

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष ।
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri Jagadish, Accountant Member

आयकर अपील सं./I.T.A. Nos.1667, 1668, 1669 & 1670/Chny/2024
निर्धारण वर्ष/Assessment Years: 2014-15, 2015-16, 2017-18 & 2018-19

D.A.V. Educational Trust,
5, S V Illam, Mohanapuri Lake View
Street, Adambakkam,
Chennai 600 088.

Vs. The Income Tax Officer,
Exemption Ward 4,
Chennai.

[PAN: AAATC5967A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G. Baskar, Advocate &
Shri A. Satyaseelan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. Gouthami Manivasagam, JCIT
सुनवाई की तारीख/ Date of hearing : 28.10.2025
घोषणा की तारीख /Date of Pronouncement : 21.01.2026

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

These four appeals filed by the assessee are directed against the orders all dated 05.04.2024 passed by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi for the assessment years 2014-15, 2015-16, 2017-18 and 2018-19.

2. Since, the issues raised in these appeals are similar based on the same identical facts, with the consent of both the parties, we proceed to

hear all the appeals together and pass consolidated order for the sake of convenience.

3. First, we shall take appeal in ITA No. 1667/Chny/2024 - AY 2014-15 for adjudication.

4. Ground No. 1(1.1 & 1.2) raised by the assessee is general in nature and requires no adjudication.

5. Ground No. 2 (2.1 to 2.5) raised by the assessee in challenging the action of the Id. CIT(A) in not considering the submissions of the assessee in respect of validity of reassessment order passed under section 147 r.w.s. 144B of the Income Tax Act, 2961 ["Act" in short] in the facts and circumstances of the case.

6. The Id. AR Shri G. Baskar, Advocate submits that the reopening of scrutiny assessment is barred by limitation under first proviso to section 147 of the Act. He submits that the assessee filed the return of income declaring NIL income by claiming exemption under section 11 of the Act and the Assessing Officer completed the scrutiny assessment vide order dated 03.12.2016 passed under section 143(3) of the Act accepting the returned income. He argued that the order of the reassessment is *firstly* illegal as no action shall be taken under section 147 of the Act after the

expiry of four years from the end of the relevant assessment year. He submits that the end of the relevant assessment year is 31.03.2015 and notice under section 148 of the Act was issued on 31.03.2021. He argued vehemently that the notice under section 148 of the Act issued is beyond four years and hit by first proviso to section 147 of the Act. He submits that the Assessing Officer, in the original assessment proceedings, after considering the books of accounts and other details including the issues raised in the notice under section 148 of the Act, completed the assessment by accepting the returned income without making any addition. He argued that the assessee disclosed fully and truly all material facts necessary for assessment for the said assessment year vide submissions dated 20.06.2016 in response to the notice under section 142(1) of the Act dated 02.06.2016. He argued that since all the material facts necessary for assessment have been disclosed during the original assessment proceedings and the reopening on the same set of fact is barred by limitation in terms of first proviso to section 147 of the Act.

7. The Id. AR *secondly* submits that the reassessment order passed by the Assessing Officer is also not maintainable as the Assessing Officer failed to furnish the copy of actual reasons recorded during the course of reassessment proceedings. He drew our attention to page 89 of the paper

book and submits that the Assessing Officer, vide notice dated 22.06.2021 under section 143(2) r.w.s. 147 of the Act furnished only issues as per the reasons recorded for reopening stating that "*to invoke provisions of section 2(15) of the Act and to deny exemption under section 11 of the Act*". Further, he referred to page 93 of the paper book and submits that the assessee filed objections to the said reasons on 07.07.2021, which were disposed of by the Assessing Officer vide order dated 10.12.2021, placed at page 98 of the paper book. He argued that the Id. DR provided a copy of reasons recorded during the course of hearing, which is different from the reasons provided in the notice under section 143(2) r.w.s. 147 of the Act. He argued vehemently that failing to provide a copy of actual reasons recorded depriving the assessee to object to the same during the reassessment proceedings. He submits that such action of the Assessing Officer is against the law laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. v. ITO in 259 ITR 19(SC). Further, he drew our attention to para 1.1 of the reassessment order, wherein, the Assessing Officer has consciously provided gist of the reasons recorded rather than actual reasons. He placed reliance on the order of Mumbai Benches of the ITAT in the case of Tata International Ltd. v. DCIT [2012] 23 taxmann.com 18 (Mumbai) and submits that the reassessment completed without furnishing the

reasons actually recorded by the Assessing Officer is not sustainable under the law as the Assessing officer is duty bound to supply the same within reasonable time as held by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. v. ITO (supra). He argued that the actual copy submitted by the Id. DR during the course of hearing before the Tribunal would not make good of the legality sufficient for reopening of the assessment. He argued that since the Assessing Officer furnished with mere gist of the reasons claiming them to be actual reasons recorded, the same is illegal making the order of reassessment, is liable to be quashed.

8. Further, *thirdly*, Shri Baskar submits that the reassessment is illegal for the reason that the Assessing Officer has reopened the assessment only on the basis of "change of opinion" to review his earlier order of scrutiny assessment. He drew our attention to page 71 of the paper book, notice dated 02.06.2016 issued under section 142(1) of the Act and submits that the Assessing officer called for several details as evident in point at 11, 12, 13 and 17. He submits that the assessee filed detailed response on 20.06.2016 including the objects constituted with main limbs of charitable purpose specified under section 2(15) of the Act and referred to page 71 and 75 of the paper book. He submits that the assessee also

furnished details of its income and expenses, receipts and payments stating that the said income was out of sale of belt, books fees, books and uniforms from IADAV, Unit II, 1 and stitching fees and referred to page 114 of the paper book. Further, he drew our attention to page 111 of the paper book showing accumulated sum of ₹.1,61,00,000/- under section 11(2) of the Act along with Form 10A belatedly seeking condonation under section 119(2)(b) of the Act before the Id. CIT(E). The Id. CIT(E) condoned the said delay in filing Form 10A vide his order dated 30.11.2016 and referred to page 82 of the paper book. He vehemently argued that the Assessing Officer, considering all the details, accepted the returned income and formed an opinion that the assessee was eligible for claiming exemption under section 11 of the Act during scrutiny assessment. He further argued that after considering the assessee's submissions and books of account, reopening of the assessment for denying of exemption is mere "change of opinion", is illegal and placed reliance in the case of CIT v. Kelvinator of India Ltd. 320 ITR 561 (SC). He prayed to allow ground No. 2(2.1 to 2.5) and quash the reassessment.

9. The Id. DR Ms. Gouthami Manivasagam, JCIT submits that the argument of reopening of assessment, barred by limitation, is untenable. She submits that the first proviso to section 147 of the Act allows

reopening of assessment beyond 4 years if the income has escaped assessment due to assessee's failure to disclose fully and truly all material facts necessary for assessment. She submits that "*the Assessing Officer recorded that the assessee did not disclose its activities, which were limited to the selling of books, notebooks and uniforms and it was not engaged in the dominant activity of education. The financials furnished did not explicitly clarify that these were not its sole activities nor it had disclosed the absence of direct educational activities despite questioning*". She submits that such information was embedded in a manner requiring due diligence to uncover attracting Explanation 1 to section 147 of the Act. Further, she submits that as the Explanation 1 provides that the production of books or evidence does not constitute disclosure if material evidence could not be discovered with due diligence. She referred to the decision of the Hon'ble High Court of Madras in the case of Karur Kongu Charitable Trust v. ITO [2023] 147 taxmann.com 73 (Madras) which held that "*mere production of accounts does not amount to disclosure if material facts are not explicitly brought to the AO's notice*". Further, the survey statement of 25.02.2019 provided critical evidence that the assessee's activities were commercial, not charitable, which was not disclosed earlier.

10. She argued vehemently that the decision in the case of Calcutta Discount Co. Ltd. v. ITO [1961] 41 ITR 191 (SC) as relied on by the Id. AR is misplaced as it applies to cases where all primary facts are disclosed. She submits that in the present case, the assessee failed to disclose the nature and extent of its activities necessitating reassessment. She referred to the decision of Hon'ble Supreme Court in the case of Phool Chand Bajrang Lal v. ITO [1993] 302 ITR 456 (SC), which upheld reopening where the assessee's non-disclosure of material facts led to escapement of income. She argued that since the assessee failed to disclose all the materials fully and truly and the survey provided fresh evidence, *"the reopening on 31.03.2021 (within six years from the end of A.Y. 2014-15) is within the limitation period under section 149(1)(b) of the Act"*, as applicable for A.Y. 2014-15.

11. The Id. DR, with reference to furnishing of gist of reasons recorded, argued that rendering the reassessment illegal citing G.K.N. Driveshafts (India) Ltd. v. ITO (supra) is factually incorrect. She argued that no specific request for supply of reasons sought by the assessee and placing on reliance in the case of G.K.N. Driveshafts (India) Ltd. (supra) and in the case of Tata International Ltd. v. DCIT (supra) are highly misplaced. She referred to the notice dated 22.06.2021 issued under section 143(2)

r.w.s. 147 of the Act by the Assessing Officer, which clearly explains the intention to invoke section 2(15) of the Act and to deny exemption claimed under section 11 of the Act. She argued that the assessee acknowledged receipt of the said notice and filed objection on 07.07.2021, which was disposed of by the Assessing Officer vide order dated 10.12.2021. She further submits that the reasons recorded clearly outlined the Assessing Officer's belief that the assessee's activities of sale of books and uniforms were not charitable and material facts were not fully disclosed during the original assessment. Further, the assessee's claim that the reasons provided different from those recorded is unsubstantiated, as no evidence supporting this allegation filed. She argued that the decision of the Hon'ble Supreme Court in the case of G.K.N. Driveshafts is applicable only when the assessee makes specific request to the Assessing Officer.

12. With reference to the contention of change of opinion, the Id. DR argued that the reopening constitutes a mere change of opinion, relying on the decision of the Hon'ble Supreme Court in the case of CIT v. Kelvinator of India Ltd. [2010] 320 ITR 561 (SC), is misplaced. She submits that the Assessing Officer initiated reassessment based on fresh tangible material obtained during survey under section 133A of the Act on

25.02.2019, wherein, Shri V. Rajendran, Chairman of the assessee Trust stated on oath that the Trust's activities were limited to the sale of books, notebooks and uniforms run by DAV School Trust. The said information reveals that the assessee was not engaged in the dominant activity of education, contrary to its claim for exemption under section 11 of the Act. She referred to original assessment order and submits that the Assessing Officer has not specifically examined the dominant activity of the Trust and the issue of assessee's activities constituted charitable education was not at all adjudicated. She referred to notice dated 02.06.2016 issued under section 142(1) of the Act and submits that it only contains general queries and assessee's reply dated 17.06.2016 did not address on specific issue of dominant activities. She argued that the Hon'ble Supreme Court in the case of Kelvinator of India Ltd. (supra) held that reopening is permissible if there is tangible material to believe income had escaped assessment and not merely on the change of opinion on the same facts and in the present case, she argued that the survey statement constitutes fresh material and the Assessing Officer's failure to examine the dominant activity in the original assessment negates the assessee's claim of change of opinion and placed reliance in the case of Ess Ess Kay Engineering Co. (P.) Ltd. v. CIT [2001] 247 ITR 818 (SC), which upheld reopening based on new information not considered earlier.

13. Heard both the parties and perused the material available on record. A plain reading of first proviso to section 147 of the Act, it is noted that where assessment under sub-section 3 of section 143 of the Act has been made in the relevant assessment year, no action shall be taken under this section after expiry of 4 years from the end of the relevant assessment year unless not disclosed any income chargeable to tax has escaped assessment for the AY by arising failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for that AY. It is noted that assessee's income and expenditure statement at page 114 of the paper book, wherein, it clearly shows that its income was out of sale of belts, books, uniform fees and stitching fees. We find that the assessee has recorded in clear terms, which is reflecting the income and expenditure statement that it generated income from sale of books and uniforms. We find the assessee disclosed the activities it carries out during the original assessment proceedings bringing all primary facts necessary for assessment. In this regard, we find notice under section 142(1) of the Act dated 02.06.2016 at page 71 of the paper book, wherein, it is noted the fact that question Nos. 11, 12, 13 & 17 clearly demonstrate that the Assessing Officer, during the course of original assessment proceedings sought details in respect of the items mentioned therein. In response to the said notice, the assessee submitted

its reply dated 17.06.2016, acknowledged by the Office of the ITO, Exemption Ward-4 on 20.06.2016, wherein for all the items, furnished reply vide annexures. Therefore, it is clear that the assessee fully and truly disclosed all the material facts as sought by the Assessing Officer vide its reply on two occasions, which are referred to above in the paper book. Therefore, we find no force in the arguments of the Id. DR that no information was furnished by the assessee with reference to the dominant activities of the assessee. As discussed above, on an examination of the income and expenditure statement at page 114 of the paper book relevant to period 01.04.2013 to 31.03.2014, clearly disclose the income of the assessee under the head "direct income - with reference to belts, books fees, uniform fees & stitching fees" which was admittedly available before the Assessing officer during the course of original assessment. It is noted that the Id. DR referred to the statement of Chairman of the assessee trust and argued that he himself admitted on oath a statement recorded during survey under section 133A of the Act on 25.02.2019 stating that the trust activities were limited to sale of books, notebooks and uniforms, which clearly supports the items which are placed under "direct income" in the income and expenditure statement at page 114 of the paper book. Therefore, we hold that no new tangible information has reached the Assessing officer vide statement recorded during the course

of survey and in fact, as stated above such statement is corroborating with the items mentioned under income and expenditure statement. Therefore, the case law relied on by the Id. DR in the case of Karur Kongu Charitable Trust v. ITO (supra) has no application. Thus, for AY 2014-15, end of assessment year is 31.03.2015, since we held that there was no failure on the part of the assessee to disclose fully and truly, the notice dated 31.03.2015 issued by the Assessing Officer under section 148 of the Act after the expiry of four years, is hit by 1st proviso to section 147 of the Act for reopening the original assessment is, in our opinion, barred by limitation.

14. Regarding next issue, for not furnishing of actual copy of reasons recorded by the Assessing Officer, we find the Assessing Officer issued notice dated 22.06.2021 under section 143(2) r.w.s. 147 of the Act, is at page 89 of the paper book. On perusal of the same, we note that the Assessing Officer mentioned the issues as per reasons recorded for reopening *“to invoke section 2(15) of the Act, 1961 and to deny exemption under section 11 of the Act”*, it is admittedly the gist of reasons recorded, but not actual reasons recorded. It is noted that a copy of the actual reasons recorded was supplied by the Id. DR during the course of hearing before the “Bench” and on perusal of the same at pages 3 to 5 of

paper book, we find that the same is entirely different from as reflecting in notice dated 22.06.2021 placed at page 89 of the paper book and therefore, we find force in the arguments of the Id. AR that the Assessing Officer mentioned only gist of the reasons recorded, but not furnished actual reasons recorded. The Id. DR vehemently contended that there was no request from the assessee seeking copy of reasons and furnished the explanation with reference to the alleged gist of reasons given to the assessee vide notice under section 143(2) r.w.s. 147 of the Act. Further, the Id. DR seriously contended that there was no objection during the reassessment proceeding for non furnishing of copy of reasons recorded and the assessee filed objections, which were adjudicated by the Assessing Officer. In this regard, the Id. AR relied on the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. v. ITO (supra), wherein, it was held that copy of reasons has to be supplied to the assessee and the assessee is entitled to file objection, thereafter, the Assessing officer has to dispose of the objection vide speaking order. On careful reading of the decision of the Hon'ble Supreme Court, we find the Assessing Officer is duty bound to supply the actual copy of reasons recorded, but, not gist of the reasons recorded. Admittedly, in this case, on perusal of the copy of the actual reasons recorded placed on record during the course of hearing, clearly demonstrates it is different from the

gist of reasons mentioned in the notice dated 22.06.2021. Therefore, we find force in the argument of the Id. AR for non furnishing of actual reasons recorded for reopening of the assessment and the reassessment made thereon fails. In this regard, we find the order of the Mumbai Benches of ITAT in the case of Tata International Ltd. (supra) and relevant para 9 is reproduced herein below:

9. The order of this Tribunal was upheld by the Hon'ble jurisdictional High Court as mentioned in the decision in the case of Videsh Sanchar Nigam Ltd (Supra). Even the SLP filed by the revenue against the decision of Hon'ble jurisdictional High Court has also been dismissed by the Hon'ble Supreme Court vide order dated 16 July 2007. Thus, it is settled proposition as laid down by the Hon'ble Supreme Court as well as Hon'ble High Court that the reasons as recorded by the Assessing Officer are required to be furnished to the assessee and the reasons recorded cannot be improved upon or amended by any correspondence, letters etc. It is an undisputed fact that the reasons actually recorded by the Assessing Officer were not furnished to the assessee till 14.06.2012 despite repeated requests and demands and therefore, the gist of reasons as furnished vide letter dated 28th June 2007 cannot be treated as reasons actually recorded by the Assessing Officer as per section 148 (2) and as mandated by the Hon'ble Supreme Court in case of GKN Driveshafts (India) Ltd (supra). Thus, the Assessing Officer has failed to furnish the reasons recorded for reopening of the assessment within the reasonable time and rather prior to the completion of assessment, than the reassessment order passed without supply of reasons as recorded for reopening of the assessment, is invalid and cannot sustain. Accordingly, we set aside the reassessments for all 3 years under consideration being invalid.

15. On perusal of the above, we note that the Coordinate Benches of Mumbai Tribunal clearly held that the Assessing Officer, as per section 148(2) of the Act and as mandated by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. v. ITO (supra), has to furnish actual copy of reasons recorded and the reopening of assessment is invalid as it

was passed without supply of actual reasons recorded. We find the facts and circumstances are identical to the facts in the case of Tata International Ltd. v. DCIT (supra) and by following the same, we hold that the reassessment is bad in law for non-furnishing of actual reasons recorded for reopening of assessment.

16. With regard to the issue of change of opinion, it is noted that during the course of scrutiny assessment proceedings, the Assessing Officer issued notices under sections 143(2) and 142(1) of the Act. We find the notice dated 02.06.2016 issued under section 142(1) of the Act placed at page 71 of the paper book and on perusal of the same, the Assessing Officer asked the assessee to furnish; vide item No. 11, *If charitable, do the objects constitute the main limbs of charitable purposes defined u/s 2(15) or is it the last limb being an "object of general public utility"* ; vide item No. 12 *"Details of income accumulated under clause 2 of explanation to section 11(1)/11(2) having bearing on this assessment in the following format from the AY 2008-09 onwards;* vide item No. 13, *Please furnish unit-wise break up and details of income & expenditure and Receipts & Payments and Balance Sheet, with previous year figures and also the consolidated I&E, R&P and Balance Sheet;* and lastly vide item No. 17 *"Furnish copy of investments made u/s. 11(5) of the IT Act, if applicable"*.

It is noted vide reply dated 20.06.2016, placed at pages 74 & 75 of the paper book, wherein, the assessee replied to the specific questions. On perusal of page 74 & 75 of the paper book, it is noted that copy of the trust deed, amendment deed, audited books of account for FY 2013-14 (AY 2014-15) were furnished vide Annexure I and soft copy respectively in response to the question Nos. 1 & 5 of the questionnaire issued under section 142(1) of the Act. Further, it is noted that the assessee replied that no assets acquired during the year under consideration in respect of question No. 7 as details of capital assets acquired. Against question No. 12 of the questionnaire, vide item No. 10 of its reply, the assessee stated that the details of income accumulated under clause 2 of section 11(1)/11(2) having bearing on this assessment in the prescribed format, will be submitted at the earliest and submitted the same at page 111 of the paper book. We note that against question No. 13 of the questionnaire relating to income & expenditure, Receipts & payments and Balance sheet, vide item No. 11 of assessee's reply, furnished as Annexure 4 placed at page 110 of the paper book. On perusal of page 111 of the paper book, it is noted that the assessee has shown purchase cost, amount applied for charitable purpose and amount accumulated or set apart for specified purposes, which clearly demonstrates that the Assessing Officer specifically asked the assessee to furnish the details

regarding computation of total income vide question No. 13 under section 142(1) of the Act. On perusal of page 114 of the paper book, we note that the assessee had given the income and expenditure statement relevant to the year under consideration. Therefore, there is no reason to hold that the Assessing Officer has not conducted examination at all during the course of scrutiny assessment, as we discussed above, the assessee responded to every questions raised by the Assessing Officer vide notice under section 142(1) of the Act and the assessee promptly replied and thereafter the Assessing Officer completed the assessment under section 143(3) of the Act. Thus, it is clear that the Assessing Officer was aware that the assessee generated its income out of sale of uniform, books & notebooks and examined the claim under section 11 of the Act.

17. Further, it is also in the knowledge of the Assessing Officer setting apart the accumulated sum of ₹.1,61,00,000/- for future application under section 11(2) of the Act. Therefore, the Assessing Officer is fully satisfied with the activities of the assessee as charitable in nature and allowed exemption under section 11 of the Act. The decision of the Hon'ble High Court of Gujarat in the case of Gujarat Power Corpn. Ltd. v. ACIT [2013] 350 ITR 266 (Gujarat), which held, where the Assessing Officer raises queries having some prima facie doubt regarding any claim asking the

assessee to satisfy him with respect to such a claim and no addition is made in the final assessment order, he can be said to have formed an opinion whether or not in the final order he gives his reasons for not making addition. Further, the Id. AR placed reliance in the case of Rubix Trading (P.) Ltd. v. ITO [2019] 108 taxmann.com 176 (Bom.), wherein, we find the Hon'ble High Court of Bombay followed the above said decision in the case of Gujarat Power Corpn. Ltd. (supra) and held merely because the order of the assessment was silent on a particular claim of the assessee could not by itself mean the same was not scrutinised or that the Assessing Officer has not formed an opinion with respect to the same. Thus, on careful reading of the above said two decisions as relied on by the Id. AR, we find in the present case that the Assessing Officer having formed an opinion that the assessee was eligible for claiming exemption under section 11 of the Act during the original scrutiny assessment, after considering assessee's explanation with reference to the questionnaire under section 142(1) of the Act and verification of relevant books of accounts and other details, in our opinion, reopening of assessment for denying the exemption is a mere change of opinion and it is not justified. Thus, the reassessment order dated 21.03.2022 under section 147 r.w.s. 144B of the Act made by the Assessing Officer and confirmed by the Id. CIT(A) fails *firstly* on barred by limitation under the

first proviso to section 147 of the Act, *secondly* the reassessment is invalid for non-furnishing of actual reasons recorded and *thirdly* the reassessment is based on mere change of opinion and hence, the reassessment is quashed. In view of our decision on the legal ground No. 2(2.1 to 2.5) in favour of the assessee, other grounds in Ground No. 3(3.1 to 3.7) raised by the assessee become academic and are not adjudicated.

18. In the result, the appeal filed by the assessee for AY 2014-15 is allowed.

19. Now, we shall take up appeal in ITA No. 1668/Chny/2024 – AY 2015-16 for adjudication.

20. Ground No. 1 (1.1 & 1.2) is general in nature and requires no adjudication.

21. Ground No. 2 (2.1 to 2.5) raised by the assessee in challenging the action of the Id. CIT(A) in not considering the submissions of the assessee in respect of validity of reassessment order passed under section 147 r.w.s. 144B of the Act, in the facts and circumstances of the case.

22. The Id. AR Shri G. Baskar, Advocate adopted the same arguments advanced in earlier assessment year 2014-15 in respect of “change of opinion”. He relied on the decision of Hon’ble High Court of Gujarat in the case of Bimalkumar Karshanbhai Tank v. ITO [2024] 159 taxmann.com 711 (Gujarat) and argued that the Assessing Officer cannot again reappreciate the same facts which was considered during the course of original assessment for AY 2015-16 to disallow exemption under section 11 of the Act to assume jurisdiction to reopen the assessment. He argued that in the case of Songwoon Speciality Chemicals India (P.) Ltd. v. DCIT [2024] 169 taxmann.com 184 (Gujarat), when the claim was accepted in the original assessment proceedings and the Assessing Officer could not have reopened assessment on the same facts which were available with the Assessing Officer during original assessment proceedings.

23. The Id. DR Gouthami Manivasagam, JCIT submits that the claim of reopening is a change of opinion is not applicable for the year under consideration as there was no scrutiny assessment under section 143(3) of the Act. She submits that the Hon’ble High Court of Delhi in the case of Usha International Ltd. 348 ITR 485 (Delhi) clarified that reopening in a non-scrutinized case based on fresh evidence is not a change of opinion. Further, she relied on the decision of the Hon’ble Supreme Court in the

case of Eicher Limited v. CIT 294 ITR 310 (SC) and argued that the change of opinion applies only when the Assessing Officer revisits previously assessed facts.

24. Heard both the parties and perused the material available on record. We note that the assessee filed its return of income declaring a total income at Rs.Nil on 29.06.2015. Admittedly that there was no scrutiny assessment in the year under consideration, which is not disputed by the Id. AR. Thus, it is clear, the Assessing Officer accepted the return of income at Rs. Nil without there being examination of facts for the year under consideration and when there was no examination of the facts with reference to the claim of the assessee, we find force in the arguments of the Id. DR that there was no change of opinion of the Assessing Officer for the year under consideration and thus, the ground No. 2 (2.1 to 2.5) raised by the assessee fails and are dismissed.

25. Ground No. 3(3.1 to 3.7) raised by the assessee on merits of the case challenging the action of the Id. CIT(A) in confirming the order of the Assessing Officer in denying the claim of exemption under section 11 of the Act.

26. The Ld.AR submits that on merits the Assessing Officer and the CIT(A) failed to see the assessee is indeed involved in the charitable

activity i.e., education and it is an undisputed fact that the assessee had been running a Teachers Education College till 2013-14 academic year. The said college had to be discontinued due to unfavourable factors and the assessee to continue its main activity of education decided to construct and run a school at Coimbatore. He submits that in pursuance of the same the funds generated out of the sale of books and uniform have been actively utilized towards the goal of construction of the school. According to him year after year the assessee had been setting apart considerable sums towards, *firstly*, purchase of land for constructing the school and *secondly*, construction of the school on the land so purchased. He drew our attention to the page 85 of the paper book and submits that the assessee filing Form-10 for AY-2014-15 as mandated u/s. 11(2) of the Act setting apart funds for the purpose of establishing a school. He drew attention to the page 117 and 131 for AYs-2015-16 and 2018-19. He submits that the assessee had purchased property for construction of school during AY-2016-17 evidencing the same he drew attention to the pages 30 to 70 of the paper book. He argued having purchased the land the assessee has been setting apart the funds for construction of the school building as is evident from Form-10 for AY-2018-19.

27. Further, the Ld. AR submits, that the Assessing Officer in the scrutiny assessment considered the same utilization of assessee's funds solely for the running of school. The Id. CIT(E) also considered the same while deciding the petition u/s 119(2)(b) of the Act for AY-2014-15. He argued vehemently that the primary object of the assessee has remained education from its inception and the main object never changed, the activity of selling of books and uniform specifically to the students of the DAV school trust only towards achievement of assessee's main objects, being education i.e. construction and running of schools. He argued vehemently that the Assessing Officer and Id. CIT(A) overlooked the fact that the main object of the assessee still remains education by way of constructing and running a school. Further, he argued vehemently that both the authorities below proceeded on the assumption that the only activity carried out by the assessee during all these years is the sale of books and uniform and no other activities carried out. On the basis of such understanding, the Assessing Officer held for all these years that the assessee has been functioning on commercial lines without having any commercial activity and the Assessing Officer came to this conclusion only due to his narrow appreciation of the activities of assessee and failed to consider its activities as a quote. The Assessing Officer conveniently

did not mention all these facts in the assessment order and prayed to declare the same is unjustified.

28. The Ld. AR submits that the status of assessee still remains as a charitable institution and would lose charitable nature only in the event that main object of education is lost. He argued once it is established that the assessee is still a charitable institution, is not precluded from carrying out any activity which may be of a commercial nature if the same are being carried out towards the achievement of the main charitable object. He submits that the carrying out of commercial activity is prohibited only in the cases where a trust is held to be operating for general public utility (GPU).

29. The Ld. AR further submits that the charitable institution can carry on business activities and the same is evident from the provisions of section 11(4A) of the Act. He submits that the sub-section (4A) states that the exemption under section 11 of the Act would not be available to the profits and gains of the business, unless the business is incidental to the attainment of the object of the trust. He submits the assessee's main object is education, being charitable activity and sale of books and uniform are only towards the attainment of assessee's main object. He

argued that the AO's order is incorrect holding the assessee is not carrying out any charitable activity.

30. He drew our attention to the decision of Hon'ble Supreme Court in the case of Ahmadabad Urban Development Authority reported in 449 ITR 389 (SC), argued that the law laid down by the Hon'ble Supreme Court is only restricted to institutions which carry out only the activities which are in the nature of GPU. Such GPU cannot engage any commercial activities subject to the exception provided for proviso to section 2(15) of the Act. The said decision of the Hon'ble Supreme Court is not applicable to the present case as assessee's main object of education, which charitable in nature and its commercial activities are neither prohibited nor restricted by the section 2(15) of the Act. The Chennai ITAT benches clarified the same vide order dated 18.11.2024 in the case of Smt. Lingammal Ramaraju Shastra Prathistha Trust reported in 168 taxmann.com 476 (Chennai Tribunal).

31. Further he drew attention to the decision of Hon'ble Supreme Court in the case of Thanthi Trust reported in 247 ITR 785 (SC) and argued that the assessee can very well carry out any business activities under section 11(4A) of the Act only subject to the conditions mandated. He referred to page 151 of the paper book and submits that the Assessing Officer and

Id. CIT(A) both failed to consider the fact of assessee's main object i.e. education, still actively in the process of construction of school seeking permission to construct school building. He prayed to direct the AO allow exemption under section 11 of Act for all the years under consideration and quash the order of Id. CIT(A).

32. The Id. DR Ms. Gouthami Manivasagam, JCIT refers to written submissions dated 11.08.2025 and submits that the claim of supplying books, notebooks and uniforms to DAV School Trust's students is an educational activity eligible for exemption under section 11 of the Act as it contributes to students development and aligns with its trust deed, is incorrect. The Assessing Officer analyzed assessee's operation and found that its primary activity in AY 2015-16 with no direct educational activities such as operating a school or college. She submits education under section 2(15) of the Act requires systematic inspection, schooling or training as defined by the Hon'ble Supreme Court in the case of Sole Trustee, Lok Shikshanath Trust reported in 101 ITR 234 (SC) as the process of training and developing the knowledge, skill, mind and character of students by normal schooling. The sale of materials lacks these elements such as curriculum or by oversight educational authorities. The assessee's arguments that supplying text books contributes to education requiring no physical school is untenable. The

supply of materials to DAV School Trust Students is a separate entity, which is a commercial transaction, but, not education. The Id. CIT(A) observed that the assessee was a supplier, not a teacher, generating significant revenue. She argued vehemently that the object to provide teaching aids at concessional rate does not change the profit-driven execution.

33. She further submits that the assessee's activities of selling books, notebooks and uniforms fall within the inclusion definition of business under the Act encompassing trade or commerce. The Assessing Officer rightly held the activities are not charitable under section 2(15) of the Act as it does not qualify education or another charitable purpose. The claim of sales was exclusively to DAV School Trust students at concessional rates negating commercial intent is unsupported. The surplus from receipts indicates charges significantly confirming commercial nature and the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (supra) held that the activities generating substantial surplus are commercial unless incidental to a charitable object. She refers to the dominant activity of selling books non-ancillary to education and the Id. CIT(A) rightly held assessee's trading was profit-

driven and providing teaching aids does not alter when executed commercially.

34. The Id. DR argued that the sale of books and uniforms are not incidental permissible under section 11(4A) of the Act. She submits that the provisions under section 11(4A) of the Act allow business activities incidental to charitable activities to separate account. The Assessing Officer's finding is correct that no dominant educational activity found in AY 2015-16, which clearly proves assessee conducted no educational programmes. She refers to the decision of the Hon'ble Supreme Court in the case of New Nobel Educational Society reported in 143 Taxman.com 276 (SC) held that the exemption requires that trust to be solely engaged in education with business income being incidental. She argued vehemently that the assessee's claim of concessional rate lacks evidence and it is irrelevant to the commercial character, further, the Id. CIT(A) rightly held that section 11(4A) of the Act does not apply without a primary educational activity.

35. The Id. DR further submits that the assessee's contention that its undisturbed registration under section 12A of the Act entitles exemption under section 11 of the Act is misconceived. She argued that the registration confirms charitable character, but, not automatic exemption

and exemption under section 11 of the Act requires income from charitable activities in the relevant year as held by the Hon'ble High Court of Karnataka in the case of Fr. Mullers Charitable Institutions reported in 363 ITR 230 (Kar). She supported the orders of Assessing Officer and the Id. CIT(A) as the assessee's commercial sales were not educational under section 2(15) of the Act disqualifying exemption and despite registration as the registration is irrelevant.

36. The Id. DR submits that the assessee's arguments that its history of running a Teachers Educational College until AY 2013-14 and intend to start a school in Coimbatore evidenced by Form 10 accumulation supporting charitable status is immaterial. She argued that the exemption under section 11 of the Act is assessed based on current year activities but not past or future intention as held by the Hon'ble Supreme Court in the case of Baba Banda Singh Bahadur Education Trust reported in [2023] 150 Taxmann.com 40 (SC).

37. The Id. DR further submits that the assessee's claim that accumulation under section 11(2) of the Act for school construction supports charitable intent is irrelevant, the exemption under section 11 of the Act requires charitable activities and the Id. CIT(A) rightly held that the commercial activity made accumulation immaterial.

38. She vehemently argued that the decisions in the case of Delhi Bureau of Text Books and Thanthi Trust as relied on by the assessee are inapplicable. She submits Thanthi Trust (supra) involved surplus donated to an educational trust unlike assessee's direct commercial sales. The Delhi Bureau of Text Books involved state controlled textbook production distinct from private sales, argued vehemently by placing reliance on the decision of the Sole Trustee (supra) by the assessee is misplaced.

39. The Id. DR sums up her submissions by stating that section 11 of the Act is inapplicable and the Assessing Officer correctly taxed the surplus from receipts as business income as per CBDT Circular No. 5P(19.06.1968) at AOP rates. The assessee's claim of accumulation for a school is irrelevant as no educational activities carried out for AY 2015-16. She prayed to uphold the reassessment order dated 30.09.2021 and the Id. CIT(A) order dated 05.04.2024 denying exemption under sections 11 & 12 of the Act. Further, she prays to dismiss the assessee's grounds of appeal by treating its activities are commercial and not charitable under section 2(15) of the Act.

40. Heard both the parties and perused the material available on records. On perusal of the assessment order, it is noted that the

Assessing Officer reopened the assessment by issuing a notice dated 23.09.2019 u/s 148 of the Act and by issuing notices under sections 143(2) and 142(1) of the Act sought details on certain points. In response to the said notices, the assessee filed details including objects of the assessee Trust which were reproduced in page No.2 of the assessment order. On examination of the same, we find that the assessee objects are “to run college, to help the poor for education, to establish schools, colleges, technical and other institutions, to construct develop the places of public worships, to purchase and denote properties, to impart any other system i.e. education training to encourage sportsmanship and adventurous spirit to make pecuniary grants by way of scholarships, to make available and provide free of costs or at concessional rates audio visual equipment, scientific and engineering equipment, scientific laboratory equipment, stores, spares and all other teaching aids and accessories to students, scholars, teachers and others involved in the field of education and to establish maintain and run boarding house and residential institutions for students both connected with the institution”. We find no dispute with regard to objects of the assessee mentioned hereinabove from the AO, CIT(A) and Id. DR and their objection is only that there was no charitable activity in the form of education during the years under consideration and section 11 exemption is not available. We

find the contention of the assessee that there was no educational activity but however the assessee decided to continue its charitable activity by purchasing land and constructing school building thereof.

41. According to the Assessing Officer in reassessment proceedings, on examination of the objects and income and expenditure statement issued show cause notice as to why exemption under section 11 of the Act should not be denied by observing as main activity of supplying uniform and note books is not a charitable activity as defined in section 2(15) of the Act. We find the assessee furnished reply dated 20.03.2020 which is reproduced in page no.3 of the assessment order. On perusal of the same, it is noted the assessee primarily contended that it was initially running a teaching training institute since its formation on 12.03.2003 and the same was closed in academic year 2013-14. It is noted supporting the same cancellation application also furnished to the Assessing Officer for his consideration and we find no dispute in this regard from the Assessing Officer, the Id. CIT(A) and the Id. DR.

42. Further, we find that assessee primarily contended that the assessee Trust also acquired 11.5 acres of land in Coimbatore for the purpose of running a school and the construction of the school building is yet to commence as the trust embroiled in various procedures relating to

approval from various regulatory authorities for land clearance, building plan is with the State Government, we find no dispute in this regard from the Assessing Officer, the Id. CIT(A) and the Id. DR. Further, it is noted the sale of note books contributed major revenue to assessee from assessment year 2014-15 onwards and the entire monies are invested in acquiring a land and balance held in fixed deposits with nationalised banks so that they could effectively be utilized for construction of building, we find no dispute in this regard from the Assessing Officer, the Id. CIT(A) and the Id. DR. Therefore, we find force in the contention of the Id. AR that generation of income is not a test to determine, competent authorities have to examine its application, likewise, earning a surplus is not outside the purview of provisions of section 2(15) of the Act, as the competent authorities has to examine the mandated accumulation.

43. We find it was explained that the notebooks, textbooks provided by the assessee to students at lower rates than rates in the open market for similar set of books and the surplus amount is again ploughed back to the main activity of education, we find no violation of any of the clauses of section 13 of the Act. We find the Assessing Officer examined the said reply of the assessee w.r.t show cause notice found not acceptable. He observed the term education has to be understood in the sense of

scholastic, collegiate or technical education where there is systematic syllabus through which the students are taken for reaching an ultimate goal apprised by the award of degree, diploma or certificate and held the assessee is engaged in any such activity. But, however, he observed the activity of running a school is no doubt a charitable activity within the main limbs of the section 2(15) of the Act, being education, but, held the sale of uniform, textbook is unarguably in the nature of business activity and by stretch of imagination cannot be called a charitable act, thereby denied exemption under section 11 of the Act, by giving benefit to expenditure, brought to tax excess of income over expenditure. It is pertinent to mention that the assessee generating revenue out of sale of books etc. to utilize the same in construction of school but however the Assessing Officer formed an opinion when there is no educational activity, exemption under section 11 of the Act is not available, in our opinion, is not justified.

44. We find the Id. CIT(A) discussed the issue by framing issue as whether appellant is engaged in education? from page No.19 of the impugned order. We note that by following the decision in the case of Ahmadabad Urban Development Authority reported in (2022) 143 taxmann.com 278 SC), the Id. CIT(A) observed that an assessee

advancing general public utility cannot engage itself in any trade, commerce or business or provide service in relation thereto for any consideration. Further, he observed that in the course of achieving the object of general public utility, the concern trust, society, or other such organization, can carry on trade, commerce or business or provide service in relation thereto for consideration, provided activities of trade, commerce, business or connected to the achievement of the object of GPU, the receipt from such business or commercial activity or service in relation to does not exceed the quantified limit. Further, he observed that section 11(4A) of the Act must be interpreted harmoniously with section 2(15) of the Act and carrying out activity in the nature of trade, commerce or business, or service in relation to in such activities should be conducted in the course of achieving the GPU object, and the income, profit or surplus or gains must, be incidental.

45. By holding so, the Id. CIT(A) confirmed the order of Assessing Officer in denying exemption under section 11 of the Act. We find the AO and CIT(A) overlooked the fact of the main object of the assessee still remains education by purchasing a land and constructing school building. Further, we find that both the authorities below failed to consider the said aspect but proceeded on the assumption that the only activity carried out

by the assessee during all these years was the sale of books, uniform and no other activity, ignoring acquisition of land and steps taken to construct the school building.

46. On examination of the findings of both authorities below w.r.t submissions made by the assessee including before this Tribunal, we find there is no dispute with regard to the fact that the assessee had been running a Teachers Educational College till academic year 2013-14. After cancellation of its affiliation, the assessee to continue its main activity of education acquired 11.5 acres of land in Coimbatore for the purpose of establishing a school. Admittedly, the construction of the school building is yet to commence because as the assessee embroiled in various procedures relating to approval from various regulatory authorities for land clearance and building plan approval. It was told during the course of hearing before us that the plan approval is still pending with the State Government. Therefore, it is clear from the intention of the assessee after the closure of Teacher Education College to continue its activity of education in pursuance of its objects which are reproduced in page No. 2 of the assessment order, decided to construct and run a school at Coimbatore resultantly funds generated out of sale of books and uniform have been actively utilized towards the goal of construction of said school. It is also not in dispute as we find from the

submissions of the assessee before the Assessing Officer and the Id. CIT(A), but the sale of note books contributed a major revenue to assessee from AY 2014-15 onwards w.r.t. income and expenditure statement at page No.114 of the paper book, entire monies are invested in acquiring a land, balance held in fixed deposits with nationalized banks enabling the assessee utilize the same effectively for construction of building. We find no dispute with regard to said fact from the orders of the Assessing Officer, the Id. CIT(A) and the submissions of the Ld. DR. In support of the same, we find the assessee filed Form-10 as mandated under section 11(2) of the Act for setting apart funds for the purpose of establishing the school at page No.85 of paper book for AY 2014-15, at page Nos.117 and 131 respectively for AYs 2015-16 and 2018-19. There is no adverse reference regarding setting apart funds generation out of sale of books and uniform for construction of school building from Assessing Officer as well as the Id. CIT(A) also. We find no dispute with regard to purchase of land for construction of school during the FY 2015-16 (AY-2016-17), sale deed of which, placed on record from page No. 32 to 70 of the paper books. We find the assessee setting apart the surplus funds to achieve its main objects of education by purchasing land and construction of school building which is also evident from Form-10 from AY-2018-19. It is not the case of Assessing Officer and the Id. CIT(A) that

the said surplus funds are diverted for other activities apart from the main object of charitable activity of education. The only objection of the Assessing Officer and the Id. CIT(A) is that selling of notebooks and uniform is the dominant activity by generating funds, but not education, therefore held assessee not entitled to get exemption under section 11 of the Act, in our opinion, not justified.

47. It was argued by the Id. AR that sub-section 4A of section 11 of the Act would support the case of the assessee. On careful reading of the provision under section 11(4A) of the Act we note it explains that the exemption under section 11 of the Act would not be available to the profits and gains of business unless the business is incidental to the attainment of the objects of the trust. In the present case, we find the main object of the assessee is education which is not doubted by Assessing Officer vide para 10 of the assessment, the sale of books and uniform is only towards the attainment of this main object. As discussed above, it was submitted before the Assessing Officer and the Id. CIT(A) the revenue generated out of sale of books and uniform are set apart achieving its object of education by purchasing land and construction thereon which is supported by way of Form-10 for AY-2014-15, 2015-16 and 2018-19. We find the requirement of law under sub-section (4A) of

section 11 of the Act for the business income of a trust or institution to be exempt is that the business should be incidental to the attainment of objects of the trust. A business whose income is utilized by the trust or the institution for the purpose of achieving the objects is a business which is incidental to the attainment of objects of the trust. Therefore, the decisions in the case of Thanthi Trust (supra) and in the case of Smt. Lingammal Ramaraju Shastra Prathistha Trust v. ACIT (supra) as relied on by the Id. AR are applicable.

48. Further, as relied on by the Id. AR, the Hon'ble Jurisdictional High Court of Madras in the case of CIT v. Sri Magunta Raghava Reddy Charitable Trust [2016] 72 taxmann.com 214 (Madras), on an identical issue, held that the profit from sale of land owned by assessee, an educational trust, could not be treated as business income and was eligible for exemption under section 11 read with section 2(15) of the Act as activity of sale of land was incidental to objects of trust and said profit had been applied for objects of trust. The relevant portion of the above said decision is reproduced herein below:

37. What emerges from the reading of the provisions and the Circular is that a trust or institution, whose purpose is advancement of any other object of general public utility, and recognised as charitable, under the fourth limb of Section 2(15) of the Income-Tax Act, and predominantly engages in activities in the nature of trade, commerce or business, should not be permitted to escape from taxability, with the mask, "charitable". In the case on hand, the glaring omission on the part of the revenue is to consider, as to whether, sale of lands

was necessitated? Whether it was incidental towards attainment of the objectives of the trust?, and more particularly, when the income was wholly utilised only for achieving the objectives of charitable purpose of the trust. Therefore, mere sale of an immovable property of the trust alone, cannot be the sole factor, to arrive at a conclusion that the income earned should be brought under the head, "business income". In the case of trust or institution, whose predominant activity is not business, incidental activity of sales, carried out, in furtherance of and to achieve the main objectives of the trust or institution, should not be construed as business activity, solely with an intention to earn profit, and consequently, to bring the income, under the head, business income.

38. *Going through the material on record and in the light of the discussion, we are unable to accept the contention of the Revenue that the substantial questions of law, raised by the revenue, deserve to be answered, affirmatively, in favour of the revenue. Both on facts and law, the revenue has failed to substantiate the contentions raised in the instant appeals.*

39. *In the light of the above discussions, the substantial questions of law, raised by the Revenue, are answered against them. In the results, the Tax Case Appeals are dismissed.*

49. On careful reading of the above decision of the Hon'ble High Court of Madras, we note that in that case, the assessee, a trust, is running educational institutions, in the name of M/s. M. S. R. Junior Colleges at Ammanabrolu, Chinnaganjam, C. S. Puram, Gudlur, J. Panguluru, Kandukuru, Kanigiri, Kavali, Kurichedu, Lingasamudram, Ravinuthala, Santhanutana Padu and Valaparla and MSR Degree Colleges at Kavali, Kondepi and Vinjamuru, registered under section 12A(a) of the Act, filed return of income for the AY 2010-11 on 21-09-2010, admitting nil income. The Assessing Officer noticed on verification of the return of the income and other details that the assessee had disclosed an amount of ₹. 1,62,76,519/-, as profit on sale of land. Against the query raised by the Assessing Officer, the assessee explained that in pursuance of its

objectives, purchased 71.89 acres of land in survey Nos. 601, 607, 611 and 598 in Nellore Bit-II, Nellore during the years 1986-87 for starting medical college and old age homes, but, however, enormous delay crept in obtaining necessary permission for starting these institutions. In the meantime, attempts at encroachment of the land began being made by various elements and it was decided to abandon the idea of medical college and old age home and decided to confine to running junior and degree colleges, drinking water and mortuary vans in the district of Nellore and Prakasam in A.P. When the above referred land was proposed to be disposed of, there were no buyers in view of the huge stretch of land. Therefore, the assessee obtained permission from town planning authorities, converted the land into small plots and started selling the land in the layout from the financial year 1994-95 and utilized the same for the charitable activities of the trust. It is therefore submitted that there was no business motive when the "assessee acquired the land and the sale of land in the form of plots is only to make the land better saleable and also to realize better price, which had been thoroughly scrutinized in the assessment of earlier years and the assessee passed the test convincingly. After considering the submissions of the assessee, the Assessing Officer observed that the assessee has purchased the said land at ₹. 49 per sq. yard, sold the same at ₹. 5,500 per sq. yard, by

making bumper profits, the Assessing Officer held that the activity of the assessee is only a commercial activity, not falling under any of the charitable activities, as per the objects of the trust, further, said activity does not fall under any of the limbs defined in section 2(15) of the Act, viz., relief to poor, education, medical relief and not even under the category, "any other object of general public utility" passed an order on 31.03.2013 and brought to tax, a sum of ₹.1,62,76,519/-, under the head "Income from business". The Id. CIT(A) held the order of the Assessing Officer is not justified. The ITAT also confirmed the order of the Id. CIT(A). Having aggrieved by the order of the ITAT, the Revenue filed an appeal before the Hon'ble High Court of Madras. By referring to the decision in the case of G. Venkataswami Naidu & Co. v. CIT [1959] 35 ITR 594 (SC) and in the case of Raja J. Rameshwar Rao v. CIT [1961] 42 ITR 179 (SC) as well as considering the CBDT Circular No. 11 of 2008 dated 19.12.2008, extracting relevant para 2 of the said circular at para 32 of the above decision, the Hon'ble High Court was pleased to hold that the profit from sale of land owned by the assessee, an educational trust, could not be treated as business income and was eligible for exemption under section 11 read with section 2(15) of the Act as activity of sale of land was incidental to objects of Trust and said profit had been applied for objects of Trust.

50. In the present case, as we have discussed above in the aforementioned paragraphs, the assessee was contending after the discontinuation of its Teachers Education College which was running from 2003 onwards, the assessee decided to continue its educational activities by acquiring land and construction of school building thereon and admittedly the assessee acquired land of 11.5 acres in Coimbatore but unable to construct school building because of want of approval which is pending before Government of Tamil Nadu. We find the assessee in order to achieve its main object of education, the surplus of funds arising out of sale of books, uniform etc are invested in nationalised banks to utilize the same for construction of building after getting building construction permission which is evident from Form-10 disclosure available before AO. Therefore, we find the facts and circumstances on hand and the facts and circumstances before the Hon'ble High Court in the case of CIT v. Sri Magunta Raghava Reddy Charitable Trust (supra) are similar and identical, and thus, in the present case, we find the revenue generated through sale of books, uniform etc. could not be said to be not incidental to the attainment of objects of the assessee. In view of the above decision of the Hon'ble High Court of Madras in the case of CIT v. Sri Magunta Raghava Reddy Charitable Trust (supra), the submissions made by the Id. DR in the written submissions at pages 8 to

12 of the paper book Volume II are not acceptable. Thus, respectfully following the decision of the Hon'ble High Court of Madras in the case of CIT v. Sri Magunta Raghava Reddy Charitable Trust (supra), we hold the activity of sale of uniforms, textbooks, etc. and the excess of income over expenditure arising thereon which are disclosed in Form-10A are incidental to the attainment of objects of the assessee. Therefore, the assessee is entitled to the benefit of section 11 of the Act for the year under consideration, accordingly, we hold so. Thus, grounds raised by the assessee in ground No. 3 (3.1 to 3.7) on merits are allowed.

51. In the result, the appeal filed by the assessee for AY 2015-16 is allowed.

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52. Ground No. 1(1.1 & 1.2) raised by the assessee is general in nature and requires no adjudication.

53. Ground No. 2 (2.1 to 2.5) raised by the assessee in challenging the action of the Id. CIT(A) in not considering the submissions of the assessee in respect of validity of reassessment order passed under section 147 r.w.s. 144B of the Income Tax Act, 2961 ["Act" in short] in the facts and circumstances of the case.

54. The Id. AR drew our attention to the written submissions dated 12.03.2025 and submits that the Assessing Officer does not have jurisdiction to reopen the assessment under section 148 of the Act when the time for issuance of notice under section 143(2) of the Act to carrying out scrutiny assessment, is available. He referred to chart in para 7.2 of the written submissions and submits that the assessee filed revised return of income on 22.08.2018 under section 139(5) of the Act and the time available for issuance of notice under section 143(2) of the Act upto 30.09.2019. He referred to para 2 of the assessment order and argued that the notice dated 23.09.2019 under section 148 of the Act was issued when the time is available for issuance of notice under section 143(2) of the Act in response to revised return of income. He vehemently argued that the reassessment made thereon is not maintainable when there is time to complete scrutiny assessment under section 143(3) of the Act by issuing a notice under section 143(2) of the Act in response to the revised return of income filed under section 139(5) of the Act. He drew our attention to the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. K.M. Pachayappan 304 ITR 264 (Mad) placed at page 94 of the paper book and argued that no action could be initiated under section 148 of the Act when there is a pendency of return before the Assessing Officer. Further he submits that on an identical issue by

following the above decision in the case of K.M. Pachaiappan (supra), the Hon'ble High Court of Madras dismissed Revenue's appeal in the case of CIT v. Qatalys Software Technologies Ltd. 308 ITR 249 (Mad) placed at page 97 of the paper book.

55. The Id. DR Ms. Gouthami Manivasagam, JCIT referred to the written submissions dated 01.05.2025 and relied on the same. She supported the orders of the Id. CIT(A) and prayed to dismiss the legal ground raised by the assessee.

56. Heard both the parties and perused the material available on record. We note that the assessee filed return of income under section 139(1) of the Act declaring a total income of Rs. NIL on 14.08.2017. Thereafter, the assessee filed revised return of income on 22.08.2018 declaring the same NIL income under section 139(5) of the Act and it is clear that the Assessing Officer has to consider the revised return of income for completing assessment for the year under consideration. In this regard we may refer to the chart having date and event in para 7.2 of the written submissions of the assessee which is reproduced hereunder:

| # | Date | Event |
|----|------------|---|
| 1. | 14.08.2017 | ROI filed u/s. 139(1) of the Act |
| 2. | 07.11.2017 | Extended due date for filing ROI u/s. 139(1) of the Act |
| 3. | 22.08.2018 | Revised ROI filed u/s. 139(5) of the Act |
| 4. | 30.09.2018 | Limitation for issuance of notice u/s. 143(2) of the Act for ROI u/s. 139(1) of the Act |

| | | |
|----|------------|---|
| 5. | 31.03.2019 | <i>Due date to file revised ROI u/s. 139(5) of the Act</i> |
| 6. | 23.09.2019 | <i>Notice u/s. 148 of the Act issued</i> |
| 7. | 30.09.2019 | <i>Limitation for issuance of notice u/s. 143(2) of the Act for ROI u/s. 139(5) of the Act</i> |
| 8. | 31.12.2019 | <i>Expiry of limitation to pass an order of assessment u/s. 143(3) of the Act as per section 153 of the Act</i> |

57. On an examination of the above, it is noted that the Assessing Officer has limitation for issuance of notice under section 143(2) of the Act upto 30.09.2019, which means the assessment is pending before the Assessing Officer, but, however, issued notice dated 23.09.2019 under section 148 of the Act to reopen the assessment. When there is no assessment completed in response to the return of income filed under section 139(5) of the Act, which is not disputed by the Id. DR, the very issuance of notice under section 148 of the Act is not maintainable. Therefore, the issuance of notice under section 148 of the Act is not maintainable as the assessment is still pending on the file of the Assessing Officer to complete the assessment under section 143(3) of the Act by 31.12.2019. In this regard we may refer to the decision of the Hon'ble Supreme Court in the case of Trustees of H.E.N. the Nizam's Supplemental Family Trust v. CIT [2000] 242 ITR 381 (SC) placed at page 87 of the paper book, which held unless the return of income already filed is disposed off, the notice for reassessment under section 148 of the Act cannot be issued i.e., no reassessment proceedings can

be initiated so long as the assessment proceedings pending on the basis of return of income filed or not terminated.

58. Further, we note that the Hon'ble Jurisdictional High Court of Madras in the case of K.M. Pachayappan (supra) by following the decision of the Hon'ble Supreme Court in the case of Trustees of H.E.N. the Nizam's Supplemental Family Trust v. CIT (supra) upheld the order of the Tribunal in coming to a conclusion that no action could be initiated under section 147 of the Act when there is a pendency of return before the Assessing Officer. Further, the Hon'ble High Court of Madras in the case of CIT v. Qatalys Software Technologies Ltd. (supra), wherein, following the decision in the case of K.M. Pachayappan (supra), dismissed the question of law "*whether, in the facts and circumstances of the case, the Tribunal was right in holding that reassessment proceedings are not valid since the Assessing Officer is barred in initiating the proceedings under section 148 when the time for issuance of notice under section 143(2) had not expired?*" We find the facts and circumstances in the present case are identical to the facts and circumstances before the Hon'ble High Court of Madras in the cases of K.M. Pachayappan (supra) and CIT v. Qatalys Software Technologies Ltd. (supra), therefore, respectfully following the same, we hold that the

notice dated 23.09.2019 issued under section 148 of the Act is not maintainable and the reassessment order dated 25.03.2021 under section 147 of the Act is not valid and hence quashed. Thus, ground No. 2(2.1 to 2.5) raised by the assessee are allowed.

59. The Id. AR and the Id. DR admits the facts and circumstances on merits are similar and identical to AY 2015-16, therefore, considering the same, the facts and circumstances on merits though identical to AY 2015-16, no finding is given on merits in view of our decision in legal ground in favour of the assessee in quashing the reassessment order dated 25.03.2021 passed under section 147 of the Act and thus, ground No. 3 (3.1 to 3.7) raised by the assessee on merits become academic.

60. In the result, the appeal of the assessee for AY 2017-18 is allowed.

I.T.A. No. 1670/Chny/2024 for AY 2018-19

61. Ground No. 1(1.1 & 1.2) raised by the assessee is general in nature and requires no adjudication.

62. Ground No. 2 (2.1 to 2.7) raised by the assessee on merits of the case challenging the action of the Id. CIT(A) in confirming the order of the Assessing Officer in denying the claim of exemption under section 11 of the Act.

63. The Id. AR and the Id. DR admits that the facts and circumstances in the year under consideration are similar and identical to the facts and circumstances raised in AY 2015-16, wherein, we held that the assessee is entitled to claim exemption under section 11 of the Act by allowing ground Nos. 3(3.1 to 3.7) in the aforementioned paragraphs. Therefore, we hold the same reasoning is applicable equally in the AY 2018-19 and set aside the order of the Id. CIT(A) and delete the addition made by the Assessing Officer on account of excess of income over expenditure vide assessment order dated 03.03.2021 passed under section 143(3) r.w.s. 143(3A) & 143(3B) of the Act. Thus, ground No. 2 (2.1 to 2.7) raised by the assessee are allowed.

62. In the result, the appeals filed by the assessee for AY 2014-15, 2017-18 & 2018-19 are allowed and the appeal for AY 2015-16 is partly allowed.

Order pronounced on 21st January, 2026 at Chennai.

Sd/-
(JAGADISH)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 21.01.2026

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.