

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH "DB", JABALPUR**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.235/JAB/2025
Assessment year: 2015-16

Ramjidas Budhraj Charitable Trust Pandurna, Chhindwara (MP)- 480334. PAN:AAATR8939D (Appellant)	Vs.	The Income Tax Officer, Exemption Jabalpur (MP)-482001. (Respondent)
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Appellant by	Shri G. N. Purohit, Advocate
Respondent by	Shri Rahul Padha, JC-2

ORDER

PER ANADEE NATH MISSHRA: A.M.

(A) This appeal vide I.T.A. No.235/JBP/2025 has been filed by the assessee for assessment year 2015-16 against impugned appellate order dated 14.07.2025 (DIN & Order No.ITBA/APL/S/250/2025-26/1078443117(1) of Ld. Addl/JCIT Commissioner of Income Tax (Appeals), the First Appellate Authority. The grounds of appeal are as under:

"1. The learned CIT appeal has erred in law and on facts of the case, in not permitting the claim of deduction for accumulation of income of rupees 39,00,000/- under section 11(2) of the Income Tax Act. Necessary compliance as per rules was made by the assessee, and form number 10 was submitted before the assessing officer within time. The claim should have been allowed.

2. The applicant may be allowed to raise any other ground or grounds of appeal at the time of hearing of appeal if arises."

(B) In this case, assessment order dated 10.09.2018 was passed by the Assessing Officer ("AO", for short) u/s 147/143(3) of Income Tax Act, 1961 ("Act", for short). The assessment proceedings were initiated u/s 147 of I.T. Act and notice u/s 148 of I.T. Act was issued to the assessee. The proceedings u/s 147 of I.T. Act came to conclusion with the aforesaid assessment order dated 10.09.2018 whereby the assessee's total income

was assessed at Rs.49,92,978/- as against returned income of Rs. Nil. The assessee's appeal against the aforesaid assessment order was dismissed by the Ld. CIT(A) vide impugned appellate order dated 14.07.2025. The relevant portion of the order of the Ld. CIT(A) is reproduced below: -

4. During the appellate proceedings, the hearing notices were issued on 01.05.2019, 06.12.2019, 02.02.2021, 15.09.2023 and 20.05.2025. In response thereto, the appellant furnished written submissions on 11.02.2021, 17.09.2023, and 21.05.2025. In its reply, the appellant has made the following submissions: -

The appeal of the assessee named above is fixed for hearing before your Honour. In addition to the oral submissions to be made during the course of personal hearing, the assessee desires to make the following written submissions: -

1. The brief facts giving rise to this appeal are that assessee is a charitable trust running educational institutions under the name and style of Ram Shanti Vidya Mandir, Ram Shanti College of Higher Education and Ram Shanti D.El.Ed. College. The separate books of accounts are maintained for each institution and they are consolidated in the books of account and a final balance-sheet and income and expenditure account is made in the hand of the trust. The return of income was submitted on 30.10.2015. The return was processed by Central Processing Centre under Section 143(1) of the Income Tax Act on 20.10.2016. A demand of Rs. 18,93,058/- was raised. Later on, a 143(2) notice was issued on 02.01.2018 fixing the case on 15.01.2018 which was obviously barred by limitation and, therefore, the Assessing Officer issued a notice under Section 148 on 28.03.2018 that was served on the assessee on 31.03.2018. In compliance to said notice the assessee submitted acknowledgement of return for assessment year 2015-2016 by speed post on 14.04.2018. The assessee had also requested the learned Assessing Officer to provide the copy of reasons recorded for reopening of the assessment in view of the Apex Court judgment in the case of G.K.N. Drive Shaft Limited vs. C.I.T. However, no copy of reasons was provided by the Assessing Officer. In this case it is pertinent to mention here that in the assessment order learned Assessing Officer has mentioned that a notice under Section 148 dated 06.12.2017 was issued to the assessee, however, no such notice was ever received by the assessee and if that is true then there was no question of issuing the second notice under Section 148 on 28.03.2018. Hence, either of the notices issued under Section 148 by the Assessing Officer is illegal and entire proceedings are without jurisdiction.

2. In response to 143(2) notice the assessee made

compliance before the Assessing Officer and the assessment was completed under Section 143(3) read with Section 147 on 19.09.2018, however, the

benefit of Section 11 was not allowed to the assessee in the assessment framed by the Assessing Officer.

3. In this case the assessee being purely educational institution its income was exempt under Section 10(23C)(iiiad) of the Income Tax Act. That due to change in law the assessee Trust was required to obtain registration under Section 12AA of the Income Tax Act. For this purpose the assessee submitted an application for registration under Section 12AA before the Commissioner of Income Tax (Exemption) on 22.07.2017. The registration under Section 12AA was allowed by the CIT (Exemption) vide order dated 22.01.2018 and the trust was registered on Registration No.CIT EXEMPTION BHOPAL/12AA/2017-18/10219 from Assessment Year 2018-2019. The attention of your good self is invited to Section 12A(2) of the Act. Sub-section (2) of Section 12A reads as under-
COME TAX DEPARTMENT

"(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made:

Provided that where registration has been granted to the trust or institution under Section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objections and activities of such trust or institution remain the same for such preceding assessment year:

Provided further that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year.

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at the time under Section 12AA

The first proviso provides that when registration has been granted to the institution it shall apply to all the preceding assessment years for which the assessment proceedings are pending. In this case the registration was granted on 22.01.2018 on that date the reopened assessment proceedings for assessment year 2015-2016 were pending before the Assessing Officer. Since as mentioned in the assessment order the first 148 notice was issued on 01.12.2017. Even otherwise, the proceedings initiated on 28.03.2018 are posterior to the grant of registration under Section 12AA. On that date the registration under Section 12AA was available with

the assessee and, therefore, the benefit of Section 11 could not have been denied.

In this background of facts the ground wise submission in appeal is as under:-

A. In the first ground of appeal the assessee has challenged the validity of notice under Section 148 firstly on the ground that learned Assessing Officer in the assessment order has mentioned that a notice under Section 148 was issued on 06.12.2017 but he himself issued a second notice on 28.03.2018. If the first notice was validly issued and served then a second notice becomes infructuous. It is, therefore, submitted that either of the notices under Section 148 are illegal. In view of the above, the first ground of appeal is not pressed.

B. In the second ground of appeal the assessee has raised the objection on the action of the Assessing Officer in not permitting the benefit of Section 11 and 12 of the Income Tax act. In this respect, it is submitted that as mentioned supra, the first proviso to sub-section (2) of Section 12A clearly provides that the registration granted shall apply to all assessment proceedings pending before the Assessing Officer on that date and the assessment proceedings for assessment year 2015-2016 was pending before the Assessing Officer which is clear from 143(2) notice dated 02.01.2018 fixing the case on 15.01.2018. Copy is enclosed for ready reference of your good self. The assessee is, therefore, entitled for benefit of Section 11 and 12 of the Income Tax Act and same should be allowed.

C. In the third ground of appeal the assessee has raised a ground that in case of charitable institution existing solely for the purpose of education their income is exempt under Section 10(23C) (iiiad) of the Income Tax Act. The direction for filing the return if the gross receipts of the institution exceed Rs.1 Crore is inserted for the purpose of monitoring the activity of educational institution the intention of legislature is not to deny the benefit of exemption and, therefore, it is submitted that the provision is directory and not mandatory. It appears in this case that learned Assessing Officer though has mentioned in the body of assessment order the fact of grant of registration by the CIT (Exemption) on page no.1 para 2 of the assessment order but has not considered the effect of such registration while framing the assessment. The exemption as claimed under Section 11 may please be directed to be allowed.

D. The assessee is raising an additional ground of appeal to say that the Assessing Officer should have allowed the benefit of section 11(2) of the Income Tax Act for accumulation of income. Since the assessee had submitted Form No. 10 through speed post on 31.08.2015 to the Income Tax Officer (Exemption), Jabalpur. The assessee is, therefore, entitled for benefit of Section 11(2) of the Income Tax Act. Same may please be allowed.

E. In this case the assessee has submitted Form No.10 by speed post on 31.08.2015 before the Income Tax Officer (Exemption), Jabalpur and had applied for accumulation of Rs.30 Lakhs out of the income for assessment year 2014-2015 to be applied in subsequent years for purchase of land and construction of building for College. The assessee had invested sum of Rs.39 Lakhs in Fixed deposits with Central Bank of India, Pandhurma. The copy of FDR is enclosed for ready reference of your good self. It is thus clear that the assessee has complied with the mandate of Section 11(2) of the Income Tax Act and the assessee is entitled for benefit of accumulation. Same should have been allowed by the Assessing Officer. Though through oversight this claim was not made in the return of income the Assessing Officer may not allow such claim. However, the powers of Commissioner of Income Tax (Appeals) are coterminous with the powers of Assessing Officer. The deduction or exemption which is not claimed before the Assessing Officer and not allowed for want of claim in the return can be claimed before the Commissioner of Income Tax (Appeals) and CIT(A) is empowered to entertain such claim. The reliance is placed on following decisions:

(i) COMMISSIONER OF INCOME TAX vs. BHARAT CURIO STORES (1899) 235 (TR 507 (A): (1999) 152 CTR (A) 51 Appeal (AAC) Additional claim in appeal of AAC to train additional claim-Claim of weighted deduction under 350 on additional terms-Claim for weighted deduction having steady been set up before ITO, Tribunal was used in directing the AAC to consider claim under 350 n respect of additional terms (COMMISSIONER OF INCOME TAX vs. VADILAL INDUSTRIES LTD (2000) 217 CTR (Cu) 318: (2000) & DTR (Appeal CITA-Additional ground in appeal-Admissibility-Assessee claimed certain expenditure for asst. yr. 1986-87 but same was disallowed-Assessee claimed the same in appeal for assessment year 1985-86 pending before CIT(A) by way of additional ground-Expenditure being genuine.

and claim being bona fide, Tribunal was justified in holding that CIT(A) ought to have entertained the additional ground

(iii) **ZAKIR HUSSAIN vs. COMMISSIONER OF INCOME TAX & ANR.** (2006) 202 CTR

(Raj) 40 Appeal (Tribunal)—Additional ground in appeal—Rejection on the ground of belated claim—Rule 11 of ITAT Rules empowers the Tribunal to permit raising of any additional ground at any stage of proceedings in deciding the appeal without any string of limitation—Only constraint is that any party likely to be affected by considering such new and additional ground must be provided with sufficient opportunity of being heard in that regard—Therefore, Tribunal was not justified in refusing to allow the assessee to raise the additional ground which required application of mind by the Tribunal and by the High Court which otherwise binds the authority in correctly assessing the tax liability on the ground of limitation.

(iv) **COMMISSIONER OF INCOME TAX vs. MOTOR INDUSTRIES CO. LTD.**

(1998) 229 ITR 137 (Kar) : (1998) 144 CTR (Kar) 101 : (1998) 97 TAXMAN 7 (Kar)

Business expenditure—Export markets development allowance—Claim for the first time before CIT(A)—Though the assessee had not claimed weighted deduction before the ITO, the CIT(A) entertained the claim—When the necessary material was available and the weighted deduction is permissible under s. 35B, the claim cannot be rejected merely on the ground that it was not made before the ITO.

(v) **ASSAM COMPANY (INDIA) LTD. vs. COMMISSIONER OF INCOME TAX**

(2002) 256 ITR 423 (Gau) : (2002) 176 CTR (Gau) 406 : (2003) 133 TAXMAN 159 (Gau)

Business Expenditure—Export market development allowance—Alternative claim under different head of s. 35B—Not barred if supported by sufficient material—CIT(A) in appeal allowed assessee's claim under sub-cl. (ix) of s. 35B(1)(b)—In further appeal to Tribunal by Revenue, assessee was not precluded from claiming the benefit under sub-cl. (ix) of ss. 35B(1)(b) as well—Matter remanded to Tribunal to consider the alternate claim of assessee.

Appeal (Tribunal)—Additional ground in appeal—Admissibility in absence of appeal or cross-objection by other party—ITAT Rules do not prohibit consideration of an additional ground not raised in memo of appeal if all facts necessary are available on record—Absence of appeal or cross-objection by other side projecting the new ground is at no relevance.

Since in this case the assessee has made compliance and satisfied all the conditions for grant of deduction under Section 11(2) for accumulation of income a liberal view may kindly be taken and the assessee may please be allowed deduction of Rs.39 Lakhs on account of accumulation of income for future applications on the objects of the trust. A separate application for additional ground of appeal and additional evidences is enclosed with this letter. It is, therefore, most humbly and respectfully submitted that in view of the above facts, the assessee's appeal may please be allowed."

The assessee has total income of Rs. 49, 92,978/- during the A.Y. 2015- 16 which is not subjected to tax. Thus, the assessee has escaped income of Rs. 49, 92,978/- during the A.Y. 2015-16, which otherwise chargeable tax.

On the date 27/11/2017 the proposal for obtaining approval u/s 151(1) of the LT. Act, 1961 to issue notice u/s 148 of the Act, 1961 submitted to The Joint Commissioner of Income Tax (Exemption), Raipur.

On the date 27/11/2017 the approval granted for issued notice u/s 148, by the Joint Commissioner of Income Tax (Exemption), Raipur by fax.

On the date 06/12/2017 notice u/s 148 of the LT. Act 1961 was issued to the assessee.

On the date 26/12/2017 the assessee submitted acknowledgment for the A.Y. 2015-16 vide the acknowledgment no 872166871301015 on 30/10/2015, which is submitted by the assessee on 26/12/2017.

On the date 02/01/2018 notice u/s 143(2) of the L.T. Act, 1961 was issued to the assessee, fixing the case of hearing on 15/01/2018.

On the date 28/03/2018 notice u/s 148 of the I.T. Act 1961 was issued to the assessee by electronic.

The assessee has total income of Rs. 49, 92,978/- during the A.Y. 2015- 16 which is not subjected to tax. Thus, the assessee has escaped income of Rs. 49, 92,978/- during the A.Y. 2015-16, which otherwise chargeable tax.

On the date 27/11/2017 the proposal for obtaining approval u/s 151(1) of the LT. Act, 1961 to issue notice u/s 148 of the Act, 1961 submitted to The Joint Commissioner of Income Tax (Exemption), Raipur.

On the date 27/11/2017 the approval granted for issued notice u/s 148, by the Joint Commissioner of Income Tax (Exemption), Raipur by fax.

On the date 06/12/2017 notice u/s 148 of the LT. Act 1961 was issued to the assessee.

On the date 26/12/2017 the assessee submitted acknowledgment for the A.Y. 2015-16 vide the acknowledgment no 872166871301015 on 30/10/2015, which is submitted by the assessee on 26/12/2017.

On the date 02/01/2018 notice u/s 143(2) of the L.T. Act, 1961 was issued to the assessee, fixing the case of hearing on 15/01/2018.

On the date 28/03/2018 notice u/s 148 of the I.T. Act 1961 was issued to the assessee by electronic.

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A.Y. 2015-16
ITBA/APL/S/250/2025-26/107844317(1)

The return income of the assessee	Nil
Add:- Surplus Income	Rs. 49,92,978/-
Assessed income	Rs. 49,92,978/-

Assessment is completed on total income of Rs 49,92,978/- (Rs. forty-nine lakh ninety-two thousand nine hundred seventy-eight only) and is charged to tax."

6. Decision

6.1 On Ground of Appeal No. 1:- In this ground of appeal, the appellant has challenged the issue of notice under section 148 as illegal and bad in law after registration under section 12A. The appellant has submitted that Assessing Officer in the assessment order has mentioned that a notice under Section 148 was issued on 06.12.2017 but he himself issued a second notice on 28.03.2018. If the first notice was validly issued and served then a second notice becomes infructuous. It is, therefore, submitted that either of the notices under Section 148 are illegal. In view of the above, the first ground of appeal is not pressed.

6.2 The submission made by the appellant has been considered and it is noted from the assessment order that notice u/s 148 was issued on 06-12-2017 and the assessee filed acknowledgement of AY 2015-16 on 26-12-2017. Thereafter, notice u/s 148 was issued on 28-03-2018 by electronic mode. This itself proves that the notice was indeed issued on 06-12-2017 which was also sent through electronic mode on 28-03-2018. Further, this ground of appeal has not been pressed by the appellant as mentioned in its reply supra, therefore, this ground of appeal is dismissed being not pressed.

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6.6 On Ground of Appeal No. 4:- The assessee's request for allowance of deduction under Section 11(2) of Rs 39,00,000/- based on a claim not made in the return of income could not be entertained at the level of the Assessing Officer, as per the settled position of law laid down by the Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT [(2006) 284 ITR 323 (SC)]. In this case, the Court held that a claim for deduction which is not made in the return of income cannot be entertained by the Assessing Officer otherwise than by way of a revised return. In the present case the assessee did not make any claim for accumulation of income under Section 11(2) in the return of income. There is no revised return on record making such a claim. Therefore, a fresh claim which was not made before the AO in the return of income, particularly in light of the above decision of the Hon'ble Supreme Court, cannot be entertained. In view of the judgement of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT [(2006) 284 ITR 323 (SC)], the claim for accumulation under Section 11(2) is denied.

(B.1) The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 14.07.2025. In the course of appellate proceeding in Income Tax Appellate Tribunal (ITAT), a paper book containing the following particulars was filed from the assessee's side: -

S. No.	PARTICULARS
1	Copy of Acknowledgement of filing of Written Submission
2	Copy of Written Submission
3	Copy of Application for Additional Ground
4	Copy of Postal receipt of speed post of Form 10
5	Copy of Form no. 10.

6	Copy of Audit report
7	Copy of fixed Deposit

(B.2) The aforesaid paper book contains a copy of the written submissions filed by the assessee during the appellate proceedings before the Ld. CIT(A), which are reproduced below for the sake of ease of reference:-

"The appeal of the assessee named above is fixed for hearing before your Honour. In addition to the oral submissions to be made during the course of personal hearing, desires to make the following written submissions: -

1. The brief facts giving rise to this appeal are that assessee is a charitable trust running educational institutions under the name and style of Ram Shanti Vidya Mandir, Ram Shanti College of Higher Education and Ram Shanti D.El.Ed. College. The separate books of accounts are maintained for each institution and they are consolidated in the books of account and a final balance-sheet and income and expenditure account is made in the hand of the trust. The return of income was submitted 30.10.2015. The return was processed by Central Processing Centre under Section 143(1) of the Income Tax Act on 20.10.2016. A demand of Rs.18,93,058/- was raised. Later on a 143(2) notice was issued on 02.01.2018 fixing the case on 15.01.2018 which was obviously barred by limitation and, therefore, the Assessing Officer issued a notice under Section 148 on 28.03.2018 that was served on the assessee on 31.03.2018. In compliance to said notice the assessee submitted acknowledgement of return for assessment year 2015-2016 by speed post on 14.04.2018. The assessee had also requested the learned Assessing Officer to provide the copy of reasons recorded for reopening of the assessment in view of the Apex Court judgment in the case of G.K.N. Drive Shaft Limited vs. C.I.T. However, no copy of reasons was provided by the Assessing Officer. In this case it is pertinent to mention here that in the assessment order learned Assessing Officer has mentioned that a notice under Section 148 dated 06.12.2017 was issued to the assessee, however, no such notice was ever received by the assessee and if that is true then there was no question of issuing the second notice under Section 148 on 28.03.2018. Hence, either of the notices issued under Section 148 by the Assessing Officer is illegal and entire proceedings are without jurisdiction.

2. In response to 143(2) notice the assessee made In response compliance before the Assessing Officer and the assessment was completed under Section 143(3) read with Section 147 on 19.09.2018, however, the benefit of Section 11 was not allowed to the assessee in the assessment framed by the Assessing Officer.

3. In this case the assessee being purely educational institution its income was exempt under Section 10(23C)(iiiad) of the Income Tax Act. That due to change in law the assessee Trust was required to obtain registration under Section 12AA of the Income Tax Act. For this purpose the assessee submitted an application for registration under Section 12AA before the Commissioner of Income Tax (Exemption) on 22.07.2017. The registration under Section 12AA was allowed by the CIT (Exemption) vide order dated 22.01.2018 and the trust was registered on Registration No. CIT EXEMPTION BHOPAL/12AA/2017-18/10219 from Assessment Year 2018-2019.

4. The attention of your good self is invited to Section 12A(2) of the Act. Sub-section (2) of Section 12A reads as under:-

"(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made:

Provided that where registration has been granted to the trust or institution under Section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objections and activities of such trust or institution remain the same for such preceding assessment year:

Provided further that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at thy time under Section 12AA."

The first proviso provides that when registration has been granted to the institution it shall apply to all the preceding assessment years for which the assessment proceedings are pending. In this case the registration was granted on 22.01.2018 on that date the reopened assessment proceedings for assessment year 2015-2016 were pending before the Assessing Officer. Since as mentioned in the assessment order the first 148 notice otherwise, the proceedings initiated on 28.03.2018 are posterior to the grant of registration under Section 12AA. On that date the registration under Section 12AA was available with the was issued on 01.12.2017. Even 7 assessee and, therefore, the benefit of Section 11 could not have been denied. In this background of facts the ground wise submission in appeal is as under:-

A. In the first ground of appeal the assessee has challenged the validity of notice under Section 148 firstly on the ground that learned Assessing Officer in the assessment order has mentioned that a notice under Section 148 was issued on 06.12.2017 but he himself issued a second notice on 28.03.2018. If the first notice was validly issued and served then a second notice becomes infructuous. It is, therefore, submitted that either of the notices under Section 148 are illegal. In view of the above, the first ground of appeal is not pressed.

B. In the second ground of appeal the assessee has raised the objection on the action of the Assessing Officer in not permitting the benefit of Section 11 and 12 of the Income Tax act. In this respect, it is submitted that as mentioned supra, the first proviso to sub-section (2) of Section 12A clearly provides that the registration granted shall apply to all assessment proceedings pending before the Assessing Officer on that date and the assessment proceedings for assessment year 2015-2016 was pending before the Assessing Officer which is clear from 143(2) notice dated 02.01.2018 fixing the case on 15.01.2018. Copy is enclosed for ready reference of your good self. The assessee is, therefore, entitled for benefit of Section 11 and 12 of the Income Tax Act and same should be allowed.

C. In the third ground of appeal the assessee has raised a ground that in case of charitable institution existing solely for the purpose of education their income is exempt under Section 10(23C) (iiia) of the Income Tax Act. The direction for filing the return if the gross receipts of the institution exceeds Rs.1 Crore is inserted for the purpose of monitoring the activity of educational institution the intention of legislature is not to deny the benefit of exemption and, therefore, it is submitted that the provision is directory and not mandatory. It appears in this case that learned Assessing Officer though has mentioned in the body of assessment order the fact of grant of registration by the CIT (Exemption) on page no.1 para 2 of the assessment order but has not considered the effect of

such registration while framing the assessment. The exemption as claimed under Section 11 may please be directed to be allowed.

D. The assessee is raising an additional ground of appeal to say that the Assessing Officer should have allowed the benefit of section 11(2) of the Income Tax Act for accumulation of income. Since the assessee submitted Form No.10 through speed post on 31.08.2015 to the Income Tax Officer (Exemption), Jabalpur. The assessee is, therefore, entitled for benefit of Section 11(2) of the Income Tax Act. Same may please be allowed.

E. In this case the assessee has submitted Form No.10 by 9 speed post on 31.08.2015 before the Income Tax Officer (Exemption), Jabalpur and had applied for accumulation of Rs.30 Lakhs out of the income for assessment year 2014-2015 to be applied in subsequent years for purchase of land and construction of building for College. The assessee had invested sum of Rs.39 Lakhs in Fixed deposits with Central Bank of India, Pandhurna. The copy of FDR is enclosed for ready reference of your good self. It is thus clear that the assessee has complied with the mandate of Section 11(2) of the Income Tax Act and the assessee is entitled for benefit of accumulation. Same should have been allowed by the Assessing Officer. Though through oversight this claim was not made in the return of income the Assessing Officer may not allow such claim. However the powers of Commissioner of Income Tax (Appeals) are coterminous with the powers of Assessing Officer. The deduction or exemption which is not claimed before the Assessing Officer and not allowed for want of claim in the return can be claimed before the Commissioner of Income Tax (Appeals) and CIT(A) is empowered to entertain such claim. The reliance is placed on following decisions:

(i) COMMISSIONER OF INCOME TAX vs. BHARAT CURIO STORES (1999) 235 ITR 507 (All): (1999) 152 CTR (AII) 51

Appeal (AAC) Additional claim in appeal-Powers of AAC to entertain additional claim-Claim of weighted deduction under s. 35B on additional items-Claim for weighted deduction having already been set up before ITO, Tribunal was justified in directing the AAC to consider claim under s. 358 in respect of additional Items

(i) COMMISSIONER OF INCOME TAX vs. VADILAL INDUSTRIES LTD.

(2008) 217 CTR (Guj) 318: (2008) 6 DTR (Guj) 98

Appeal [CIT(A)]-Additional ground in appeal-Admissibility-Assessee claimed certain expenditure for asst. yr. 1986-87 but same was disallowed-Assessee claimed the same in appeal for asst. yr. 1985-86 pending before CIT(A) by way of additional ground-Expenditure being genuine and claim being bona fide, Tribunal was justified in holding that CIT(A) ought to have entertained the additional ground.

(iii) ZAKIR HUSSAIN vs. COMMISSIONER OF INCOME TAX & ANR. (2006) 202 CTR (Ra) 40 Appeal (Tribunal)-Additional ground in appeal-Rejection on the ground of belated claim-Rule 11 of ITAT Rules empowers the Tribunal to permit raising of any additional ground at any stage of proceedings in deciding the appeal without any string of limitation-Only constraint is that any party likely to be affected by considering such new and additional ground must be provided with sufficient opportunity of being heard in that regard-Therefore, Tribunal was not justified in refusing to allow the assessee to raise the additional ground which required application of mind by the Tribunal and by the High Court which otherwise binds the authority in correctly assessing the tax liability on the ground of limitation.

(iv) COMMISSIONER OF INCOME TAX vs. MOTOR INDUSTRIES CO. LTD.

(1998) 229 ITR 137 (Kar): (1998) 144 CTR (Kar) 101: (1998) 97 TAXMAN 7 (Kar) Business expenditure-Export markets development allowance-Claim for the first time before CIT(A)-Though the assessee had not claimed weighted deduction before the ITO, the CIT(A) entertained the claim-When the necessary material was available and the weighted deduction is permissible under s. 35B, the claim cannot be rejected merely on the ground that it was not made before the ITO.

(v) ASSAM COMPANY (INDIA) LTD. vs. COMMISSIONER OF INCOME TAX (2002) 256 ITR 423 (Gau): (2002) 176 CTR (Gau) 406: (2003) 133 TAXMAN 159 (Gau) Business Expenditure-Export market development allowance-Alternative claim under different head of s. 358-Not barred if supported by sufficient material-CIT(A) in appeal allowed assessee's claim under sub-cl. (ix) of s. 35B(1)(b)-In further appeal to Tribunal by Revenue, assessee was not precluded from claiming the benefit under sub-cl. (ix) of ss. 35B(1)(b) as well-Matter remanded to Tribunal to consider the alternate claim of assessee.

Appeal (Tribunal)-Additional ground in appeal-Admissibility in absence of appeal or cross-objection by other party-ITAT Rules do not prohibit consideration of an additional ground not raised in memo of appeal if all facts necessary are available on record-Absence of appeal or cross-objection by other side projecting the new ground is at no relevance.

Since in this case the assessee has made compliance and satisfied all the conditions for grant of deduction under Section 11(2) for accumulation of income a liberal view may kindly be taken and the assessee may please be allowed deduction of Rs.39 Lakhs on account of accumulation of income for future applications on the objects of the trust. A separate application for additional ground of appeal and additional evidences is enclosed with this letter.

It is, therefore, most humbly and respectfully submitted that in view of the above facts, the assessee's appeal may please be allowed."

(C) At the time of hearing before us, the Ld. Counsel for assessee placed reliance on the aforesaid written submissions referred to foregoing paragraph no. (B.2) of this order. In particular, he pleaded that the order of the Hon'ble Supreme Court in the case of Goetze (India) Ltd vs CIT [(2006) 284 ITR 323 (SC)], on which the Ld. CIT(A) placed reliance while dismissing the assessee's appeal, is applicable only to assessment proceedings before the Assessing Officer and has no application to appellate proceedings.

(C.1) The Ld. Departmental Representative for Revenue supported the orders passed by the Ld. Addl/JCIT Commissioner of Income Tax (Appeals), the First Appellate Authority and the Assessing Officer.

(C.2) We have heard both sides. We have perused the materials on record. In the present case, the assessment proceedings were initiated

u/s 147 read with section 148 of I.T. Act; and not u/s 143(3) of I.T. Act. The question whether, in the proceedings initiated u/s 147 of the Act, a benefit not claimed by the assessee in the return of income can be allowed or not is settled and has attained finality by the order of the Hon'ble Supreme Court in the case CIT vs Sun Engineering Work Pvt Ltd (1992) 64 Taxman 442/198 ITR 297 (SC). In this case, the Hon'ble Supreme Court held that the proceedings u/s 147 of I. T. Act are for the benefit of Revenue and not the assessee and are aimed at gathering the escaped income of an assessee. In the present case before us, the assessee has made a claim for deduction on account of accumulation of income of Rs.39,00,000/- u/s 11 of the Act. However, this claim was not made in the return of income filed by the assessee. This claim has been made by the assessee for the first time during the appellate proceedings before the Ld. CIT(A). Since proceedings u/s 147 of I.T. Act are for the benefit of Revenue and not for the benefit of the assessee, in an appellate proceeding pertaining to the assessment order u/s 147/143(3) of the Act such a claim cannot be made for the first time. The proceedings u/s 147 of I.T. Act are open only qua the items of under assessment and escapement of income. The finality on other items remains undisturbed. It is not open to the assessee, in proceedings u/s 147 of I.T. Act; to raise issues unconnected with under assessment i.e. income escaping assessment. In proceedings, u/s 147 of I.T. Act, it is not open to the assessee, to claim re-computation of income or redoing of assessment; and the assessee also cannot be allowed a claim which was not made earlier, or which was rejected.

(C.2.1) The case of the assessee in the present appeal before us, is on even weaker footing than the case of CIT vs Sun Engineering Works Pvt Ltd (supra). In accordance with the principle established by Hon'ble Supreme Court in the case of CIT vs Sun Engineering Works Pvt Ltd (supra); the assessee would have been disqualified from making the

claim even if the assessee had made the claim for the first time in return filed in response to notice u/s 148 of I.T. Act read with section 147 of I.T. Act. Fact is, in the present case before us, the assessee did not make the claim in the return filed; but made the claim for the first time in appellate proceedings before the Ld. CIT(A). Being on even weaker footing, the claim of the assessee is devoid of any merit. Therefore, ground of appeal is dismissed. Therefore, respectfully following the aforesaid order of the Hon'ble Supreme Court in the case of CIT vs Sun Engineering Work Pvt Ltd (supra), grounds of appeal taken by the assessee for permitting the claim of deduction for accumulation of income of Rs.39,00,000/- u/s 11(2) of I.T. Act, is dismissed. In view of the foregoing, the appeal of the assessee is dismissed. All grounds of appeal are treated as disposed of in accordance with our aforesaid direction.

(E) In the result, the appeal of the assessee is dismissed.

(Order pronounced in the open court on 19/02/2026

Sd/-
[KUL BHARAT]
VICE PRESIDENT

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

Dated: 19/02/2026

Vijay Pal Singh (Sr. PS)

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. D.R., I.T.A.T., Jabalpur