

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH AT KOLKATA**

Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No(s).: 2748, 2749 & 2750/KOL/2025
Assessment Year(s): 2017-18**

Jermel's Accademy	Vs.	ITO, Ward-2(2), Exemp, Siliguri
(Appellant)		(Respondent)
PAN: AABTJ0525C		

Appearances:

Assessee represented by : Deep Agarwal, AR.

Department represented by : Satyajit Mandal, CIT, DR.

Date of concluding the hearing : 02-February-2026

Date of pronouncing the order : 26-February-2026

ORDER

PER BENCH:

These appeals filed by the Assessee are against the separate orders of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2017-18 dated 02.09.2025 and 03.09.2025.

2. The Assessee is in appeal before the Tribunal raising the following grounds of appeal:

I. ITA No. 2748/KOL/2025:

"1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have held that the order passed by the Ld. A.O u/s 144 is bad in law and liable to be quashed.

2. For that on the facts and in the circumstances of the case, that the Ld. CIT(A) has erred in sustaining the addition of ₹50,14,820/- made u/s 69A of the Income Tax Act, 1961 by treating the cash deposits during the period 09.11.2016 to 30.12.2016 as unexplained, without appreciating that the



said deposits represented genuine fees collections from students and school building fund contributions.

3. For that on the facts and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate that the appellant is a charitable trust engaged in education, which is per se a charitable purpose u/s 2(15) of the Income Tax Act, and the receipts were applied towards its educational objects; hence the addition sustained is unjustified.

4. For that on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that non-availability of registration u/s 12AA/ 12AB or u/s 10(23C) at the relevant time automatically renders the institution a business concern, without appreciating that the objects and activities were charitable in nature being in the nature of educational activities, and that the trust has since been granted provisional registration u/s 12A(1)(ac).

5. For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have held that the income of the assessee was eligible for exemption u/s 11 in view of the proviso to Sec. 12A(2) of the Act.

6. For that on the facts and circumstances of the case, the Ld. CIT(A) has erred in upholding the finding of the Assessing Officer that filing of return of income u/s 139 was mandatory for AY 2017-18, ignoring the fact that the appellant had deficit of income and there was no taxable income, and further overlooking that section 12A(1)(ba) making return filing a condition was inserted only from AY 2018-19.

7. For that on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in sustaining the assessment without addressing the specific documentary evidences submitted.

8. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal.”

II. ITA No. 2749/KOL/2025:

“1. For that the Ld. CIT(A) ought to have held that the order passed u/s 271B is bad in law and is liable to be quashed.

2. For that on the facts and in the circumstances of the case, the Ld. CIT (Appeals) erred in law and in facts in confirming the penalty of 1,50,000/- levied under section 271B of the Income Tax Act, 1961.

3. For that on the facts and in the circumstances of the case, has erred in confirming the penalty of ₹1,50,000/- levied u/s 271B of the Act, without appreciating that the appellant is a charitable trust running an educational institution and not engaged in any business activity so as to attract the provisions of section 44AB.

4. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal.”



III. ITA No. 2750/KOL/2025:

"1. (a) For that the Ld. CIT(A) ought to have held that the penalty order passed u/s 271AAC(1) dated 03.03.2025 is bad in law and is liable to be quashed.

(b) For that the Ld. CIT(A) ought to have quashed the said penalty order on the ground that the same was barred by the law of limitation.

2. For that on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in upholding the penalty levied u/s 271AAC(1) of the Act amounting to ₹3,87,394/-, without properly appreciating the facts, explanations and evidences furnished by the appellant.

3. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal."

3. We shall first take up **ITA No. 2748/KOL/2025** for adjudication. Brief facts of the case are that the assessee is a Trust registered at the office of the Sub Registrar, Siliguri. It had been formed with the objective of education and it was running a school "Jermel's Academy" in accordance with the objects of its formation. The assessee had not obtained the registration u/s 12AA or u/s 10(23C)(vi) of the Act. The Income & Expenditure Account for the FY 2016-17 showed total fees collections of ₹4,18,61,525/- and an excess of expenditure over income of ₹361.36. The assessee had not filed its return for the AY 2017-18 since its income was claimed to be below the maximum limit not chargeable to tax. The assessee had made the cash deposits of ₹50,14,820/- in its bank accounts during the period from 09.11.2016 to 30.12.2016. The case was selected for scrutiny assessment and the total income of the assessee for the AY 2017-18 was assessed u/s 144 of the Act. During the course of the assessment proceedings, the source of the cash deposits was explained by the assessee as fees collections were from the students. However, the cash deposited by the assessee in the bank accounts during the demonetization period amounting to ₹50,14,820/- was treated as unexplained money and the addition was



made by invoking section 69A of the Act. The Assessing Officer (hereinafter referred to as Ld. 'AO') concluded that since the assessee had not filed the return of income, it had failed to comply with the provisions of the Act. He was also of the view that an institution which had not obtained exemption certificate under rule 2CA of the Income Tax Rules, 1962, was also not eligible to get the benefit of the exemption u/s 10(23C)(iiiad) or (vi) of the Act as it had not got registered under section 12A/12AA and had neither filed ITR nor had it furnished the audit report in the prescribed Form No. 10B electronically; hence the activities of the assessee were to be treated as business activities instead of that of a non-profit making institution and the assessee was also to be assessed as an association of persons. The Ld. AO further stated that the assessee was carrying on the business activity and it was liable to get its accounts audited under the provisions of section 44AB of the Act as the gross receipts from the business exceeded ₹1 Crore. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who, vide order dated 02.09.2025 dismissed the appeal of the assessee by holding as under:

"7.1. In Ground of Appeal No. 1, 8 and 9 [As per Para 3 above]

7.1.1. Please refer to Para No. 3 above for grounds. Since these grounds of appeal are general in nature, they do not require any separate adjudication.

Hence, Grounds No. 1,8 and 9 are Dismissed.

7.2 Additional Ground of Appeal- Ground A [As per para no 3.1 above]

7.2.1 Please refer to para 3.1 for the additional ground of appeal. During the course of appellate proceedings, the appellant has filed a petition for admission of the following additional ground of appeal

-A. that on the facts and circumstances of the case, the income of appellant is eligible for exemption under section 11, in view of the proviso to section 12A(2) of the Income Tax Act, 1961. "



The appellant has submitted that the additional ground of appeal is purely legal in nature and has place reliance on the decision of Hon'ble Supreme Court of India in the case of National Thermal Power Company Limited, (229 ITR 383), where it was held that a question of law arising from the facts which are on record during the assessment proceedings can be raised at any time before the judicial authorities.

7.2.2 The matter regarding the admissibility of additional Ground of Appeal filed by the appellant is decided as follows. The appellant has raised an additional ground during the course of appellate proceedings and the issue that arises is whether such additional ground can be entertained at the stage of First Appellate Authority. In this regard, it is noted that Hon'ble Supreme Court in the decision of National Thermal Power Company Limited[supra], categorically held that the Appellate Authority is competent to entertain a new ground of law so long as the relevant facts are already on record and the issue requires no fresh investigation. The Hon'ble Supreme Court observed that the power of Appellate Authority is not confined to only those grounds which were taken before the lower authorities but extends to any question of law arising from the facts found by the Appellate Authority. The principle laid down is that the ultimate objective of appellate proceedings is to determine the correct tax liability of the appellant in accordance with the law. Therefore, if a pure question of law arises on the basis of facts, already on record, such additional grounds ought to be admitted to ensure the complete justice. Following this binding precedent of the Hon'ble Supreme Court, and considering that the additional ground raised by appellant is purely legal in nature and does not require any fresh investigation of facts, I admit the same for adjudication.

7.2.3. In the additional ground of appeal, the appellant has highlighted various reasons to assert its claim regarding eligibility of availing the benefit of exemption u/s 11 of the Act, which was denied by the Ld. AO on account of non-compliance of mandatory conditions like registration u/s 12AA/12AB, filing of return u/s 139(1)/139(4A) and furnishing of audit report as specified in Rule 17B of the Income tax Rules, 1962. The same are enumerated below:

(a) The appellant has been engaged in the activity of running a co-educational school for past many years. The definition of charitable activity as mentioned in section 2(15) of the Income Tax Act, 1961, also covers the education as a separate limb, and therefore the appellant qualifies this test as given in the section. The appellant has further stated that its school was being run with a non-profit motive and solely for the purpose of education, which is evident from the financial affairs of the trust; therefore, even if it was not registered

under section 12 A/ 12 AA at the time of assessment proceedings, its objectives and activities were clearly covered under the definition of charitable activities as per the section 2(15) of the Income Tax Act, 1961.

(b) The appellant has also tried to demonstrate through its Income and Expenditure statement, that it has complied with the requirement of application of 85% of more of the total receipts during the year for the purpose of objects of the trust.

(c) The appellant has further submitted that although it had not filed the return of income for A.Y 2017-18 u/s 139(1) and the audit report in Form 10B within the time stipulated u/s 12A(1)(b) and Rule 178, the audit report was subsequently submitted before the Ld. AO during the course of assessment proceedings.

(d) The appellant has relied on the second proviso to section 12A(2) of the Act, which reads as under:

"Provided further that where registration has been granted to the trust or institution under section 12AA or section 12AB, 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 objects and activities of such trust or institution remain the same for such preceding assessment year:"

The appellant has claimed that in view of the second proviso to Section 12A (2) of the Act, it was eligible for claiming exemption u/s 11 of the Act as it had obtained an Order of Provisional Registration on 31.08.2021 and the proceedings before Commissioner (Appeals) were pending on the said date; further the objects of the trust were also same during the period under consideration. The appellant has stated that though the assessment order under section 144 was passed on 28.12.2019, the appeal against the assessment order was filed before the Ld. CIT(A) on 20.01.2020 which was disposed by the Ld. CIT(A), vide appeal order u/s 250 dated 31.07.2023. Thus the appellant has demonstrated that on the date of registration of trust on 31.08.2021, the appellate proceedings were pending before the Ld. CIT(A) [from 02.01.2020 till 31.07.2023). In this regard, the appellant has asserted that the pendency of appellate proceedings are to be construed as pendency of assessment proceedings since appellate proceedings are continuation of assessment proceedings

and the powers of CIT(A) are co-terminus with that of an Assessing Officer. In support of its proposition, the appellant has relied on the decision of honourable ITAT Kolkata Bench, in the case of DCIT. Circle-2. Kolkata v. Karmapa Charitable Trust ITA no. 953/ KOL/ 2015 dated 10.01.2018, wherein it has been held that the assessment proceedings which are pending in appeal before the First Appellate Authority should also be deemed to be assessment proceedings pending before the Assessing Officer within the meaning as envisaged under the first proviso to section 12A and therefore the appellant was entitled for claim of exemption u/s 11 of the Income Tax Act, 1961. The appellant has also relied on the decision of Hon'ble Cochin bench of ITAT in the case of SNDP Yogam v. Asst Director of Income-tax (Exemption) [2016] 161 ITD 001 (Cochin) dated 01.03.2016 and decision of the Hon'ble ITAT, Kolkata in the case of Sonam Topgay Bhutia in ITA no. 331/ KOL/2011, where the said issue has been decided on similar lines, as discussed.

(e) The appellant has claimed that the second proviso to Section 12(A) refers to registration granted u/s 12AA or 12AB and does not specifically exclude provisional registration, therefore the benefit of Section 11 and 12 are applicable even by virtue of a provisional registration. In this regard, the appellant has invited reference to the decision rendered by the Hon'ble ITAT in its own case in A.Y 2016-17, wherein the Hon'ble ITAT placed reliance on the judicial pronouncement in the case of Genius Education Society[supra] and held that provisional approval granted was good enough for claiming the exemption u/s 11 of the Income tax Act, 1961.

7.2.4 The assessment order, Ground of Appeal Statement of Facts and the submission of the appellant has been considered, and the matter is adjudicated as follows. I am of the opinion that it is a settled principle that assessment proceedings come to an end with the passing of the assessment order by the Assessing Officer under section 143(3), 144 or 147 of the Income Tax Act, 1961. The moment the assessment order is passed, the jurisdiction of the Assessing Officer in respect of that assessment year is exhausted, and the proceedings before him stand concluded. Any proceedings thereafter, whether before the Commissioner (Appeals), the Income Tax Appellate Tribunal, or higher judicial fora, are not in the nature of "assessment proceedings" but are appellate proceedings governed by Chapter XX of the Act. The appellate jurisdiction is a distinct jurisdiction conferred on the appellate authorities, independent of the assessment jurisdiction of the Assessing Officer. This position has been consistently recognized in judicial pronouncements. The Hon'ble Supreme Court in CIT v. Rai Bahadur Hardutroy Motilal Chamaria (1968 AIR 153) emphasized that



the powers of the Appellate Authorities are appellate in character, while the assessment order represents the culmination of the assessment process. Once the order is passed, the proceedings before appellate authorities cannot be regarded as assessment proceedings and they cannot carry the powers given to them in the statute, beyond the issues raised by the Assessing Officer. This implied that Hon'ble Supreme Court has considered the appellate proceedings as separate and independent appellate proceedings. In light of the above, it is thus established that assessment proceedings are completed the day the assessment order is passed by the Assessing Officer, and any proceedings thereafter are appellate in nature and not "assessment proceedings within the meaning of the Act.

7.2.5 In the instant case, assessment order under section 144 was passed on 26.12.2019 and the appellant had preferred appeal against the assessment order on 21.01.2020. The appellant was granted a Provisional Registration under section 12A(1)(ac)(vi) on 31.08.2021 and the appellate order under section 250 was passed on 31.07.2023. Thus, it is clear that the Provisional Registration under section 12 A(1)(ac)(vi) was received on a date, which was subsequent to passing of assessment order under section 144 i.e. after 28.12. 2019; therefore the second proviso to section 12A(2) is not applicable in the instant case.

Therefore, I am of a view that that the appellant was not registered under section 12 AA or 12 AB of the Act on the date of passing of assessment order and hence not eligible for the claim of exemption u/s 11 of the Income tax Act, 1961.

7.2.6 Having decided on the issue of what constitutes assessment proceedings, the other issue that needs adjudication is whether the appellant, having been granted Provisional Registration under section 12A(1)(ac)(vi), is eligible to invoke the benefit of the second proviso to section 12A (2) of the Income tax Act, 1961. It is observed that the appellant was granted only provisional registration under section 12A(1)(ac)(vi) of the Act. The benefit of the second proviso to section 12A(2) is specifically linked to cases where regular registration has been granted under section 12AA/ 12AB, and not to provisional registration which is merely prospective in nature and is granted without any examination of activities. The legislative intent behind the scheme of Provisional Registration, as introduced by the Finance Act, 2020 and later repealed and re-implemented by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020(hereafter referred to as TOLA) with effect from 01.04.2021, is explicit. The Parliament consciously provided that a newly created trust or institution shall be granted Provisional Registration under section 12A(1)(ac)(vi) for a period of three years only on the basis of its stated



objects. without any examination of its actual activities. Such provisional registration is prospective in nature and is intended merely to enable the assessee to claim exemption under sections 11 and 12 in future assessment years, subject to subsequent verification at the stage of regular registration. This insertion of the section regarding provisional registration is distinct and independent of the second proviso to section 12A(2). The purpose of the second proviso to section 12A(2) was to grant relief to trusts obtaining regular registration under section 12AA/12AB by extending the benefit of sections 11 and 12 for pending assessments of earlier years. It is also pertinent to note that the second proviso to Section 12A(2) has been omitted by the Finance Act, 2023, w.e.f. 01.04.2023. The conscious omission of any reference to Provisional Registration in the proviso to section 12A(2) clearly manifests the legislative intent that such retrospective benefit was never meant to apply to cases wherein only provisional registration had been granted. In light of the above discussion, it is held that provisional registration under section 12A(1)(ac)(vi) does not attract the operation of the second proviso to section 12A(2), and hence the appellant is not entitled to claim retrospective benefit of sections 11 and 12 in earlier assessment years.

7.2.7 Further, I have examined the appellant's reliance on the decision of Hon'ble ITAT in the case of Genius Education Society (supra) and find it to be misplaced on facts. In the case of Genius Education Society[supra], the appellant had applied for registration under section 10(23)(C)(vi) of the Income Tax Act, 1961 on 03.05.2012, which was denied by the Chief Commissioner of Income Tax, Shimla, vide order dated 15.05.2013. The appellant had also applied for registration as a charitable society under section 12A of the Income Tax Act, 1961 on the same day which was granted by Principal Commissioner of Income Tax, Shimla vide order dated 07.11.2012 with effect from 01.04.2012, effective from AY 2013-14. The decision given by Chandigarh bench of Hon'ble ITAT in the case of Genius Education Society [supra] was in the background of these facts. In the instant case, the approval was not granted under section 12AA or section 12AB, but only a Provisional Registration under section 12 A(1)(ac) (vi) was granted to the appellant on 31.08.2021. It may be noted that the grant of provisional registration has come into force only from 01.04.2021 and at the same time, the second proviso to section 12A(2) has been omitted with effect from 01.04.2023. Thus, there was no occasion for the Chandigarh bench of Hon'ble ITAT to consider these facts while rendering its decision in the case of Genius Education Society [supra], vide order dated 20.08.2018. In fact, the date of the order in the case of Genius Education Society (supra), is much prior to the date of insertion of section 12 A(1)(ac) (vi) and omission/repeal of second proviso to section 12A(2). Therefore, I am of the opinion that the

appellant's reliance on the decision given by Chandigarh bench of Hon'ble ITAT in the case of Genius Education Society[supra] is misplaced, because of the difference in facts and circumstances in both the cases.

7.2.8 Accordingly, as per discussions in the foregoing paragraphs, it is held that the appellant, having been granted only provisional registration under section 12A(1)(ac)(vi), is not covered by the second proviso to section 12A(2). The retrospective benefit of sections 11 and 12 is available only where regular registration under section 12AA/ 12AB has been granted, and not in cases of provisional registration. Hence, the appellant's claim for exemption under sections 11 and 12 for earlier years is rejected.

Accordingly, the Additional ground A of the appellant is dismissed.

7.3. In Ground of Appeal No. 2, 3 and 4 [As per Para 3 above]

7.3.1 Please refer to Para No. 3 above for grounds. Since these Grounds of Appeal relate to the addition of Rs. 50,14,820/- made by the Ld. AO as unexplained money under section 69A of the Income Tax Act, 1961, the same are being adjudicated together. The Ld. AO was in possession of information that the appellant had deposited cash totalling to Rs.50,14,820/- in his bank accounts in State Bank of India, Axis Bank and HDFC Bank. During the course of assessment proceedings, the Ld. AO confronted the appellant regarding said information and requested the appellant to explain the source of the cash deposited. In response, the appellant furnished copies of ledger accounts regarding the fees received, the copies of bank statements and its Balance Sheet and Income & Expenditure Account. No other supporting documents were submitted by the appellant to justify the claim. Therefore, not satisfied about the source of these cash deposits, the Ld. AO held that the source of cash deposits in the appellant's bank account remained unexplained and added the same as unexplained money under the section 69A of Income Tax Act, 1961.

7.3.2 During the course of appellate proceedings, the appellant has submitted that since it is running schools, it receives fees from the students in the form of cash. This cash is the source of cash deposits in the bank account. The appellant has further submitted Ld. AO has made addition u/s 69A, without giving any reasons/explanation. The appellant has placed reliance on many judicial decisions to highlight its argument that onus lies on the department to find fault with the submissions of the assessee while making any additions u/s 69A. Further, the additions can be made only if the Ld. AO is able to bring evidence on record, which contravenes the stand of an assessee. The appellant has further submitted that all transactions of fees received from the students were recorded in the books of accounts maintained by the appellant and the books were audited and copy of audit

report was furnished during the course of assessment proceeding. The appellant further mentions that the entire amount of fee receipts were declared as income in Income and Expenditure Account and the books of accounts were not rejected by the Ld. AO. Therefore, the appellant has claimed that the action of the Ld. AO in treating its cash deposits in bank account as unexplained money under 69A of the Income Tax Act 1961 was incorrect and needs to be deleted.

7.3.3 I have carefully considered the assessment order, the grounds of appeal, and the submissions made by the appellant. The undisputed fact is that during the demonetization period from 09.11.2016 to 13.12.2016, the appellant deposited a sum of Rs. 50,14,820/- in cash in its bank accounts. The appellant claims that the source of such cash deposits was tuition fees and other fees received from students. The Ld. AO, however, was not satisfied with the explanation and made an addition under section 69A of the Income-tax Act, 1961, treating the said amount as unexplained money. The appellant has contended that the Ld. AO has not given specific reasons for rejecting the explanation. I do not find merit in this plea of the appellant. Section 69A squarely places the initial burden on the assessee to substantiate, with credible evidence, the nature and source of cash found credited. In the present case, while the appellant has made a general statement that the cash represented tuition and other fees, it has not furnished:

A month-wise or day-wise reconciliation of fees received vis-à-vis deposits,

Documentary evidence linking student-wise collections to the cash deposited,

Corroborative registers, receipts, or internal accounts establishing that the exact quantum deposited corresponds to genuine fee collections during the relevant period.

Mere general assertions without verifiable and contemporaneous records cannot be accepted as satisfactory discharge of onus. Therefore, the Ld. AO was justified in holding that the appellant's explanation was vague, unsubstantiated, and did not inspire confidence.

7.3.4 The appellant's grievance that the Ld. AO acted arbitrarily is not borne out of record. The Ld. AO examined the submissions, found them deficient, and recorded his conclusion. It is not necessary for an Assessing Officer to provide an elaborate rebuttal to each and every assertion of an assessee when the explanation itself lacks evidentiary value. Judicial precedents have consistently held that the satisfaction of the AO under section 69A is essentially a fact-finding exercise; unless the explanation is cogent and verifiable, the AO is well within his right to reject it reliance is placed on the



decision rendered in the case of *Sumati Dayal v. CIT* (214 ITR 801 (SC)), wherein the Hon'ble Apex Court held that the test of human probabilities must be applied, and fanciful or uncorroborated explanations cannot be accepted. Applying these principles, I hold that the AO was justified in concluding that the cash deposits remained unexplained.

7.3.5 In view of the foregoing discussion. I find no infirmity in the action of the Assessing Officer in making the addition of Rs. 50,14,820/- under section 69A. The appellant has failed to discharge the onus cast upon it to prove, with cogent and verifiable evidence, the nature and source of the cash deposits made during the demonetization period. Accordingly, the addition made by the AO is confirmed and this ground of appeal is dismissed.

Hence, the grounds of appeal number 2,3 and 4 are dismissed.

7.4 In Ground of Appeal No. 5 and 7 [As per Para 3 above]

7.4.1 Please refer to Para No. 3 above for grounds. In these grounds of appeal, the appellant has challenged the action of Ld. AO in treating and classifying the income generated out of its enterprise as Business Income and not in the nature of Not for Profit organisation. The appellant is agreeable to the facts that it had not obtained a registration under section 12AA/12AB of the Income Tax Act, 1961 and that it had not submitted the audit report in Form 10B as mandated in Rule 17B of the Income Tax Rules, 1962; however, it is aggrieved by categorization of the nature of its income as 'income from business activities' instead of 'not for profit organisation'. The appellant has claimed that it is a public charitable trust formed for the purpose of running a school which was created on 21.07.1987. The appellant claims that since its inception, it has been carrying on the activities as per the objects of Trust which fall within the definition of charitable purpose within the meaning of section 2(15) of the Income Tax Act. The appellant has further claimed that the school which has been running since its inception, is affiliated to Central Board of Secondary Education, approved by the education department of West Bengal government, and presently catering to over 1500 students with more than 60 teaching staff and other administration and support staff. The appellant has submitted a copy of audited financial statement of the relevant year to demonstrate that its income solely comprises of fees received from school and interest and its entire expenditure is also incurred solely in connection with running of educational institution; therefore, the surplus generated from its activities do not qualify to be classified as business income.

7.4.2 The assessment order, the grounds of appeal, the statements of facts and the submission of the appellant before the undersigned is considered. The core contention raised by the appellant is that though it had not



obtained registration under section 12A/12AA and also not furnished the audit report in Form 10B, its activities of running a CBSE-affiliated school should be regarded as "charitable" in nature falling under section 2(15), and therefore the surplus generated should not be treated as Business Income. I am unable to agree with the submissions of the appellant. The appellant has, by its own admission, had not obtained registration under section 12AA/12AB. In the absence of such regular registration, the income of the appellant cannot be brought to tax under the beneficial code of sections 11 and 12. Resultantly, once the special provisions of sections 11 and 12 are out of operation, the income of the appellant automatically becomes assessable under the normal provisions of the Act.

7.4.3 It is a submitted fact that the appellant is running a co-educational school from nursery to class XII, catering to nearly 1500 students and employing about 60 staff members. The fees collected from its educational activities would have definitely resulted in generation of surplus over the period of time, though not specifically in the year under consideration. The appellant has not been able to establish its claim that the activity of running the school is not in the nature of profiteering. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in *Sole Trustee, Loka Shikshana Trust v. CIT* [101 ITR 234 (SC)] wherein it was held that if an institution runs with the primary object of making profit, even though cloaked as "education", it amounts to business. In the present case, the Ld. AO has rightly treated the appellant's income as "business income" since the appellant has neither demonstrated its eligibility to be treated as a charitable institution under Chapter III nor complied with the statutory conditions required for availing special treatment. In the absence of beneficiary provisions of exemption u/s 11, the income from running the school can only be assessed under the head "Profits and Gains of Business or Profession." The appellant's argument that it has been formed for charitable purposes and has been imparting education since 1987 is not disputed. However, for tax purposes, characterization of income depends on statutory compliance and legal definitions, and not solely on intent. In the absence of registration u/s 12AA/12AB, and generation of income out of systematic fee collection, the appellant's income has correctly been categorized by the Ld. AO as business income.

7.4.4 Accordingly, I find merit in the action of the Assessing Officer in treating the surplus generated by the appellant as business income assessable under the head "Profits and Gains of Business or Profession" activities the appellant as business activities. The argument that the appellant should nonetheless be regarded as a trust for taxation purposes cannot be accepted in the absence of statutory registration and compliance. The stand of the Ld. AO is therefore upheld.

7.4.5 Further, the appellant in its written submission dated 30.07.2025 has stated that during the year under consideration it was having deficits to the tune of Rs.361.36/-. The same may be verified by the Ld. AO and accordingly brought to tax.

Accordingly, Grounds of Appeal number 5 and 7 are dismissed.

7.5 In Ground of Appeal No.6[As per Para 3 above]

7.5.1 In this ground of appeal, the appellant has claimed that it was not mandatorily required to file a return under section 139(1), as it did not have any taxable income during the year and the return under this section has to be compulsory filed by a person other than company or a firm, only if the total income exceeded the maximum amount not chargeable to tax. The appellant has stated that it is an Association of Persons (AOP), it is not mandated to file return under section 139(1); hence the additions made by Ld. AO under section 69A of the Income Tax Act are based on wrong premises that the cash deposits in its bank account were unexplained owing to non-filing of return by the appellant.

7.5.2 I have already adjudicated this ground in the earlier paras of this order. However, since the appellant has once again, raised this issue in Ground of Appeal No. 6, the same is being adjudicated again after considering the grounds of appeal and the submissions of the appellant. The facts of the case are that the appellant, being a Trust/Association of Persons, did not file its return of income for the AY 2017-18, nor did it get its accounts audited as mandated under the Act. Further, the appellant did not file its return of income even in response the notice issued by the Ld. AO u/s 142(1) of the Act. The Ld. AO treated the cash deposits in the bank account as unexplained, noting that the appellant was under a statutory obligation to file a return of income under section 139 of the Act, which it failed to do. The appellant has argued that under section 139(1)(a), only companies and firms are compulsorily required to file returns, and in the case of any other person, return is mandatory only if total income exceeds the maximum amount not chargeable to tax. This argument is misplaced. The obligation under section 139(1) cannot be read in isolation; it has to be read in harmony with other provisions applicable to charitable and religious trusts. Section 139(4A) specifically provides that every person in receipt of income derived from property held under trust or legal obligation, wholly or partly for charitable or religious purposes, is required to furnish a return of income if the total income, without giving effect to sections 11 and 12, exceeds the maximum amount not chargeable to income-tax. Thus, even if the appellant claims itself to be a trust formed for charitable purposes, the obligation to file return u/s 139(4A) is clearly attracted. Further, section 12A(1)(b) requires the accounts of such a trust to be audited if the total

income exceeds the basic exemption limit and the audit report to be filed in Form No. 10B. The appellant has admittedly not complied with this mandate. Since the appellant did not file its return and disclose the source of cash deposits through the statutory process, the Ld. AO was justified in treating the cash deposits as unexplained under section 69A, particularly since the appellant did not discharge its primary onus of substantiating the nature and source of such deposits.

7.5.3. In light of the above, I hold that the appellant's plea that it was not under obligation to file return of income is contrary to the express mandate of section 139(4A). Furthermore, the appellant failed to discharge the legal mandate of filing the return of income even in response to the notice issued by the Ld. AO u/s 142(1) of the Act. Therefore, the Ld. AO was correct in observing that the appellant was mandatorily required to file a return of income for AY 2017-18 and to get its accounts audited. The non-filing of the return coupled with unexplained cash deposits justifies the AO's action of treating the deposits as unexplained.

Accordingly, the Ground of Appeal No 6 is dismissed.

8. In result, the appeal filed by the appellant is Dismissed.”

4. Aggrieved with the order of the Ld. CIT(A), the Assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined. It was stated that the provisions of section 12A(1)(b) of the Act were introduced with effect from AY 2018-19 which related to filing of return of income and are not applicable for AY 2017-18. The Ld. CIT(A) did not accept the explanation that the cash deposited was out of the school fee and the specified bank notes were not accepted. The students directly deposited fee in the bank account and there is no exemption certificate under Rule 2CA of the Income Tax Rules, 1962. However, rule 2C requires the institution to be approved in case the gross receipts exceed the specified amount. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld.



6. We have considered the facts of the case, the submissions made and the documents filed. The assessment order was made *ex parte* and the provisions applicable to the facts of the case were not correctly appreciated as the assessee could not present its case properly. The assessee contends that the cash deposits in the bank accounts were out of fee receipts and it was submitted that in case another opportunity is granted, the assessee would be able to justify the source of cash deposits. Therefore, in the interest of justice and fair play it was considered by the Bench that the order of the Ld. CIT(A) be set aside and the matter may be remanded to the Ld. AO for considering the submissions of the assessee and to reframe the assessment *de novo* as per law after granting an opportunity of being heard to the assessee. Hence, the order of the Ld. CIT(A) is hereby set aside and the matter is remitted to the Ld. AO to make the assessment *de novo* after granting an opportunity of being heard to the assessee. The assessee shall not seek unnecessary adjournments and shall produce all evidences in his position in support of the claim that the cash deposits in the bank accounts was out of the fee receipts and no addition was warranted u/s 69A of the Act. Hence, the appeal in **ITA No. 2748/KOL/2025** is partly allowed for statistical purposes.

7. Since the assessment order has been directed to be framed *de novo* and the assessee claims that it is a charitable trust and not a business entity and was not liable to get the accounts audited, the order of the Ld. CIT(A) confirming the penalty under section 271B is also set aside as the issue of the claim of exemption is to be decided by the Ld. AO. Hence, the appeal in **ITA No. 2749/KOL/2025** is also partly allowed for statistical purposes as the audit under section 44AB is required only in the case of every person carrying on the business or



profession and if the turnover exceeds ₹ one crore in any previous year. Similarly, the appeal in **ITA No.: 2750/KOL/2025** is also partly allowed for statistical purposes as the penalty does not survive once the quantum addition has been set aside for being done afresh. In case on fresh assessment any penalty is warranted, the Ld. AO shall be at liberty to initiate the same as per law.

8. In the result, all the 3 appeals filed by the Assessee are partly allowed for statistical purposes.

Order pronounced in the open Court on 26th February, 2026.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 26.02.2026

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

- 1. Jermel's Accademy, C/o. Agarwal Vishwanath & Associates, 133/1/1A, S.N. Banerjee Road, Pushkal Bhawan, 3rd Floor,, Kolkata, West Bengal, 700013.**
- 2. ITO, Ward-2(2), Exemp, Siliguri.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata