, the assessee reiterated the submissions made earlier. The same is not considered for the facts discussed in the order and accordingly ld. AO made disallowance of Rs. 28,50,637/-.

5. Aggrieved from the order of the National Faceless Assessment Center, assessee preferred an appeal before the ld. CIT(A). Apropos to the

grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

5.1 I have carefully considered the facts of the case, assessment order and submissions filed by the appellant. As per the assessment order, the appellant firm had received interest income of Rs. 26,94,361/- during the F.Y. 2012-13 relevant to A.Y.2013-14 and did not file return of income for the year under consideration. The case was reopened vide notice 148 dated 24.03.2021, in response of the same the appellant had filed return of income declaring nil income after claiming exemption u/s10 of the IT Act, 1961. As per the assessment order, during the relevant year, the appellant had received Rs.28,50,637/- as Income from other sources and the same was claimed as exempt income u/s 10 of the IT Act, 1961. As per the assessment order, the appellant did not file the Return of Income for the relevant assessment year voluntarily u/s 139 of the IT Act, hence the AO disallowed the claim of exempt income for Rs.28,50,637/- as claimed by the appellant under the provision of section 10 of the IT Act, 1961 and passed an assessment order u/s 144 r.w.s. 147 at assessed income of Rs. 28,50,640/-.

5.2 During the course of appellate proceedings, the appellant has submitted various submissions and documentary evidences at the time of filing the appeal as well as in response to notice of hearing u/s 250. The appellant has furnished copies of order for registration u/s 12AA of the IT Act, 1961, dated 19.02.2019, computation of income, constitution of institute management committee (I.T.I., Jhalawar, Rajasthan), Society Registration Certificate and acknowledgment of income tax return (filed on 23.04.2021) for the relevant year as documentary evidences in support of it's grounds of appeal. Further, on perusal of the assessment order, it has seen that the only reason of disallowance of the exempt income of Rs.28,50,637/-was extracted by the AO that the appellant had not filed it's return of income during stipulated time under the provision of section 139 of the IT Act, 1961.

5.3 However, it has also been seen that the appellant did not file a valid Income Tax Return within the stipulated time permitted under section 139(1) of the Income Tax Act, 1961, hence the benefit of deduction u/s 10 or u/s 12AA can't be allowed to the appellant under the provision of IT Act, 1961. No such deduction shall be allowed to him unless he furnishes a return of it's income for such assessment year on or before the due date specified under section (1) of Section 139. Hence, the appeal is hereby disallowed. Further, it is also pertinent to

mention that the appellant will be eligible to claim the said deduction if it files a valid return of income for the relevant year after getting the necessary approval from the competent authority under the provision of section 119(2) of the IT Act, 1961.

6. Resultantly, the appeal of the appellant is dismissed.

6. Feeling dissatisfied with the above order of the Id. CIT(A), the assessee preferred the present appeal. In support of the grounds so raised by the assessee, Id. AR of the assessee, has filed the written submissions which reads as follows;

“The brief facts of the case are that the assessee is a Society registered under the Raj. Society Act on dt.11.03.2008. Vide Reg. Certificate No. 99/Jhalawar/2007-08 dt.11.03.2008 (PB3-14) and Society is having main objects of to general public utility, for the purpose of education training and other advancement of object of general public utility, the photocopy of the registration certificate with Registrar of cooperative societies, Kota along with copy of constitution of the society are enclosed. At present the Society is carried out the social activities in the field of education. Society is motivating rural people for education, agriculture, self-development etc. Society is also working for the upliftment of people including farmers and their families in general. Society is working with unemployed educated youth in skill building so that they can have sustained livelihood and also working with women groups in rural areas for their social, educational and economic up-liftment. There was no branch office of the society.

2. The Trust is also registered u/s 12A of the IT Act vide registration certificate No. CIT EXEMPTION, JAIPUR/12AA/2018-19/A/10496 dt. 19.02.2019 (PB). In the present case the Id. AO has issued the notice u/s 148 on dt. 24.03.2021(PB15-16) on the reasons that “On perusal of the information and details available on record it is noticed that the assessee had received the interest income of Rs.26,94,361/- during the F.Y. 2012-13 but he has not filed the return of income for A.Y. 2013-14, hence I have reason to believe that income chargeable to tax amounting to Rs.26,94,618/- has escaped assessment. Copy of reasons recorded is enclosed(PB18-19). In response to the notice u/s 148 the assessee has filed its return of income declaring the nil income by claiming the

exemption u/s 10(23C)(iiiad)/iv being the education institute and receipt is below 1.00 Crore on dt. 23.04.2021 (PB21-22).

3. The Id. AO has noted that the assessee filed return of income declaring nil income after claiming exemption u/s.10. The assessee is in receipt of Income from other sources of Rs.28,50,637/- which was claimed exempt u/s.10 of the Act.

4. The Id. AO has stated that by virtue of section 139(4C) every educational institution referred to in sub-clause (iiiad) or sub-clause (vi) of Section 10(23C) whose total income in respect of which such institutions is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1). The Id. AO asked to the assessee to furnish the copy of trust deed and copy of certification of registration u/s.12A and /or 10(23C) and to explain why the claim of exemption should not be denied as assessee has not filed the return of income within the due date as stipulated u/s.139(1) of the Act. In response thereto the assessee file reply on dt. on 27.12.2021(PB23-24), by stating that

“the society was formed for execution of memorandum of agreement between the President of India, The governor/administrator of the State Rajasthan and as Industrial partner for “upgradation of government Industrial Training Institute (ITI) Jhalawar under “Public Private Partnership: (PPP). We further inform that a certain fund was given to IMC by Central Govt. as Interest free loan for obtaining the purpose of the aforesaid PPP Scheme, IMC made the FDR of the amount received from the Govt. and interest earned on it was utilized for the objects of the society.

During the year under consideration, the assessee society is eligible for exemption u/s.10(23C)(iiiad) of the Act, provides that the income earned by any university or educational institution existing solely for educational purposes and not for the purposes of profit, shall be exempt from tax so assessee is also eligible to take benefit of exemption as its income is exempt from tax, so there is no fraudulent intention behind not filing return of income within the due date as stipulated u/s.139(1) of the Act. Hence we have filed return of income u/s.148 of the Act, so kindly consider the return as return filed u/s.139(1) of the Act and treat the return as valid return by providing exemption u/s.10(23C)(iiiad)”.

5. However the Id. AO did not feel satisfy with the reply of the assessee and stated that, exemption shall not be allowed beyond doubt if Income Tax Return is not filed within stipulated time permitted under section 139(1) of IT Act, 1961.

The assessee's trust was granted registration u/s.12AA of the Act vide Reg.No.CIT Exemption, Jaipur/12AA/2018-19/A/10496 only on 19.02.2019. The Id. AO has stated that since return of income for the A.Y 2013-14 is filled after due date i.e. on 30/03/2019, the exemption claimed u/s 10 amounting Rs.28,50,537/- is not allowed to the assessee.

In first appeal assessee filed the detailed WS (PB25-34) with legal position and documents. However the Id. CIT(A) did not consider the same in their true perspective and sense and confirmed the action of the Id. AO by observing that

“the appellant did not file a valid Income Tax Return within the stipulated time permitted under section 139(1) of the Income Tax Act, 1961, hence the benefit of deduction u/s 10 or u/s 12AA can't be allowed to the appellant under the provision of IT Act, 1961. No such deduction shall be allowed to him unless he furnishes a return of it's income for such assessment year on or before the due date specified under section (1) of Section 139. Hence, the appeal is hereby disallowed. Further, it is also pertinent to mention that the appellant will be eligible to claim the said deduction if it files a valid return of income for the relevant year after getting the necessary approval from the competent authority under the provision of section 119(2) of the IT Act, 1961.”

Hence this appeal

SUBMISSIONS :

1. No income escaped: It is submitted that the notice u/s 148 can be issued only when there is any escape of income because S. 147 provides that If the Assessing Officer has reason to believe that an income chargeable to tax has escaped assessment for any assessment year, here the assessee has not escaped any income because the assessee admittedly an educational institute and the receipts is below Rs.1.00 crore receipts or income is exempt to that extent and after filling the return the income comes Nil. Only due to not filling the return being the income below taxable or nil or exempt it cannot be said that there was escapement of income, Which shows that there was no escapement of income by the assessee,. Hence if there is neither the escapement of income by the assessee nor proved then the notice issued u/s 148 is invalid. However the Id. CIT(A) has not denied our these submissions and not speak any word.

2. Reason to believe and not reason to suspect:

2.1 It is further submitted that even under the amended law by the finance act 1989 the condition precedent or words, which continues right since inception till date, are “reason to believe” and not “reason to suspect”. The word “believe” has to be understood in contradistinction of suspicion or opinion. Belief indicates

something concrete or reliable. Kindly refer Gangasharan & Sons Pvt. Ltd. 130 ITR 1 (SC), and ITO v. Lakhmani Mewal Das, (1976) 103 ITR 437 (SC).

2.2 The belief of the Officer should be as to escapement of income and the belief should not be a product of imagination or speculation. There must be reason to induce the belief. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court (Sheo Nath Singh v. AAC, (1971) 82 ITR 147 (SC)).

In the case of Mukesh Modi & Ors. vs. DCIT 366 ITR 418 (Raj) held that Evasion of tax was menace to society but Assessee contributing to the exchequer in form of tax could not be allowed to suffer on mere pretence that it had evaded payment of tax. Rowing and fishing enquiry in hands of AO on mere suspicion or change of opinion could not satisfy expression "reason to believe" exposing Assessee for reopening of assessment. Notice for reopening of assessment was not in consonance and in conformity with under Section 147 and made specified notice vulnerable. High Court pointed that, reasons given by AO for issuance of notice for Re-assessment were not plausible and convincing. In fact order, where objections were rejected by AO, was not self-contained speaking order. Upon perusal of the order, it was amply clear that the same contains conclusions and is bereft of reasons.(para 12)

Notices issued to Assessee by AO under Section 147/148 were not satisfying the pre-requisites for same. There was no whisper in the notice, or iota of proof that while issuing same. AO had reason to believe that any income chargeable to tax had escaped assessment for the assessment year. Notice issued by AO simply for his own verification and to clear his doubts and suspicions to re-examine the material which were already available on record at time of passing of t earlier assessment orders. The legislature under Section 147 has not clothed AO with such jurisdiction therefore the action could not be upheld in the background of facts of instant case. One more redeeming fact which had direct nexus with the subsequent re-assessment proceedings and ramification of the same had culminated into re-assessment orders was the impugned order where AO rejected the objections submitted by Assessee pursuant to notice under Section 147/148. Order passed by AO in this behalf was not a speaking order which could not be sustained. In view of legal infirmity in the notice under Section 147/148 and laconic order of AO while rejecting objections Assessee the consequential assessment Orders were liable to be annulled.(para16).

In the case of Abrar Ahmed Qasami v/s ITO Ward 46(5) in ITA 3177/Del/2017 dt. 01.06.2018 it has been held that

“7. After considering rival submissions, I am of the view that reopening of the assessment is bad in law. The A.O. merely noted in the reasons that since there is an information available on ITD System of the Department that assessee has made cash deposits of Rs.14,75,000/- in his Bank Account, therefore, income chargeable to tax has escaped assessment. The ITAT, Delhi Bench in the case of Shri Arvind Yadav (supra) considering the identical facts held that the deposit in the bank account per se cannot be the income of the assessee. This is a mere suspicion of the A.O. based on incorrect fact that income chargeable to tax has escaped assessment and accordingly, quashed the reopening of the assessment. The findings of the Tribunal in para 8 of the Order are reproduced as under :

“8. In this case the Assessing Officer after obtaining the AIR information wanted to verify the same and issued a letter of enquiry to the assessee. The Assessing Officer thus did not apply his independent mind to the information received from AIR. Since no proceedings were pending before the Assessing Officer when he issued a letter of enquiry to the assessee, therefore, such enquiry letter was not valid in eyes of law. Therefore, the assessee was not required to respond to invalid letter of enquiry issued by the Assessing Officer. The Assessing Officer in the absence of reply of the assessee presumed that cash deposited in the bank account has escaped assessment. The deposit in the bank account per se cannot be income of the assessee. It is mere suspicion of the Assessing Officer based on incorrect fact that income chargeable to tax has escaped assessment. The issue is therefore covered in favour of assessee by order of ITAT SMC Delhi Bench in the case of Tajendra Kumar Ghai (supra). In view of this matter, I am of the view that the Assessing Officer has wrongly assumed jurisdiction u/s 147 of the Income Tax Act for the purpose of reopening of the assessment. I accordingly set aside the orders of the authorities below and quash the reopening of the assessment in the matter. Resultantly, the addition made in the reassessment would stand deleted.

3. No addition made on the reasons recorded u/s 148: Further it is submitted that as the Id. AO issued the notice u/s 148 on the reasons recorded that “On perusal of the information and details available on record it is noticed that the assessee had received the interest income of Rs.26,94,361/- during the F.Y. 2012-13 but he has not filed the return of income for A.Y. 2013-14, hence I have reason to believe that income chargeable to tax amounting to Rs.26,94,618/- has escaped assessment.” However on perusal of the assessment order admittedly it has been come to know that the Id. AO has not made any addition on this issue or on the issue recorded in the reason for reopening the case and he has made addition on different issue on account of assessee not filed the ITR u/s 139(4C), hence disallowed the exemption u/s 10(23C)(iiiad), which is illegal and now it is the settled legal position of law that if no addition on the reasons recorded has been made then no other addition or disallowance or denial of exemption or claim or deduction can be made, for this kindly refer following decisions:

(a) In the case of CIT vs. Shri Ram Singh 306 ITR 0343 (Raj.) the Hon'ble High Court Of Rajasthan Held that It is only when, in proceedings under s. 147 the AO assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under s. 147. To put it in other words, if in the course of proceedings under s. 147, the AO were to come to conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under s. 147. It is a different story that for such other income, the AO may have recourse to such other remedies, as may be available to him under law, but then, once it is found, that the income, regarding which he had "reason to believe" to have escaped assessment, is not found to have escaped assessment, the AO is required to withhold his hands, at that only. Once the AO came to the conclusion, that the income, with respect to which he had entertained "reason to believe" to have escaped assessment, was found to have been explained, his jurisdiction came to a stop at that, and he did not continue to possess jurisdiction, to put to tax, any other income, which subsequently came to his notice, in the course of reassessment proceedings, which were found by him, to have escaped assessment.—[CIT vs. Atlas Cycle Industries](#) (1989) 180 ITR 319 (P&H) concurred with.

(b) In the case of CIT vs. Jet Airways (I) LTD 331 ITR 0236 (Bom): Held *Reassessment—Scope—Items unconnected with escapement for which notice was issued—When Explan. 3 to s. 147 was introduced, Parliament stepped in to correct what it regarded as an interpretational error in the view which was taken by certain Courts that the AO has to restrict the assessment or reassessment proceedings only to the issues in respect of which reasons were recorded for reopening the assessment—However, Explan. 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of s. 147—AO has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings—However, if after issuing a notice under s. 148, he accepted the*

contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him to independently assess some other income—If he intends to do so, a fresh notice under s. 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee

(c) In the case of *Ranbaxy Laboratories Ltd. vs. CIT* 336 ITR 0136(Del) held that *The crux of s. 147 is the escapement of income which may be assessed or reassessed as well as any other income chargeable to tax which has escaped assessment and which comes to the notice of the AO subsequently in the course of proceedings under this section. Explanation 3 makes it clear that the AO may assess or reassess the income in respect of issue which has escaped assessment, if such issue comes to his notice in the course of proceedings under this section even though said issue did not find mention in the reasons recorded and the notice issued under s. 148. Since there was confusion prevailing with regard to the powers of the AO to assess or reassess on the issues for which no reasons were recorded, Expln. 3 came to be inserted as clarificatory. Now, after the insertion of Expln. 3, the position is that the AO may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under s. 147 though the reasons for such issue were not included in the reasons recorded in the notice under s. 148(2) on the basis of which he had initiated proceedings under s. 147.—[Vipan Khanna vs. CIT](#) (2002) 175 CTR (P&H) 335 : (2002) 255 ITR 220 (P&H) and [Travancore Cements Ltd. vs. Asstt. CIT](#) (2008) 219 CTR (Ker) 359 : (2008) 305 ITR 170 (Ker) held no longer good law.*

The heading of s. 147 is "Income escaping assessment" and that of s. 148 "Issue of notice where income escaped assessment". Sec. 148 is supplementary and complimentary to s. 147. Sub-s. (2) of s. 148 mandates reasons for issuance of notice by the AO and sub-s. (1) thereof mandates service of notice to the assessee before the AO proceeds to assess, reassess or recomputed escaped income. Sec. 147 mandates recording of reasons to believe by the AO that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per Expln. 3 if during the course of these proceedings the AO comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, the legislature could not be presumed to have intended to give blanket powers to the AO that on assuming jurisdiction under s. 147

regarding assessment or reassessment of escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before AO during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under s. 148.—

[CIT vs. Jet Airways \(I\) Ltd.](#) (2011) 239 CTR (Bom) 183 : (2011) 52 DTR (Bom) 71 : (2011) 331 ITR 236 (Bom) concurred with.

The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the AO proceeded to reduce the claim of deduction under ss. 80HH and 80-I which as per above discussion was not permissible. Had the AO proceeded to make disallowance in respect of the items of club fees, gifts and presents, etc., then in view of the discussion as above, he would have been justified as per Expln. 3 to reduce the claim of deduction under ss. 80HH and 80-I as well. In view of the above discussions, the Tribunal was right in holding that the AO had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated but he was not so justified when the reasons for the initiation of those proceedings ceased to survive.

(d) In the case of CIT vs. Dr. Devendra Gupta 336 ITR 0059(Raj): held Reassessment—Scope—Addition in respect of items other than the one on which notice in given—Income alleged to have escaped assessment in reasons recorded not having been actually found to .

(e) Also refer AVG Construction Pvt. Ltd v/s ITO Ward 6(2) Jaipur in ITA no. 90/Jp/2020 dt. 02.09.2021 under the same facts and circumstances copy is enclosed.

(f) Recently the Honble ITAT Jaipur Bench in the case of Shri Shambhu Dayal Saraf v/s IT in ITA No. 558/Jp/2013 dt 02.07.2018 58 TW 355(Jp), has also held the same view copy of order is enclosed

(g) Also refer latest decision of this Honble ITAT in the case of Pappu Qureshi v/s ITO in ITA No. 314//Jp/2019 dt. 28.04.2020

Sec. 292B is no applicable: S. 292B could not be invoked to correct a foundational/substantial error as it was meant so as to meet jurisdictional requirement—Therefore, both impugned notice and impugned order were quashed and set aside—It was made clear that this order would not prohibit Revenue from issuing a fresh notice for reassessment, if requirement of Ss 147/148 were satisfied, including limitation period therein Kindly refer Sumit Balkrishan Gupta v/s ACIT 104 CCH379(Bom.HC)(2019).

Thus, cannot be said that it is an irregularity curable u/s. 292B—

(h) In the case of Saraf Gramodyog Sansthan vs. ITO 108 ITD 115(Agra)it has been held that Further, AO had referred to wrong bank account number in the reasons recorded by him—Sec. 292B cannot take care of any mistake in recording the reasons because that section refers to "return of income, assessment, notice, summons or other proceedings"—It does not refer to the reasons recorded by the AO—Any invalid proceedings for assumption of jurisdiction cannot be corrected by s. 292B

(i) In the case of Vikram Singh vs. Income Tax Officer (2021) 63 CCH 0044 Lucknow Trib Reassessment—Escapement of income—Case of assessee was reopened u/s. 147 for deposits in bank amounting Rs.11,00,000—Held, Bombay High Court in case of CIT vs. Jet Airways (I) Ltd., 331 ITR 236 has held that sec. 147 has this effect that AO has to assess or reassess income ("such income") which escaped assessment and which was basis of formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which, comes to his notice during course of proceedings—However, if after issuing a notice under s. 148, he accepted contention of assessee and holds that income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income—If he intends to do so, a fresh notice under s. 148 would be necessary, legality of which would be tested in event of a challenge by assessee—In view of above facts and circumstances and in view of judicial precedent—Assessee's ground allowed.

(j) In the case of CIT(EXEMPTION) vs. B.P. Poddar Foundation For Education Sep 13, 2022 (2022) 115 CCH 0026 KolHC Reassessment—Reopening of assessment—Assessee filed return of income declaring a total income of Rs. NIL—Return was processed under Section 143 (1—A survey was conducted from which it was found that assessee has deposited money with NIL—It was further seen that said company is a specified person of assessee—According to Assessing Officer, assessee is hit by Section 13(1)(c)(ii) and Section 13(1)(d) for

such reason assessment was reopened under Section 147—Assessing Officer observed that from impugned documents it was seen that assessee had deposited sums with N and both these companies are specified persons of assessee—Therefore, Assessing Officer held that these amounts are to be taxed separately at Maximum Marginal Rate in terms of proviso to Section 164(2)—Total amount was treated as income by invoking Section 13(1)(b) read with Section 11(5)—Amount said to have received as donation was added back to income of assessee under Section 69A—CIT(A) affirmed view taken by Assessing Officer except for granting partial relief such as with regard to claim for carry forward of depreciation etc—Tribunal after taking note of factual position, more particularly, that addition which was made in reassessment proceedings having been deleted by CIT(A) reassessment on heads which were not part of reasons recorded for reopening assessment is not sustainable—Held, in case of GKN Driveshafts (India) Ltd. Versus Income-Tax Officer and Ors., (2003) 259 ITR 19 (SC) it was held that assessing officer is bound to furnish reasons within a reasonable time and noticee is entitled to file their objection to such notice and assessing officer is bound to dispose of same by passing a speaking order—Though Explanation 3 inserted by amendment empowers assessing officer to assess income in respect of any issue which has escaped assessment when such issue comes to his notice subsequently in course of proceedings under Section 147 notwithstanding that reasons for such issue have not been included in reasons recorded under Sub-Section 2 of Section 148, prerequisite is there should be a valid notice—Admittedly, in case on hand, notice was held to be not sustainable—If that be so, assessing officer cannot be stated to be empowered to make a roving enquiry into other issues which according to him came to his notice during reassessment proceedings—Foundation of a reassessment proceeding is a valid notice and if this notice is held to be invalid entire edifice sought to be raised on such foundation has to collapse—Tribunal was right in granting relief to assessee—Revenue's appeal dismissed.

(k) In the case of Satyawan vs. ITO ITA No. 3423/Del/2019 Jun 20, 2022 (2022) 65 CCH 0217 DelTrib Reassessment—Reopening of assessment—Assessee is challenging very validity of assessment made by Assessing Officer as assessment was reopened for escapement of income on account of cash deposits made into bank account by assessee and whereas while completing assessment Assessing Officer made various disallowances of expenses other than reason for which assessment was reopened—Held, a plain reading of reasons recorded Assessing Officer has reason to believe that income of assessee has escaped assessment in respect of cash deposits of Rs.68,68,705/- as they were remained unexplained—However, while completing assessment

Assessing Officer disallowed 25% of purchases for want of bills and vouchers—Assessing Officer also disallowed opening capital shown by assessee in his capital account as no explanation was offered by assessee—There is one more addition which was made by assessee in respect of license fee paid by assessee for want of supporting documents—Other than these three additions there is no other addition or disallowance made by Assessing Officer, which relates to cash deposits by assessee made into his bank account—In other words, Assessing Officer did not make any addition for which assessment was reopened—In case of Ranbaxy Laboratories Limited Vs. CIT (ITA. No. 148/2008) Delhi High Court held that if Assessing Officer does not make any addition on primary ground on basis of which proceedings under Section 147 were initiated he cannot make other additions—Ratio of decision of Delhi High Court squarely applies to facts of case since Assessing Officer did not make any addition for which reopening was made—Assessing Officer made various other additions other than addition for which assessment was reopened—In view of above, respectfully following above decision of jurisdictional High Court, reassessment order passed by Assessing Officer under Section 143(3) read with Section 147 is bad in law—Assessee's grounds allowed.

Prayer: Thus in view of the above facts, circumstances and the legal position of law the proceedings so initiated and assessment so passed may kindly be quashed.

4. The Id. AO has denied the exemption u/s 10(23C)(iiiad) only on the reasons that the assessee has not filed the ITR in the stipulated time limit u/s 139(i). Only on this reasons the Id. AO denied the exemption u/s 10(23C)(iiiad) of the act and the Id. CIT(A) has also confirmed the action of the Id. AO in very summarily manner without rebutting our WS and details.

5. No denial of exemption u/s 10(23C)(iiiad) for the reason not filling the ITR u/s 139:

5.1 It is submitted that Id. AO has disallowed the exemption on the ground that the assessee has not filed its ROI u/s 139 and Audit report. The reason of not filing of the same are that as the assessee is an educational institute solely exist for education purpose admittedly, it is also fact that the trust receipts was below Rs.1.00 crore, it is also facts assessee's case falls u/s 10(23C)(iiiad) admittedly. In the provisions of section 10(23C) no where it has been held or provided that if the assessee or its income/receipts comes under the provision of Sc. 10(23C)(iiiad), the exemption shall not be allowed if assessee has not filled the

ITR u/s 139, the restriction or condition for claiming the exemption have been given for the assessee falling under the Sub provisions of (iv),(v),(vi) of section 10(23C) not for the case falling u/s 10(23C)(iiiad) or (iiiab). For the same kindly refer entire provisions of Sec. 10(23C). And both the lower authority failed to consider the same.

Further when the Id. CIT(A) has himself stated that *"Further, it is also pertinent to mention that the appellant will be eligible to claim the said deduction if it files a valid return of income for the relevant year after getting the necessary approval from the competent authority under the provision of section 119(2) of the IT Act, 1961."* In this regard it is submitted that when the assessee had filed return u/s 148 which is valid return not defective nor held so rather the Id. AO himself issued the notice u/s 143(2) vide page 1 para 2 of the assessment order and notices. The Id. AO nowhere stated that return filed by the assessee is not valid return, hence when the assessee has filed the valid return u/s 148 there is no requirement to file application u/s 119(2). Thus these shows the contradictory approach of the lower authorities. If the return was not valid the Id. AO could not have issued the notice u/s 143(2), 142(1), returned income etc. The only reason given is not filing the ITR u/s 139(4C).

5.2 Further in section 139(4C), it no where it has been stated that if the return has not been filed u/s 139, the claim of exemption shall be denied u/s 10(23C)(iiiad). Both the lower authorities have failed to read and understood the provisions of law and without considering in their true perspective and sense has denied the exemption and proceeded on misinterpretation. Thus the addition as well as action u/s 147/148 both are invalid, illegal void-ab-intio and liable to be quashed.

5.3 Further the institute on the basis of provisions of Sec. 10(23C)(iiiad) has not filled the ITR and under impression that the receipts/income below the limit. However when the notice u/s 148 has come to the notice of the assessee it filed its ROI income and Audit report which are a valid return rather accepted by the Id. AO. Hence for the same institute must not be punished.

6. However it is also settled legal position of law that if an assessee has not filed his ROI and filed ROI and not shown any claim or deduction in the ROI filed and claim the same during the course of assessment proceedings even although during the course of appellate proceedings. The Honble courts has allowed the same by stating that if the assessee is entitled for any claim as per law cannot be denied for the reason that he has not claimed in the ROI. For this purpose kindly refer.

6.1. In the case of *Amina Ismi IRangari vs. ITO (2017) 51 CCH 0595 MumTrib* it has been held that *Capital gains—Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house—Rejection of claim of exemption—Case of assessee was re-opened and notice u/s 148 was issued—Assessee filed her return of income declaring taxable income after claiming exemption u/s 54F against ‘Long-term capital gains’ arising from sale of shares—AO held that share transaction entered into by assessee resulting in long term capital gains were not genuine—Since long-term capital gains were not treated to be genuine, AO also rejected claim of assessee for exemption u/s 54F—CIT(A) held that, rejection of claim of exemption u/s 54F by AO, was in order—Held, section 54F, neither provided as pre-condition requirement of filing of ‘return of income’ by assessee within stipulated time period, nor places any embargo as regards claim of such exemption in case ‘return of income’ filed by assessee involves some delay—When assessee raised claim u/s 54F in ‘return of income’ filed by her in compliance to notice u/s 148, therefore, it was obligatory on part of AO to have deliberated on entitlement of assessee towards claim of exemption u/s 54F—Due to dismissal of claim of exemption in limine by AO, there was no occasion for lower authorities to have deliberated upon satisfaction of requisite conditions contemplated u/s 54F by assessee—As assessee had during course of hearing of appeal submitted complete details as regards his entitlement towards claim of exemption u/s 54F, AO was directed to verify genuineness and veracity of claim of assessee—Claim of exemption u/s 54F, as raised by assessee should be allowed—Assessee’s appeal allowed.*

6.2 However the assessee had filed the ROI and Audit report in response to the notice u/s 148. As per the section 147 and section 148 of the Income Tax Act 1961 itself provide the opportunity to assessee for filing the return of income, hence we could not say that the Income Tax Return was late filed. And the Return filed u/s 148 is treated as filed u/s 139 and all the provision are applicable for the same. If there was any default why the notice has been given in March 2021. Further the Id. AO in the entire order has stated that the assessee has not filed ITR and other allegation.

Kindly also refer our reply filled to the Id. AO as part of our WS before your honor.

6.3 Further if there was any procedure default for non-filing the ITR, for that there many other penalties or provision has been given and in Sec. 10(23C)(iiid)

it has not been provided anywhere that if an assessee has not filed ITR the exemption shall be denied.

- In the case of Additional Director of Income Tax (Exemption) v/s Manav Bharati Child Institute & Child Psychology 20 SOT 517(Del) held that *though filing of Form No. 10 in respect of accumulation of Income of surplus income is mandatory to claim exemption u/s 11 and 12, the same can be filed at any time during the pendency of assessment proceeding and benefit of accumulation of income cannot be denied.*
- In the case of Haryana Welfare Board v/s CIT 83 CCH 268(P&H) it has been held that *information in form 10 was required to be furnished at any time before the finalization of the assessment proceedings.*
- In the case of Association of Corporation & Apex Societies of Handlooms v/s ADIT 351 ITR 287(Del) it has been held that *when the revenue re-open the assessment by invoking S. 147 of the said Act the assessee would not be remediless and would not be barred from furnishing Form -10 during those assessment proceedings.*
- Also refer Raghavan Nair vs. ACIT 402 ITR 0400 (Ker) (2018)
The ratio of the above judgments are also applicable in the present case.

6.4. In the case of CIT v/s Hardeodas Agarwalla Trust 198 ITR 511(Cal) it has been held that *It is now well-settled that a procedural provision, ordinarily, should not be construed as mandatory, if the defect in the act done in pursuance of it can be cured by permitting the appropriate rectification to be carried out at a subsequent stage. Procedural laws are devised and enacted for the purpose of advancing justice. It does not mean that the procedural laws should be brushed aside by the Court. It depends on the facts and circumstances of a particular case as to whether a breach in the observance of any procedural law, if not excused or overlooked, would cause real and substantial injustice to the parties. Having regard to the object of s. 12A, it cannot be said that the legislature intended that, even where the trust has got its accounts audited and the certificate obtained in Form No. 10B before the assessment is completed, merely because such report could not be filed in the course of the assessment proceedings, it would deprive a trust of getting the exemption if it is otherwise entitled to it in law. As in this case, the audit report had been obtained before the assessment was completed. The ITO, before completion of the assessment, did not allow any opportunity to the assessee to furnish the audit report. The*

direction that the audit report should accompany the return is not mandatory as the omission to do it may be rectified by filing the report at a later stage before the assessment is completed. The result of ignoring such return or the audit report will be denial of exemption to the trust although the income has been spent for charitable or religious purposes. This was not intended by the legislators. If an assessee fails to obtain the audit report in the prescribed form before the assessment is completed, he may not, ordinarily, be entitled to get the benefit of exemption. In this case, however, the assessee was not given an opportunity to file audit report in the prescribed form which was available with assessee before assessment was completed. In such a case, appeal being a continuation of the original proceedings, the appellate authority has the power to accept the audit report and direct the Assessing Officer to re-do the assessment

6.4. In the case of CIT vs. Lucknow Public Educational Society³¹⁸ ITR 0223 (All HC) it has been held that *Charitable trust—Exemption under s. 11—Effect of non-availability of exemption under s. 10(23C) vis-a-vis filing of return—Assessee, a registered society, filed original return claiming exemption under s. 10(23C)—Later, when it was known that it was not eligible for exemption under s. 10(23C), filed a revised return claiming exemption under s. 11 along with supporting documents like audit report—AO treated the revised return as non est, as original return has been filed after due date and completed assessment on the basis of original return denying exemption under s. 11—Not justified—AO himself had passed the order under s. 143(3) in respect of the original return—AO was aware that the assessee was entitled to exemption under s. 11, if not under s. 10(23C)—Department should not take advantage of the ignorance of the assessee—Duty cast on the AO to ask information at the time of scrutiny—AO had not done so in the instant case—Filing of audit report is only procedural and not mandatory—Same can be furnished before completion of assessment—Assessee is entitled to exemption under s. 11*

6.4. In the case of Kunhitharuvai Memorial Charitable Trust vs. DCIT (2019) 6 TMI 595 (Cochin) it has been held that *Exemption u/s. 11 - filing of return of income belatedly - returns of income were filed consequent to the notice u/s. 153A - the assessee has not filed the regular return of income u/s. 139(4A) but filed the return of income u/s. 153A(a) consequent to search u/s. 132 - HELD THAT:- Compliance of requirement of the Act will have to be at any time before the completion of assessment proceedings. However, for claiming the benefit of exemption u/s. 11 on the basis of information supplied consequent to the completion of the assessment proceedings would mean that the assessment order will have to be re-opened. The Act does not contemplate such reopening of*

the assessment. However, in the present case, it was filed consequent to the notice issued u/s. 153A(a). Further, in the present case, exemption u/s. 11 was denied because of non filing of return of income on time and also due to the discrepancies mentioned above.

In our opinion, the returns of income were filed consequent to the notice u/s. 153A. The sections 11 & 12 of the Act nowhere prescribe filing of return by any due date for the assessment years under consideration so as to grant exemption u/s. 11. Therefore, the findings of the CIT(A) that the assessee having not filed its returns of income within the prescribed time had failed to comply with the requirement prescribed under the Act, is not tenable. - Decided in favour of assessee

The memorandum explaining the relevant provisions of the Finance Bill, 2017 reads as under:

"as per the existing provisions of said section, the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. However, there is no clarity as to whether the said return of income is to be filed within time allowed u/s 139 of the Act or otherwise. In order to provide clarity in this regard, it is proposed to further amend section 12A so as to provide for further condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Act.

These amendments are clarificatory in nature.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent years

Circular No.02/2018 dated 15.02.2018 containing "Explanatory Notes to the Provisions of the Finance Act, 2017" on insertion of clause (ba) in Sub section (1) of section 12A is quoted as under:

"the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139 of the Income-tax Act, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax.

Amendment to section 12A of the Income-tax has been made so as to provide for additional condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Income-tax Act."

“Thus, for a trust registered u/s 12AA of the Act to avail the benefit of exemption u/s 11 shall inter-alia file its return of income within the time allowed u/s 139 of the Act. Accordingly, orders u/s 143(1)(a) in those cases in which demand has been raised on this issue may please be rectified.”

7. Hence, the Assessing Officer cannot deny the grant of exemption u/s. 10(23C)(iiiad)

8. The Coordinate Bench of ITAT, Delhi Bench in the case of United Educational Society v. JCIT (2019) 7 TMI 738 (ITAT Delhi) has held as under:

Reopening of assessment u/s 147 - exemption u/s 11 denied - assessee has not filed the return u/s 139 (4A) reads with section 12A (b) - assessee society was carrying out educational activities which fell within charitable activities u/s 2(15) , it was granted registration u/s 12A - whether, the filing of audit report alongwith the return filed in response to notice u/s 148 will entitle the assessee for benefit of computation of section 11 ? - HELD THAT:- We are of the view that, whether it is a case of a regular assessment or it is a case of an assessment consequent to issue of notice u/s 148, not only the procedure of return as given in section 139 has to be applied, but also such the income has to be computed on the basis of such return in accordance with the provision of the Act, which of course will be subject to any specific provision in the Act which itself bars a claim or an exemption.

Section 148 provides that all the provision of the Act has to apply on such return furnished in response to notice u/s 148. The Ld. CIT DR has referred to the words ‘so far as may be’ to canvass the proposition that all the provision will not apply. This contention of the Ld. DR is not correct in view of our reasoning given above. The meaning of these words ‘so far as may be’ will not mean to exclude provision of section 11 of the Act.

Our above view gets further supported from the amendment made by the Finance Act, 2017 whereby a further clause (ba) has been inserted imposing a further condition that such return of income is to be furnished in terms of section 139(4A), within the time allowed under that section. Firstly, this requirement was not there before this amendment; and secondly, this insertion of additional clause clearly shows that such condition was not there in existing clause (b) of section 12A. Had such condition being there in clause (b) itself, then there was no need to insert a further clause (ba) by the Legislature for denying benefit of section 11 & 12 in case return is not filed in time as per provision of section 139 (4A).

We are also not in agreement with the contention of the Ld. DR that this amendment is clarificatory in nature. As rightly pointed out by the Ld. Counsel that this amendment has been made by the Finance Act, 2017 effective from A.Y. 2018-19, meaning thereby that this clause has not been made applicable even for the A.Y. 2017-18, the return of which were still to be filed. Thus, the Legislature has thought fit to make this amendment applicable from next assessment years onwards and not even to the current A.Y. 2017-18.

While interpreting the amendment made by the Finance Act No. 2 of 2014 whereby section 11 (6) was inserted so as to exclude such assets while computing depreciation in respect of which deduction has been allowed as an application of income u/s 11.

In view of the above, we hold that AO was not justified in denying the benefit of the exemption u/s 11 of the Act and we direct the AO to compute the income in accordance with the provision of section 11. Ground no.6 is accordingly allowed.

Here also the position are the same.

9. On perusal of the Id. CIT(A) order it is clear that he has not given any adverse finding on our contentions, plea judgments etc. He passed the order in very summarily manner. Which show he was not having any adverse judgments against the assessee on the issue.

9. Prayer : In view of the above facts, submissions and legal position your honours are requested to delete the entire additions/disallowance and quash the order of the Id. AO and oblige.

Note : we also would like to submit that IN ITA NO.41/JP/2025 FOR AY 2014-15 U/S 147/143(3) our submission are the same as IN ITA NO. 39/JP/2025 FOR AY 2013-14 U/S 147/143(3), hence the same may kindly be considered here also.”

7. Ld. AR of the assessee also filed a detailed paper book to support the contention raised in the written submission and is supported by following evidence / records:

ITA No. 39/JP/2025

Paper Book Index

S. No.	PARTICULAR	Page No.
1.	Index and details list before CIT(A).	1-2
2.	The copy of Registration Certificate along with the Constitutions of the Society.	3-14
3.	The copy of the order of Registration under section 12AA of the IT Act, Dated 19.02.2019.	15-16
3.	The copy of the Approval Letter for issue of notice u/s 148 of the IT Act, Dated: 23.03.2021 along with the reasons of reopening of the case.	17-19
4.	The copy of notice u/s 148 of the IT Act, Dated: 24.03.2021.	20
5.	The copy of Computation of Income along with the copy of acknowledgement of the Income Tax Return for AY 13-14.	21-22
6.	The copy of the Letter of Reply submitted on dated 27.12.2021 against the query letter issued u/s 148 & 142(1) of the IT Act.	23-24
7.	Copy of WS to CIT(A).	25-34

ITA No. 41/JP/2025

Paper Book Index

S. No.	Particular	Page No.
1	Index and details list before CIT(A)	1-2
2	The copy of notice u/s 148	3
3	The Copy of Computation of Income along with the copy of acknowledgement of the Income Tax Return for A.Y 2013-14	4-6
3	The Copy of the Letter of Reply submitted on dated 27.12.2021 against the query letter issued u/s 148 & 142(1) of the IT. Act.	7-8
4	Copy of WS to CIT(A)	9-18

8. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee provision of section 10(23C(iiiad)) is applicable and when there is no income taxable there is no requirement to file income tax return as the income on educational activities do not form part of total income. The Id. AO vide reasons recorded intend to tax income but has disallowed the claim of expenditure and thus once on reasons recorded no addition is made based

on the decision of Ramsingh (Supra) by our High Court the order is required to be quashed even on that count.

9. The Id DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A). Ld. DR stated that no benefit be given if the assessee do not file the ITR.

10. In the rejoinder the Id. AR of the assessee submitted that once the income is exempt under the provision of the Act and it does form part of total income and requirement to file the ITR was not made applicable for the year under consideration.

11. We have heard the rival contentions and perused the material placed on record. Vide ground no. 1 the assessee challenges the impugned order on its legality and vide ground no. 2 the assessee challenges the impugned order on its merits.

Record reveals that the assessee is a trust / society undertaking Educational activities and falls under the provision of section 10(23C)(iiiad) and even the Id. AO did not dispute that claim of the assessee. For the year

under consideration based on the information in possession of revenue Id. AO noted that the assessee had income chargeable to tax has escaped assessment. Therefore, there were reasons to believe that the Assessee has not disclosed fully and truly all material facts necessary for his assessment for that Assessment year. After recording satisfaction "reasons to believe" and obtaining the prior approval of the competent authority, notice u/s 148 of the Act was issued on 24/03/2021 as assessee has received an interest income of Rs.26,94,361/- during the year, however, the assessee has not filed return of income for the year under consideration.

Therefore, an assessee by issuance of notice u/s. 148 was required to file the ITR. In response, the Assessee filed its return of income on 23.04.2021. Thereafter statutory notices were issued to the assessee. Ld. AO noted that the assessee filed a return of income declaring nil income after claiming exemption u/s.10(23C(iiiad)). During the year, the assessee is in receipt of Income from other sources of Rs 28,50,637/- and the same was claimed exempt. By virtue of section 139(4C) every educational institution referred to in sub-clause (ad) or sub-clause (vi) of Section 10(23C) whose total income in respect of which such institutions is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a

return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1) of section 139. In this regard, the assessee was specifically asked to furnish the copy of trust deed and copy of certification of registration u/s 12A and/or 10(23C) and to explain why the claim of exemption should not be denied as they have not filed the return of income within the due date as stipulated u/s.139(1) of the Act. Ld. AO noted that since the assessee is registered u/s. 12AA of the Act w.e.f. 19.02.2019 the benefit of 10(23C)(iiiad) cannot be given and thereby the he disallowed the claim of income not chargeable to tax u/s. 10 was denied.

As the dispute is relates to the provision of section 10(23C)(iiiad) it would be relevant to go through the provision of the Act which reads as under:

(23C) any income received by any person on behalf of—

(i) the Prime Minister's National Relief Fund or the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND); or

(ii) the Prime Minister's Fund (Promotion of Folk Art); or

(iii) the Prime Minister's Aid to Students Fund; or

(iiia) the National Foundation for Communal Harmony; or

(iiiaa) the Swachh Bharat Kosh, set up by the Central Government; or

(iiiaaa) the Clean Ganga Fund, set up by the Central Government; or

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(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual

receipts of the person from such university or universities or educational institution or educational institutions do not exceed five crore rupees; or

As is evident from the above provision and as it was applicable for the year under consideration the limit of aggregate annual receipt for the year under consideration was made applicable was up to Rupee one crore. Now coming to the requirement of filling the return of income by these institution section 139(4C) would be applicable which reads as under:

- (4C) Every—
- (a) research association referred to in clause (21) of [section 10](#);
 - (b) news agency referred to in clause (22B) of [section 10](#);
 - (c) association or institution referred to in clause (23A) of [section 10](#);
 - (ca) person referred to in clause (23AAA) of [section 10](#);
 - (d) institution referred to in clause (23B) of [section 10](#);
 - (e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (iiiab) or sub-clause (iiiad) or sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (iiiac) or sub-clause (iiiæ) or sub-clause (via) of clause (23C) of [section 10](#);
 - (ea) Mutual Fund referred to in clause (23D) of [section 10](#);
 - (eb) securitisation trust referred to in clause (23DA) of [section 10](#);
 - (eba) Investor Protection Fund referred to in clause (23EC) or clause (23ED) of [section 10](#);
 - (ebb) Core Settlement Guarantee Fund referred to in clause (23EE) of [section 10](#);
 - (ec) venture capital company or venture capital fund referred to in clause (23FB) of [section 10](#);
 - (f) trade union referred to in sub-clause (a) or association referred to in sub-clause (b) of clause (24) of [section 10](#);
 - (fa) Board or Authority referred to in clause (29A) of [section 10](#);
 - (g) body or authority or Board or Trust or Commission (by whatever name called) referred to in clause (46) of [section 10](#);
 - (h) infrastructure debt fund referred to in clause (47) of [section 10](#),

shall, if the total income in respect of which such research association, news agency, association or institution, person or fund or trust or university or other educational institution or any hospital or other medical institution or trade union or body or authority or Board or Trust or Commission or infrastructure debt fund or Mutual Fund or securitisation trust or venture capital company or venture capital

fund is assessable, **without giving effect to the provisions of [section 10](#), exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed** and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

Thus, the law as applicable to the assessee says that if the receipt exceeds Rupee one crore and income after giving effect to the provision of section 10(23C(iiiad)) the income exceeds the maximum amount which is not chargeable to tax then the present assessee has to file the ITR for the year under consideration.

Our above view is also support from the following judicial precedents ;

CIT v. Children's Education Society [\[2013\] 34 taxmann.com 285/358 ITR 373 \(Karnataka\)](#) Section 10(23C) of the Income-tax Act, 1961 - Charitable/religious purpose (Society running institutions for educational purpose) - Assessment year 2005-06 - Whether where assessee- society runs several educational institutions, in terms of section 10(23C)(iii)(ad), income from each educational institution if they are not receiving any aid from government wholly or substantially in respect of which aggregate annual receipt does not exceed Rs. 1 crore received by assessee, is not included while computing annual total income of assessee - Held, yes [Para 22] [In favour of assessee]

Jat Education Society v. Dy. CIT [\[2011\] 10 taxmann.com 127/47 SOT 35 \(Delhi\)](#)

Section 10(23)(iiiab) of the Income-tax Act, 1961, r.w.r 2BC of the Income-tax Rules, 1962 - Educational institutions - AYs 2003-04 and 2004-05 - Assessee-society was running several educational institutions - In course of assessment, AO found that aggregate of annual gross receipts of three educational institutions run by assessee exceeded monetary limit of Rs.1.00 crore as prescribed in rule 2BC of 1962 Rules Accordingly, Assessing Officer held that income of those institutions was not exempt under section 10(23C) - Whether aggregate annual receipt below Rs. 1 crore had to be seen for each educational institution separately and for that purpose, annual gross receipts of all three educational institutions could not be considered collectively to be

eligible for exemption under section 10(23C)(iiiad) - Held, yes -Whether since each of educational institution was having annual gross receipt of less than Rs. one crore, income of those institutions was exempt from tax -Held, yes

CIT (Exemptions) v. Smt. Shanti Devi Educational Trust [\[2019\] 102 taxmann.com 141/261 Taxman 339/\[2018\] 409 ITR 522 \(Punjab & Haryana\)](#) (para 14). obtaining registration under Section 12AA of the Act was not mandatory for claiming exemption under section 10(23C)(iiiad) of the Act. According to this provision, any income received by any person on behalf of any university or other educational institution existing solely for educational purposes and not for the purpose of profit is exempt if the aggregate annual receipt of such university or educational institute does not exceed the amount of annual receipt as may be prescribed". "It is held that, Total income of society running that school or university is not to be considered under that section. Income from interest and FDRs was an additional income of society and cannot be considered to be part of annual receipt of the school. It was held that the assessee was eligible for exemption under section 10(23C)(iiiad) of the Act as annual school receipts did not exceed 1 crore."

Pawan Hans Swami Uma Bharti Mission v. ACIT [\[2013\] 29 taxmann.com 223/140 ITD 429 \(Delhi - Trib.\)](#)

Section 10(23C) of the Income-tax Act, 1961 - Educational Institutions - Annual receipts - Assessment year 2006-07 -Whether in terms of provisions of section 10(23C)(iiiad), annual receipts of school or university may be taken into consideration and not total income of society running that school or university - Held, yes [Para 8] [In favour of assessee].

Therefore, in the present facts and circumstances of the case and following the judicial precedents cited supra, we are of the considered opinion that the Id.CIT(A) has erred in confirming the denial of exemption u/s. 10(23C)(iiiad) of the Act to the assessee for the impugned assessment

year and hence we are setting aside the order of the Id.CIT(A) by allowing the ground no 2 raised by the assessee.

Ground no. 1 challenges the re-opening of the case of the assessee since we have considered ground no. 2 on merits ground no. 1 raised by the assessee becomes academic. Ground no. 3 charge of interest is consequential and ground no. 4 is general.

In the results, the appeal of the assessee in ITA no. 39/JP/2025 stands allowed.

12. The facts of the case in ITA Nos. 41/JP/2025 are similar to the facts of the case in ITA No. 39/JP/2025 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 41/JP/2025 is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 39/JP/2025 for the Assessment Year 2013-14 shall apply mutatis mutandis in the case of

Institute Management Committee ITI Jhalawar in ITA Nos. 41/JP/2025 for Assessment Year 2014-15.

In terms of these observations, the appeal of the assessee in ITA No. 41/JP/2024 is also allowed.

(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

ITAs No(s). 39 & 41/JPR/2025

(Assessment year 2013-14 & 2014-15)

Institute Management Committee ITI, Jhalawar vs. ITO

PER: NARINDER KUMAR, JUDICIAL MEMBER.

I have gone through the draft order communicated by Learned Accountant Member.

Having regard to the issues involved in these two appeals, I have pondered over the respective contentions raised, and proceed to express my views.

2. Learned CIT(A), vide impugned orders, each dated 25.11.2024, upheld the assessment orders dated 21.03.2022, passed by the Assessing Officer u/s 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), relating to two different assessment years i.e. 2013-14 & 2014-15, and as a result, dismissed the two appeals filed by the assessee.

Assessment year 2013-14

3. The Assessing Officer, as regards assessment year 2013-14, disallowed exemption to Rs. 28,50,537/-, claimed by the assessee u/s 10 of the Act and made addition of said amount to the total income of the assessee.

Assessment year 2014-15

4. As regards the other assessment year 2014-15, the Assessing Officer disallowed the claim of the assessee regarding exemption of Rs. 27,47,673/-, claimed u/s 10 of the Act.

Assessing Officer issues directions to file ITR under section 148

5. Admittedly, the assessee-appellant is a trust. When the department noticed that the assessee-appellant had not disclosed fully and truly all material facts necessary for assessment, on 24.03.2021, the department issued notices to the assessee, u/s 148 of the Act.

Said notices were issued as the assessee was found to have not filed any returns of income for the said two assessment years, and in respect of the abovesaid two amounts of income.

Returns are filed in response to notices under sec. 148

6. Admittedly, in response to the notices u/s 148 of the Act, the assessee was required to file ITR within a month of the receipt of the

notices, but, in the view of the Assessing Officer. Same were filed on 23.04.2021 to comply with direction about the prescribed period. That is how, the department issued notices u/s 143(2) of the Act, which were followed by notices u/s 142(1) of the Act seeking certain information/documents, but the assessee did not furnish any response to the said notices.

Again, the Assessing Officer provided opportunity to the assessee to furnish reply.

Thereafter, the Assessing Officer prepared draft assessment orders and sent the same to the assessee in respect of each assessment year. Show cause notices dated 11.02.2022 were also issued. However, the assessee did not furnish any response to the said draft assessment order/show cause notices. That is how, the two assessment orders were passed.

Challenge to the Assessment Orders

7. When the matters came up in appeals by the assessee, challenging the above said assessment orders, Learned CIT(A) dismissed the appeals.

Ground for disallowing of exemption claimed under sec. 10

8. The department has disallowed exemption claimed u/s 10 of the Act on the ground:

“the assessee having failed to furnish returns of income in each assessment year or before the due date specified under sub-section (1) of Section 139 of the Act”

For the same reason, Learned CIT(A) has upheld the assessment orders.

Contentions

9. Ld. AR for the assessee-appellant has contended that the assessee was not required to file any income tax return, relating to the any of the two assessment years as the assessee had entered into agreement with the Government for upgradation of Government Industrial Trading Institute, Jhalawar under Public Private Partnership Scheme; that certain funds were assigned by the Central Government to the assessee by way of interest free loan to achieve the targets of the abovesaid scheme. The assessee got the free loan amount deposited by way of fixed deposit receipt and utilized the amount of interest that accrued on the said amount to achieve its objects.

Therefore, the contention is that the assessee was eligible for exemption sub- clause (iiiad) of clause (23C) of section 10 of the Act.

As regards, non filing of the return on or before the due date, Ld. AR submitted that there was no malafide intention for not filing the same. Ultimately, Ld. AR urged that since the assessee filed returns of income of section 148 of the Act, said returns may be treated as valid returns deeming that the same were filed u/s 139(1) of the Act.

10. On the other hand, Learned DR for the department has submitted that ITR, in response to notices under section 148 of the Act, were required to be filed within the prescribed period, and since the assessee failed to abide by the time limit, the authorities below were justified in declaring the returns to be invalid returns, and declining exemptions as claimed under section 10 of the Act.

Discussion

11. Sub-clause (iiiad) of clause (23C) of section 10 of the Act, as in force, during relevant period, provided that in computing the total income of previous year of any person, any income falling in the said clause shall not be included, where the aggregate annual receipt of any university or other educational institution existing solely for educational purpose and not for purpose of profit, did not exceed the limit of Rs. 1 Cr.

Was the assessee required to file Return of Income under any provision other than under section 148?

12. As regards, the contention raised on behalf of the assessee-appellant that the assessee-appellant was not required to file any Income Tax Return, sub-section (4C) of Section 139 of the Act provides that every university or other educational institution referred to in sub clause (iiiad) of Clause (23C) of section 10 of the Act shall furnish return of such income of the previous year, if the total income of the said university or educational institution is assessable, without giving effect to the provisions of Section 10, and exceeds the maximum amount, which is not chargeable to income tax.

Sub-section (4C) further provides that all the provisions of this Act shall, so far as may be, apply as if such return were a return required to be furnished under sub-section (1).

13. Significantly, sub-section (1) of Section 139 provides that a return of income during previous year is to be furnished on or before the due date.

14. Herein, nothing has been brought to our notice from the side of the department that the total income of the assessee-appellant

(without giving effect to the provisions of section 10) exceeded the maximum amount not chargeable to income tax.

In this situation, there is merit in the contention raised on behalf of the assessee-appellant that the assessee was not required to furnish a return of income either u/s 139(1) or section 139(4C) of the Act.

Was there any Time limit prescribed under the Act for filing of Return of Income under section 148 during the relevant Assessment Years?

15. Admittedly, the assessee was required to file return(s) of income for the said 2 Assessment Years, and that too, in reponse to the notices under section 148 of the Act.

Notices u/s 148 of the Act were issued on 24.03.2021. As per contents of these notices, Returns of Income were required to be filed within 30 days from the date of service thereof. These were filed on 23.04.2021. This shows that the assessee complied with the directions issued by the Assessing Officer.

3rd proviso came to be inserted in section 148 of the Act to the effect that any returns of income required to be furnished by the assessee under this section, if furnished beyond the period allowed,

shall not be deemed to be a return u/s 139 of the Act. It was only w.e.f. 01.04.2023 that said proviso came to be inserted. Hence, said proviso was not there at the relevant time.

As per amended provisions of Section 148 of the Act, provisions of this Act shall apply to the return so furnished, as if the same were a return required to be furnished u/s 139 of the Act.

The time period of 3 months for furnishing of a return u/s 148 of the Act came to be prescribed only vide amendment by Finance Act, 2023, w.e.f 01.04.2023. In other words, prior to this amendment, the return, when presented was to be treated as a return as required to be furnished u/s 139 of the Act.

In the given situation, as per the law in force at the relevant time, the Assessing Officer should have treated said 2 returns of income to have been furnished under section 139 of the Act. In other words, the 2 returns of income were valid and could not be termed to be invalid in the eyes of law.

Conclusion

16. In view of the above discussion, the authorities below were not justified in treating the returns as invalid returns, on the ground that the same were not filed within time prescribed u/s 139(1) of the Act.

Consequently, the authorities below also fell in error in disallowing the claims of the assessee seeking exemptions u/s 10 of the Act.

Result

17. For the aforesaid reasons, both the appeals filed by the assessee deserve to be allowed and the impugned orders passed by Learned CIT(A) deserve to be set aside.

Files alongwith this common order be accordingly laid before Ld. Accountant Member for perusal and pronouncement. Sr. Private Secretary to do the needful as per rules.

Sd/-

(नरेन्द्रकुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

Operative Part

As a result, both the appeals of the assessee are hereby allowed.

Order pronounced in the open court on 05/05/2025

Sd/-
(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

Sd/-
(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 05/05/2025

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Institute Management Committee ITI Jhalawar
2. प्रत्यर्धी / The Respondent- Income Tax Officer, Ward, Jhalawar
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA Nos. 39 & 40/JP/2025)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar