

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHANDIGARH

HYBRID HEARING

BEFORE HON’BLE SHRI RAJPAL YADAV, VICE PRESIDENT
AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकर अपील सं. / ITA No.824/CHANDI/2014
(निर्धारण वर्ष / Assessment Year: 2005-06)

&

2. आयकर अपील सं. / ITA No.825/CHANDI/2014
(निर्धारण वर्ष / Assessment Year: 2006-07)

The Ved Prakash Mukand Lal Educational Society (Radaur, Yamuna Nagar) C/o Shri Tej Mohan Singh (Advocate) #527, Sector – 10D, Chandigarh	बनाम/ Vs.	DCIT Circle Yamuna Nagar Haryana
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAATV-4812-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

3. आयकर अपील सं. / ITA No.833/CHANDI/2014
(निर्धारण वर्ष / Assessment Year: 2005-06)

&

4. आयकर अपील सं. / ITA No.832/CHANDI/2014
(निर्धारण वर्ष / Assessment Year: 2006-07)

DCIT Circle Yamuna Nagar Haryana	बनाम/ Vs.	The Ved Prakash Mukand Lal Educational Society (Radaur, Yamuna Nagar) C/o Shri Tej Mohan Singh (Advocate) #527, Sector – 10D, Chandigarh
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAATV-4812-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Sh. Tejmohan Singh (Advocate) – Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Smt. Yamini (CIT) - Ld. DR (Virtual)

सुनवाईकीतारीख/ Date of Hearing	:	04-02-2026
घोषणाकीतारीख / Date of Pronouncement	:	10-03-2026

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid cross-appeals for Assessment Years (AY) 2005-06 & 2006-07 are directed against common order of learned first appellate authority. The facts as well as issues are stated to be identical. First, we take up revenue's appeal for AY 2005-06 which arises out of a common order passed by Ld. Commissioner of Income Tax (Appeals), Panchkula [CIT(A)] on 31-07-2014 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s 143(3) r.w.s. 147 of the Act on 20-03-2013. The grounds of appeal read as under: -

1. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition for claim of Rs. 1,25,82,774/- for the A.Y. 2005-06 and Rs.3,86,28,412/- for the A.Y. 2006-07 investment in fixed deposits as application of income incomplete disregard.

2. The appellant craves leave to add or amend the grounds of appeal before this appeal is heard and disposed off.

1.2 It is admitted position that the issue in revenue's appeal has been adjudicated by Special Bench of Tribunal vide order dated 29-09-2025. The copy of the same has been placed on record. Considering the same, our adjudication would be as under.

Assessment Proceedings

2.1 The sole grievance of the revenue is that Ld. CIT(A) has allowed claim for Rs.1,25,82,774/- in AY 2005-06 and similar claim of Rs.3,86,28,412/- in AY 2006-07. From case records, it emerges that the assessee is a charitable society which is registered under Section

12AA. The assessee filed 'nil' income after claiming exemption u/s 11. The return was initially processed u/s 143(1) and later on, scrutinized u/s 143(3) on 25-10-2007 accepting the returned income. However, the case was reopened u/s 147 r.w.s. 148 of the Act on the ground that the Income and Expenditure account of the assessee showed that out of the total receipts of Rs.8,86,35,665/-, only a sum of Rs.7,06,25,737/- (revenue expenditure of Rs.3,67,90,756/- + capital expenditure of Rs.3,38,81,961/-) has been spent towards its objects, which approximately constitute only 80% of the total receipts. In order to cover the deficit, the assessee claimed that balance amount of Rs.1,25,82,774/- was deposited in the bank fixed deposit (FDRs) in pursuance of Section 11(2) and 11(5) of the Act. The assessee, inter-alia, contended that the investment made in Bank FDRs would be capital expenditure and is to be considered as an application of income. However, the said claim was rejected by Ld. AO considering the provisions of Sec. 11(1A). The Ld. AO also found that the assessee had not given any intimation in Form No. 10 as required u/s 11(5) with regard to the purpose and period for which the excess income was accumulated or set apart. The AO having found that the assessee failed to follow the prescribed procedure as mandated under law and therefore, the shortfall of Rs.46,67,779/- was to be brought to tax. Finally, vide assessment order dated 20-03-2013, Ld. AO made an addition of Rs.46,67,779/- and assessed the total income of the assessee.

2.2 Upon further appeal Ld. CIT(A), following the earlier decision of this Tribunal in assessee's own case for AY 2008-09 (ITA No.952/Chd/2011 order dated 25-01-2012), allowed the claim of the assessee against which the revenue is in further appeal before us. Similar are the facts in AY 2006-07 wherein Ld. AO took the same view and the first appeal order is in assessee's favor.

2.3 We find that this matter is subject matter of adjudication by Special Bench of Tribunal wherein an order has been passed on 29-09-2025. The adjudication of Special Bench is as under: -

This Special Bench is constituted to decide the following questions:-

- i) Whether the object of an assessee Society to invest its income in the mode and manner as per provisions of Section 11(5) can be said to be an object of charitable nature?
- ii) Where an assessee Society is having an object that its income will be invested in the mode and manner as prescribed u/s 11(5) of the Act and it invests its income in the FDRs, can it be said to be an application of the income for charitable or religious purposes?"

Brief Facts

2. The Ved Prakash Mukund Lal Educational Society – the appellant-assessee is a charitable society registered under Section 12AA of the Income Tax Act, 1961 ('Act' for short). The assessee filed its Return of Income (RoI) for assessment year 2005-06 on 30.10.2005 declaring total income at Nil, claiming surplus of income over expenditure as exempt under Section 11 of the Act. The RoI was processed under Section 143(1) of the Act. Subsequently, the case was selected for scrutiny and the assessment was finalized under Section 143(3) of the Act vide order dated 25.10.2007 accepting the returned income. Later on, the case was selected for reassessment under Section 147 r.w.s. 148 of the Act on the ground that the Income and Expenditure account of the assessee showed that out of the total receipts of Rs.8,86,35,665/-, only a sum of Rs.7,06,25,737/- (revenue expenditure of Rs.3,67,90,756/- + capital expenditure of Rs.3,38,81,961/-) has been spent towards its objects, which approximately formed only 80% of the total receipts. In order to cover the deficit, the assessee claimed that balance amount of Rs.1,25,82,774/- was deposited in the bank fixed deposit in pursuance of Section 11(2) and 11(5) of the Act. The Assessing Officer ('AO' for short) found that the assessee had not given intimation in Form no. 10 as required by Subsection 5 of Section 11 of the Act with regard to the purpose and period for which the excess income was accumulated or set apart. The AO having found that the assessee had failed to follow the prescribed procedure, vide order dated 20.03.2013 made an addition of Rs.46,67,779/-.

3. Insofar as assessment year 2006-07 is concerned, the appellant filed its RoI on 30.10.2006, again declaring total income at Nil claiming the surplus of income overexpenditure as exempt under Section 11 of the Act. The return was processed under Section 143(1) of the Act followed by assessment order under Section 143(3) of the Act dated 30.12.2008 accepting the returned income. Later on, the case was selected for reassessment under Section 147 of the Act. The AO found that out of the total receipt of Rs.9,94,56,533/-, only a sum of Rs.6,51,26,448/-

(revenue expenditure of Rs.4,75,81,711/- + capital expenditure of Rs.1,75,44,737/-) has been spent towards the objects, which approximately formed 72% of the total receipts. The AO found that in order to cover the deficit, a sum of Rs.3,86,28,412/- was claimed to have been deposited in a fixed deposit with the bank as per Section 11(2) and 11(5) of the Act. Here again the AO found that the assessee had not filed Form no. 10 as required by Sub-section 5 of Section 11 of the Act. The assessee thus having failed to follow the prescribed procedure, the AO made an addition of Rs.1,94,11,605/-.

4. The assessee, feeling aggrieved, challenged both these orders before the Commissioner of Income Tax (Appeals) ('CIT(A)' for short). Apart from the issue of deposit in the bank being treated as application of income, the assessee also challenged the reopening and disallowance of carry forward of excess expenditure over its income for the earlier year to be adjusted in the subsequent year.

5. The learned CIT(A) by a common order dated 31.07.2014 has refused to accept the ground challenging the reopening and the issue of carry forward of excess expenditure over the income in the subsequent year. The learned CIT(A), however, allowed ground no. 3 pertaining to claim of the assessee of the deposit in the bank being treated as application of income for charitable purposes. A perusal of the order of learned CIT(A) shows that for the purpose of ground no. 3 the learned CIT(A) has placed reliance on the decision of Chandigarh Benches in assessee's own case for assessment year 2008-09 (ITA No. 952/Chandi/2011 dated 25.01.2012). In that view of the matter, the appeals came to be partly allowed by the learned CIT(A).

6. The present set of four appeals comprise of two appeals each filed by the assessee and the Revenue for assessment year 2005-06 and 2006-07.

7. When the appeals came up before the Division Bench, the Division Bench expressed its inability to agree with the decision of the co-ordinate Bench in assessee's own case in ITA No. 952/Chandi/2011 for assessment year 2008-09. In such circumstances, the Division Bench by an order dated 17.03.2020 has required the aforesaid issues to be placed before a Special Bench. Although the Division Bench has observed that the Special Bench may also decide the other/all issues involved in these appeals, the President in his discretion has only referred the aforesaid two issues to the Special Bench. In the present reference, we are only concerned with the appeals filed by the Revenue challenging the finding recorded by the learned CIT(A) allowing ground no. 3 raised before him.

Rival submissions

8. We have heard Smt. Kusum Bansal, learned DR and Shri Tejmoan Singh, learned counsel for the assessee. With their assistance, we have gone through the record.

9. It is submitted by the learned DR that deposit of the amount in nationalized bank as contemplated under Sub-section (5) of Section 11 of the Act cannot be treated as application of income for charitable purposes. It is submitted that under Sub-section (1) of Section 11 of the Act, assessee is obliged to apply 85% of the income for charitable purposes. It submitted that any amount falling short of 85% can be invested in nationalized bank subject to the conditions as prescribed in Sub-section (5) of Section 11 of the Act. It is submitted that such investment can be for a period of five years subject to intimation in Form no. 10 being furnished to the AO indicating the object and the period for which the balance amount is accumulated or set apart. It is submitted that the assessee in this case has not complied with the said condition as admittedly no intimation in Form no. 10 has been furnished to the AO. It is submitted that reliance placed by the assessee on the Objects is misplaced. It is pointed out that an object permitting the assessee to invest in a nationalized bank cannot by itself be an object of charitable purpose. It is submitted that Sub-section (5) of Section 11 of the Act cannot partake or be elevated as application of income under Section Sub-section (1) of Section 11 of the Act else otherwise Sub-section (1) of Section 11 would be rendered otiose.

10. The learned DR has referred to the definition of “charitable purpose” under Section 2(15) of the Act in order to submit that investment in a Fixed Deposit cannot be said to be a charitable purpose. It is submitted that there is an essential difference between application of the income for charitable purpose and the income being accumulated or set apart for such application.

11. The learned counsel for assessee has strenuously urged that investment in nationalized bank itself being provided as one of the objects of the assessee-Trust, the investment so made in the subject assessment years has to be treated as an application of income. It is submitted that the assessee is registered under Section 12AA of the Act. It is pointed out that the competent authority on the basis of the objects as set out in the Memorandum of Association (MoA) has granted the registration and, therefore, the AO was not justified in refusing to treat the investment so made as application of income. The learned counsel was at pains to point out that clause III (1) to (6) of the MoA have to be read together with clause (7). He submitted that the Division Bench in assessee’s own case for assessment year 2008-09 has allowed the claim of such investment being treated as application of income, which has rightly been relied upon by the learned CIT(A). He, therefore, submitted that the issues referred may be answered in favour of the assessee.

12. On behalf of the assessee, reliance is placed on the decision of Delhi High Court in Director of Income Tax (Exemption) vs DLF Qutab Enclave Complex Medical Charitable Trust, 248 ITR 41 (Delhi) and the decision of Gauhati High Court in CIT vs Highway Construction Co. (P.) Ltd., 217 ITR 234 (Gauhati).

Consideration

13. We have given our anxious consideration to the rival circumstances and the submissions made. The material facts are not in dispute, apart from being matters of record. It is not in dispute that for both the assessment years, assessee had not spent 85% of the amount as required by Section 11(1) of the Act. The balance falling short was invested in a nationalized bank. The only question is whether such investment can be treated as application of income within the meaning of Section 11(1) and 11(5) of the Act read with the objects of the assessee-Trust. In order to appreciate the rival contentions, it is necessary to reproduce the objects as set out in Clause III of the MoA as under :-

“1. To run Seth Jai Parkash Mukand Lal Institute of Engineering & Technology, Village Chhotabans, Radaur, Distt. Yamuna Nagar (Haryana), Jai Parkash Mukand Lal Innovative Engineering & Technology Institute, Village Chhotabans, Radaur, Distt. Yamuna Nagar (Haryana) and to establish & run Medical Institutions, Hospitals, Diagnostic Centre, other educational & charitable institutions, in any part of India.

2. To purchase, take on lease & rent, accept gifts/donation or otherwise acquire/transfer any land, building or other moveable/immovable assets

3. To construct or alter any building of the society.

4. To sell, lease, to let, exchange or otherwise transfer for construction all or any portion of the properties, assets of the Society to any other Society or person or persons.

5. To enter into any arrangement/contract with Government or any other person or persons for securing grant-in-aid for the Society & the institutions run by the Society.

6. To raise and borrow money on such terms & conditions as the Society shall deem fit and to pay out of the funds of the Society all expenses of or incidental to the raising of money for the Society

7. To invest the funds/money of the Society in a manner as provided U/S 11(5) of Income Tax Act from time to time be determined, and from time to time transfer/sell such investments.

8. The society will utilize its surplus of revenue & receipts over expenses & payments, if any, or other income in promoting its objects.

9. To make such grants as the Society may think fit for the benefit of the employee or employees of the Society and to grant scholarships, study loans and Financial aids to deserving students/persons.
10. To give donations to institutions, organizations or Societies engaged in social welfare programmes.
11. To give loans to institutions being run/managed by registered Societies/Trusts.
12. To do all such other things as may be incidental or conducive to the attainment of the above objects.”

14. Section 11 of the Act, to the extent relevant, reads as under:-

“11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property;

(c)

(d)

(1A)

(2) Where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—

(a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5);

(c) the statement referred to in clause (a) is furnished [at least two months prior to] the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:

Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

Explanation.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or section 12AB or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or subclause (via) of clause (23C) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.

(3)

(3A)

(4)

(4A)

(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely :—

(i) investment in savings certificates as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;

(ii) deposit in any account with the Post Office Savings Bank;

(iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a cooperative land mortgage bank or a co-operative land development bank).

Explanation.—In this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

(iv) investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);

(v) investment in any security for money created and issued by the Central Government or a State Government;

(vi) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;

(vii) investment or deposit in any public sector company: Provided that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector company,—

(A) such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of three years from the date on which such public sector company ceases to be a public sector company;

(B) such other investment or deposit shall be deemed to be an investment or deposit made under this clause for the period up to the date on which such investment or deposit becomes repayable by such company;

(viii) deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;

(ix) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;

(ixa) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India.

Explanation.—For the purposes of this clause,—

(a) "long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;

- (b) "public company" shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956);
- (c) "urban infrastructure" means a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, roads, bridges and flyovers or urban transport;
- (x) investment in immovable property. Explanation.—"Immovable property" does not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to, or permanently fastened to, anything attached to the earth;
- (xi) deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964);
- (xii) any other form or mode of investment or deposit as may be prescribed."

15. From a plain reading of the aforesaid provisions, the following principles emerge:-

- i) The Trust is required to apply or deemed to have applied 85% of its income for charitable or religious purposes in India in order to claim the benefit of exemption under Section 11(1) of the Act. Apart from the application of such income, the Trust can also accumulate or set apart such income not in excess of 15%;
- ii) Sub-section (2) to Section 11 of the Act envisages a situation where the Trust has not applied or deemed to have applied 85% of the income for religious or charitable purposes in India. In terms of Sub-section (2) of Section 11 of the Act, the income which falls short of 85% of application, can be accumulated or set apart subject to the conditions as specified in Sub-section (2);
- iii) Section 11(2)(a) of the Act requires the Trust to furnish a statement, in the prescribed form and in the prescribed manner, to the AO stating the purpose and period for which the income is being accumulated or set apart for eventual application, which shall not exceed 5 years;
- iv) As per Section 11(2)(b) of the Act, any money so accumulated or set apart has to be invested or deposited in the forms or modes specified in Subsection (5) of Section 11 of the Act;
- v) Sub-section (5) of Section 11 of the Act only prescribes the forms and modes of investing or depositing the money as is referred to in clause (b) of Section 11(2) of the Act.
- vi) Section 11(5) of the Act refers to the investment or deposit of money referred in clause (b) of Section 11(2) of the Act. Clause (b) of Section 11(2) of the Act refers to the money 'so accumulated or set apart'.

16. It is thus clear that Sub-section 5 of Section 11 of the Act, which merely prescribes the forms and modes of investing or depositing the money, relates to the money 'accumulated or set apart'. In other words, Section 11(2) and 11(5) of the Act do not provide for any application of income as such, as is referred to in Section 11(1) of the Act. Quite to the contrary, these provisions are relating to the investment or deposit of income which falls short of the required 85% of the income (which is to be applied for religious or charitable purposes in India).

17. It was strenuously urged on behalf of the assessee that clause III (7) has to be read alongwith other clauses of clause III of MoA. A plain reading of clause III (7) indicates that it refers to investment of the fund/money of the assessee "in a manner as provided under Section 11(5) of the Act". As noticed earlier, Section 11(5) of the Act refers to the forms or modes of investment of the money which is accumulated or set apart, which would be distinct from the application of income as contemplated in Section 11(1) of the Act. We are, therefore, clearly of the view that the investment/deposit of income, as is referred to in Section 11(5) of the Act, cannot partake of the nature of an application of income as contemplated in Section 11(1) of the Act.

18. There is yet another reason why we are unable to accept that clause III (7) of MoA can be said to be application of income. Section 2(15) of the Act defines "charitable purpose" as under:-
 "15) "charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of

monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless-

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year”

It can thus clearly be seen that any investment as contemplated under Section 11(5) of the Act cannot be said to be a charitable purpose by itself. It is essentially an investment of the amount which is either accumulated or set apart for eventual application to such charitable purpose.

19. It is contended on behalf of the assessee that the competent authority having granted registration to the assessee under Section 12AA of the Act in the context of the objects as set out in clause III (1) to (7) of MoA, it is not open for the authorities to hold that clause III (7) of MoA cannot be treated as application of income. We are unable to accept the said contention. This is for the reason that, as noticed earlier, the clause refers to investment of the fund/money, ‘in a manner as provided under Section 11(5) of the Act’, which in itself is pertaining to the money which is accumulated or set apart. A trust can resort to Section 11(5) of the Act even without there being object of that nature as set out in the MoA, as the trust is statutorily permitted to invest/deposit the income which is accumulated or set apart as referred to in Section 11(2)(a) of the Act, in a mode and manner as provided under Section 11(5) of the Act. Nonetheless, the said investment continues to be of income which falls short of 85% which the trust is required to apply for such charitable purpose. It is thus necessarily the income which is accumulated or set apart.

20. We now propose to deal with the decision of the Division Bench in assessee’s own case for assessment year 2008-09. In that case, it was contended on behalf of the assessee that the net additions to the Fixed Deposit Receipts (FDRs) of Rs.6,00,42,237/- should be treated as application of income in view of Section 11(5) of the Act. The Bench placing reliance on clause III (7) of the MoA held that the net addition to the FDRs should be treated as application of income.

21. A perusal of para 12 of the order for assessment year 2008-09 indicates that the Tribunal, on facts, found that as against the gross receipts of Rs.15,52,33,648/-, the Trust was found to have applied the income to the extent of Rs.18,32,95,603/-. In these circumstances, this Tribunal found that there was no merit in the stand of the authorities that the assessee was required to show its intention of setting apart the income by notice under Section 11(2) of the Act. The following observations in para 12 are relevant for the purpose:-

“12. In view of our observations in paras hereinabove, the total expenditure incurred by the assessee and the additions to fixed assets and FDRs, which are allowed as application of income of the previous year, amounts to Rs.18,32,95,603/-. The gross receipts of the previous year in the hands of the assessee-society being Rs.15,52,33,648/-, there is no merit in the stand of the authorities below that the assessee was to show his intention of setting apart the income which has not been utilized during the year, by way of any notice under section 11(2) of the Act. The assessee having invested more than its income by way of application of income in the form of fixed assets and FDRs invested during the year, there was no provisions of the Act compelling the assessee to issue the notice of its intention to make the investments in the succeeding years. In view thereof, we set aside the order of CIT (Appeals) and direct the

Assessing Officer to adopt the income of the assessee-society at nil. Ground No. 1 to 5 raised by the assessee are thus allowed.” (Emphasis supplied)

We, therefore, find in the first instance that the decision was rendered in a factual matrix which was different than the one obtaining in the present case. In that case, the amount having being applied was found to be in excess of the gross receipts, quite contrary to the present case where there is a shortfall for both the relevant years in applying 85% of the receipts for such application. Nonetheless, we are unable to subscribe to the finding recorded by the Bench that the net addition to the FDRs should be treated as application of income. As noticed earlier, Sub-section (5) read with Subsection (2)(b) of Section 11 of the Act refers to the income which is accumulated or set apart, which is necessarily the income which the Trust was unable to apply for charitable purposes. There is a clear distinction between the application of income as contemplated under Section 11(1) of the Act and the income which is accumulated or set apart, which is necessarily the whole or part of the income which the Trust is unable to apply for charitable purposes within the meaning of Section 11(1) of the Act. Apart from placing reliance on clause III (7) of the MoA, the Bench was also swayed by assessment order under Section 143(3) of the Act for assessment year 2005-06 and 2007-08 in which the investment/deposit was allowed as application of income.

It is trite that principles of *res judicata* do not strictly apply to the assessment proceedings which are essentially to be examined on the facts of the case on a year-to-year basis. The interpretation placed by the Division Bench which has failed to notice the distinction between application of such income to charitable purpose as against accumulation or setting apart, the same cannot be concurred with even assuming that for certain earlier years, viz. 2005-06 and 2007-08, such investment in deposit was allowed as an application of income.

22. Coming to the present case, and even assuming for the sake of argument that the investment/deposit as contemplated under Section 11(5) of the Act can be treated as application of income, the AO has found on facts that the assessee in this case has not complied with the said provisions by furnishing a statement in the prescribed forms contemplated under Section 11(2)(a) of the Act. It is clear that such accumulation or setting apart of income which falls short of the required 85% can be so accumulated or set apart for a maximum period of 5 years. This is another indicator to hold that it is an interim measure which the Trust can adopt for accumulation or setting apart of whole or part of income for a period of 5 years, after which it has to be applied for charitable purposes as contemplated under Section 11(1) of the Act.

23. Reliance on the decision in case of DLF Qutab Enclave Complex Medical Charitable Trust (*supra*), in our opinion, is misplaced. That was a case where the assessee-Trust, which was registered under Section 12A of the Act, had received certain premium amount on leasing of a plot of land for a period of 99 years. That amount was deposited by the assessee in a FDR with a scheduled bank and had complied with Section 11(5) of the Act. The AO found that the FDR with bank did not constitute investment in a capital asset. The AO was of the view that assessee had infringed the provisions of Section 11(5) of the Act. The Commissioner (Appeals) accepted the stand of the assessee and found that there was no breach of either Section 11(5) or Section 11(1)(a) of the Act, which order was confirmed by the Tribunal and the matter went to the High Court at the instance of the Revenue.

24. Para 3 of the judgment in DLF Qutab Enclave Complex Medical Charitable Trust (*supra*) would indicate that the only contention raised on behalf of the Revenue was that the term deposits were not sufficient compliance with the requirement of Section 11(5) of the Act. The High Court noticed a decision of Supreme Court in *ACIT vs A.L.N. Rao Charitable Trust*, 216 ITR 697 (SC) in which it was held that Section 11(1) of the Act is not in any manner restricted by Section 11(2) of the Act. The accumulated income which is exempt under Section 11(1)(a) of the Act is not required to be invested in ‘government securities’. It was found that Section 11(2)

of the Act relates only to additional accumulated income beyond 25% (as the section then stood, which is now 15%). The High Court after noticing Section 11(1), (2) and (5) of the Act found that the time deposit in 'scheduled bank' would be a capital asset within the meaning of Section 2(14) of the Act. It can be seen that in the said case the proceeds on leasing out of the land were kept in fixed deposit for construction of a hospital at a future date. Thus, the income was essentially accumulated or set apart for eventual application to the charitable purpose, which in that case was construction of a hospital. The assessee had also complied with Section 11(2) of the Act by furnishing an intimation in Form 10. In our humble view, the decision turned on its own facts as it was a case of accumulation of income. The facts in the present case are clearly distinguishable.

25. In Highway Construction Co. Pvt. Ltd. (supra) before the Gauhati High Court, it was, inter alia, held that a Special Bench has no jurisdiction to decide matters which are not referred to it. Incidentally, in that case, one of the questions was whether the Tribunal was justified in taking up the case on assessee's appeal when earlier the Tribunal had remitted the matter back to the AO in an appeal by the Revenue. We are unable to see as to how that decision can come to the aid of assessee in this case.

26. In the result, we answer both the issues as referred to in the negative. The appeals shall now be placed before the regular Division Bench for disposal according to law.

This issue has thus finally been settled by Special Bench in revenue's favor. It has been held by the bench that the object of an assessee-society to invest its income in the mode and manner as per provisions of Section 11(5) cannot be said to be an object of charitable nature. Further, investment in FDRs could not be said to be an application of income for charitable or religious purposes. Respectfully following the same, the adjudication of Ld. CIT(A), for both the years, stand reversed and that of Ld. AO stand restored. The revenue succeeds in its appeals for both the years. The assessments for both the years, as framed by Ld. AO, stand restored.

Assessee's Appeals for AYs 2005-06 & 2006-07

3.1 The assessee has raised similar grounds in both the years. The assessee's grounds of appeal, for AY 2005-06, read as under: -

1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the reopening of already completed assessment framed under Section 143(3) of the Income Tax Act 1961 by resorting to the provisions of Section 148 of the act which is illegal, arbitrary and unjustified.

2. That the assessment was re-opened on the basis of an audit objection which is not permissible under the law and as such the re-opening upheld by the Commissioner of Income Tax (Appeals) on the basis of an audit objection is illegal, arbitrary and unjustified.
3. That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as facts in upholding the action of the Assessing Officer whereby benefit of excess application of income over receipts incurred in earlier year(s) was not allowed which is illegal, arbitrary and unjustified.
4. That the order of Ld. Commissioner of Income Tax (Appeals) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.

It is evident that the assessee has challenged the reopening jurisdiction of Ld. AO and also seeks benefit of excess application of income over receipts of earlier years. The Ld. AR advanced arguments and filed written submissions by referring to various case laws. The Ld. CIT-DR also advanced arguments and referred to the findings of Ld. CIT(A). Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

3.2 As noted by Ld. AO in the assessment order, the case of the assessee was reopened vide notice u/s 148 dated 27-03-2012 on the following grounds: -

A perusal of Income & Expenditure annexed with the return of income reveals that as against total receipts of Rs.8,86,35,665/-, only a sum of Rs.7,06,25,737/- (revenue expenditure of Rs.3,67,90,756/- + capital expenditure of Rs.3,38,81,961/-) has been spent towards its objects, which forms only 80% (Approx.) of the total receipts. Whereas, in order to claim its income exempt in pursuance of Section 11 & 13 of the Income Tax Act, 1961, at least 85% of the total receipts are / were required to be applied for its objects / charitable purposes. In order to cover the deficit, a sum of Rs.1,25,82,774/- is claimed to have been deposited in the bank fixed deposit Receipts in pursuance of Section 11(2) and 11(5) of the Income Tax Act. However, for the purposes that income of the trust so accumulated or set apart shall not be included in its total income, the assessee trust was required to give an intimation to the Assessing Officer in Form No.10 with regard to purpose and period for which the income is accumulated or set-apart, within a prescribed time limit as prescribed in provisions of Section 11(2)(a) of the Income Tax Act, 1961. However, further perusal of the record, the assessee does not appear to have filed Form No.10 to the Assessing Officer. As the assessee has failed to follow the prescribed procedure and hence a shortfall in application of income of Rs.46,67,770/- was to be assessed as total income of the assessee.

Upon perusal of the same, it is quite discernible that though there was shortfall in application of income in this year, the assessee did not file mandatory Form No.10 and still laid claim on impugned deduction u/s 11 & 12 of the Act. Accordingly, an opinion of escapement of income has been formed and the case has been reopened. This legal issue of reopening has been dealt with by Ld. CIT(A) from para 4.1 onwards of the impugned order. Before Ld. CIT(A), the assessee objected that the case was reopened beyond four years. However, Ld. AO had accepted the claim of the assessee during regular assessment proceedings after due consideration of material on record, facts of the case, explanations offered and after due examination of books of accounts. The assessee had truly disclosed all the material facts during the course of original assessment proceedings itself. Therefore, the reopening was on a mere change of opinion. Further, the reopening has been done on the basis of objections by Audit party. The specific queries were raised on the impugned issue during regular assessment proceedings u/s 143(3) which were duly been responded to by the assessee. Therefore, the reopening was on a mere change of opinion without there being any fresh tangible material on record to form belief of escapement of income.

3.3 The Ld. CIT(A), at para 4.5, observed that the assessee-trust had failed to file mandatory Form No 10 to the Assessing Officer intimating the fact of accumulation of funds. Thus, the assessee failed to follow the prescribed procedure under the statute and there was shortfall in application of its income. The case was reopened after due

approval of appropriate authority which was available on record. This notice was well within the mandate of Sec.151(1). The fact of ongoing proceedings u/s 154, as urged by the assessee, could not be equated with passing of an assessment order. Regarding reopening on the basis of audit objections, it was observed that the information before Ld. AO could be available from various sources including material forthcoming from any other proceedings or from any other officer and the material only provides the background for recording of the reason to believe that the income had escaped assessment. Reference was made to the decision of Hon'ble Supreme Court in the case of **CIT vs. PVS Beedies Pvt. Ltd. (237 ITR 13)** holding that reopening on the basis of error pointed out by the audit party was valid. Similar was the decision of Hon'ble Madras High Court in the case of **CIT vs. First leasing Co. of India Ltd. (241 ITR 248)**. In the case of **Raymond Woollen Mills Ltd. vs ITO (236 ITR 34)**, it was held by Hon'ble Supreme Court that in determining whether the commencement of reassessment proceedings was valid, it has only to be seen whether there was, prima-facie, some material on the basis of which the department could reopen the case. The sufficiency or correctness of material is not a thing to be considered at this stage. In the case of **ACIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (291 ITR 500)**, it was held that even if reason to belief about escapement of income is prompted by audit objections, the assessment would be valid.

3.4 In the present case, Ld. AO duly considered the objections of the assessee on reopening of the case of the assessee. In the

assessment order, Ld. AO brought on record the reasons for reopening the case, the assessee's replies thereto and his findings in the assessment order. On the issue of change of opinion, it was observed that in AY 2005-06, no query was raised by Ld. AO either during show-cause notice or through any order sheet entry. In the order sheet, Ld. AO only asked for copy of judgement reported as 115 Taxman 520 (DIT vs. DLF Qutab Enclave Complex Medical Charitable Trust; Delhi High Court) which was based on submissions made by the assessee. Apart from the copy of this decision, there was no show-cause notice or any other order sheet entry issued by the AO nor any discussion on the issue was found in the assessment order to arrive at any finding. In AY 2006-07, Ld. AO raised the issue through a show-cause notice dated 22-12-2008 which was replied to by the assessee vide letter dated 30-12-2008 but the AO had not recorded any finding on the issue. Later on, same AO, on the basis of objection pointed out by the audit, reopened the issue. However, AO had not given any positive or negative finding during the course of original assessment proceedings. Since the issue was neither discussed in the assessment order nor any evidence was available on record to show acceptance or rejection of issue during the course of original assessment proceedings, there could be no question of any change of opinion. In the case of **Ess Kay Engineering Co. (P) Ltd. (247 ITR 818)**, Hon'ble Apex Court affirmed the findings of Hon'ble Punjab & Haryana High Court (137 ITR 446). The Hon'ble High Court had held that though the assessee may have fully disclosed the facts at the

time of original assessment, however, if the same are found to be untrue on the basis of a material discovered later on by assessing authority, the assessment would be liable to be reopened because in such a case, the assessee would have failed to disclose truly all the material facts necessary for the assessment and it would not be a case of mere change of opinion. If on the basis of fresh material, AO found that the assessee had not truly disclosed all the material particulars then reopening would be valid. Even if the assessee had made a full disclosure of material facts, the same having been found to be untrue then on the basis of discovery of new facts, it could not be said that the reassessment was the result of change of opinion. In such a case, the reassessment could be said to be validly initiated.

3.5 In the present case, the assessee claimed bank FDRs as application of income in view of certain decisions. The AO, after getting new information based on audit objections, recorded his reason to believe that income had escaped assessment. The assessee neither complied with the mandatory statutory provisions nor it intimated Ld. AO, through Form No.10, about accumulation and proposed application of income. The same would show that all the material facts necessary for the assessment was not fully and truly disclosed by the assessee. The same would also establish that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment in the present case. The Hon'ble Delhi High Court in the case of **Honda Siel Power Products Ltd. (2012; 340 ITR 53)** held as under: -

The term 'failure' on the part of the assessee is not restricted only to the income tax return and the columns of the income-tax return or the tax audit report. This is the first stage. The said expression "failure to fully and truly disclose material facts" also relates to the stage of the assessment proceedings, the second stage. There can be omission and failure on the part of the assessee to disclose fully and truly material facts during the course of the assessment proceedings. This can happen when the assessee does not disclose or furnish to the Assessing Officer complete and correct information and details which it is required to disclose under an obligation. Burden is on the assessee to make full and true disclosure. [Para 10].

The law postulates a duty on every assessee to disclose fully and truly all material facts for its assessment. The disclosure must be full and true. Material facts are those facts which, if taken into account, would have an adverse effect on the assessee by the higher assessment of income than the one actually made. They should be proximate and should not have any remote bearing on the assessment. Omission to disclose may be deliberate or inadvertent. This is not relevant, provided there is omission or failure on the part of the assessee. The latter confers jurisdiction to reopen an assessment. [Para 12].

Whether or not there was a failure or omission to disclose fully and truly material facts, is essentially a question of fact. Section 14A was introduced with retrospective effect by the Finance Act, 2001, which was tabled in the Parliament on 28-2-2001 and was passed by the Parliament on 1-4-2001. The assessee was a multinational company and it was difficult to perceive and accept that its tax or legal department was not aware of and did not have knowledge about section 14A. [Para 13]

The assessee had accepted that 'material particular' referred to in the first proviso to section 147 not only refers to details in the return but also to explanations and details furnished during the course of assessment proceedings. The assessee had not stated anything or given factual matrix to justify and state that the material facts had been fully and truly disclosed in the assessment proceedings and there was no omission or failure on the part of the assessee. The Explanation to section 147 stipulates that mere production of books of account or other evidence is not sufficient. Therefore, merely because material lies embedded in material or evidence, which the Assessing Officer could have uncovered but did not uncover, is not a good ground to deny or strike down a notice for reassessment. Whether the Assessing Officer could have found the truth but he did not, does not preclude the Assessing Officer from exercising the power of reassessment to bring to tax the escaped income. [Para 15].

There was an omission and failure on the part of the assessee to point out the expenses incurred relating to tax free/exempt income which prima facie had been claimed as a deduction in the income and expenditure account. There was, therefore, omission and failure on the part of the assessee to disclose fully and truly material facts. [Para 16]

This decision was upheld by Hon'ble Supreme Court (20 Taxmann.com 5) confirming the proposition that the assessee having not pointed out during assessment proceedings about expenses

incurred relatable to tax free income, there was omission and failure on its part to disclose fully and truly material facts and hence reopening of assessment was justified.

3.6 In the background of all these facts and judicial decisions, it was concluded by Ld. CIT(A) that Ld. AO was fully justified to reopen the case as there was failure on the part of the assessee and the assessee had not disclosed fully and truly all the material facts necessary for the assessment. Finally, the reassessment proceedings were held to be justified for both the years. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. The material facts and relevant dates are not much in dispute. Admittedly, the assessee's return of income for AY 2005-06 was initially processed u/s 143(1) and later on, scrutinized u/s 143(3) on 25-10-2007 accepting the returned income. However, the case was reopened u/s 147 r.w.s. 148 of the Act on 27-03-2012 which is beyond four years from end of relevant AY 2005-06. The reopening stem from the opinion of Ld. AO that the approx. 80% of receipts were applied towards the object of the trust. To cover up the deficit, the assessee claimed Bank FDRs as an application of income on the ground that investment made in Bank FDRs would be capital expenditure and the same is to be considered as an application of income. However, the said claim was inadmissible as per the provisions of Sec. 11(1A). The Ld. AO also recorded that the assessee had not given any intimation in Form No. 10 as required u/s 11(5) with regard to the purpose and

period for which the excess income was accumulated or set apart. Accordingly, the case was reopened with prior approval of Ld. CIT, Panchkula vide order no. 4986 dated 15-03-2012. From the record, it emerges that the original assessment was framed against the assessee u/s 143(3) on 25-10-2007 which is kept on Page Nos.15 to 17 of the paper-book. As per assessment order, a detailed questionnaire along with statutory notices was issued to the assessee on 25-06-2007 which was obtained and scrutinized. The copy of this notice has been placed on Page nos. 69 to 70. All the information as obtained by Ld. AO was found to be in order and no anomaly was noticed. Accordingly, the returned income was accepted. The Ld. CIT(A) perused the original assessment records and rendered a finding that in AY 2005-06, no query was raised by Ld. AO on the impugned issue either during show-cause notice or through any order sheet entry. In the order sheet, Ld. AO only asked for copy of judgement reported as 115 Taxman 520 (DIT vs. DLF Qutab Enclave Complex Medical Charitable Trust; Delhi High Court) which was based on the submissions made by the assessee. Apart from the copy of this decision, there was no show-cause notice or order sheet entry issued by the AO nor any discussion on the issue was found in the assessment order to arrive at any finding. Upon perusal of questionnaire dated 25-06-2007 (Page Nos. 69 to 70 of the paper-book), it could be seen that the issue of shortfall in application of income has nowhere been flagged by Ld. AO in the said notice. No query has been raised on Bank FDRs being treated as application of

income. The assessee filed its replies on 16-07-2007 & 25-10-2007 which was restricted to the queries as raised by Ld. AO. There is no discussion on Bank FDRs whatsoever. Considering these replies, the original assessment has been framed by Ld. AO on 25-10-2007. In AY 2006-07, Ld. AO raised the issue through a show-cause notice dated 22-12-2008. In this notice, Ld. AO sought justification by the assessee for treating the FDRs as application of income for charitable purposes. The assessee, vide replies dated 26-12-2008 & 30-12-2008, justified its claim and referred to a decision of Chandigarh Tribunal to support the same. However, while framing the assessment on 30-12-2008, Ld. AO has not recorded any finding on the issue nor is there any discussion, whatsoever, on the impugned issue, in the assessment order. These facts would establish that the impugned issue was not examined by Ld. AO during the course of regular assessment proceedings for both the years.

5. During hearing before us, Ld. AR has sought different interpretation of these facts. However, no factual error could be demonstrated in the findings of Ld. CIT(A). It could be gathered that in AY 2005-06, no specific query has been raised by Ld. AO on the impugned issue and what was demanded from the assessee was copy of the decision as referred to by the assessee. In AY 2006-07, though a query was raised on 22-12-2008 and the same was responded to by the assessee on 30-12-2008, no findings was recorded by Ld. AO on the impugned issue in the assessment order. The Ld. AO had not given any positive or negative finding during the

course of original assessment proceedings. Since the issue was neither discussed in the assessment order nor any evidence is available on record to show acceptance or rejection of issue during the course of original assessment proceedings, there could be no question of formation of any opinion at assessment stage and change of opinion at the time of reopening of the case of the assessee. On these facts, no fault could be found in the findings of Ld. CIT(A) that no opinion was formed by Ld. AO during the course of regular assessment proceedings on the impugned issue. We order so.

6. We find that the case law of Hon'ble Apex Court in **Ess Kay Engineering Co. (P) Ltd. (247 ITR 818)**, as rightly quoted by Ld. CIT(A), duly favors the reopening of the case of the assessee. In this decision, Hon'ble Apex Court affirmed the findings of Hon'ble Punjab & Haryana High Court (137 ITR 446). The Hon'ble High Court had held that though the assessee may have fully disclosed the facts at the time of original assessment, however, if the same are found to be untrue on the basis of a material discovered later on by assessing authority, the assessment would be liable to be reopened because in such a case, the assessee would have failed to disclose truly all the material facts necessary for the assessment and it would not be a case of a mere change of opinion. If on the basis of fresh material, AO found that the assessee had not truly disclosed all the material particulars then reopening would be valid. Even if the assessee had made a full disclosure of material facts, the same having been found to be untrue then on the basis of discovery of new facts, it could not

be said that the reassessment was the result of change of opinion. In such a case, the assessment could be said to be validly initiated. Considering all these facts, we concur with the adjudication of Ld. CIT(A) on the issue of change of opinion. The case laws as quoted by Ld. AR are rendered in the background of the fact that an opinion was already formed during the course of regular assessment proceedings and the reopening was on mere change of opinion. The same is not the case here.

7. The Ld. AR has further pointed out that on the basis of audit objections, notice u/s 154 was issued on 29-01-2009 to which the assessee objected. Finally, no rectification u/s 154 was ever passed clearly indicating that the proceedings u/s 154 were dropped. Thereafter, the case has been reopened after four years which is nothing but change of opinion. However, we concur with the adjudication of Ld. CIT(A) that proceedings u/s 154 could not be equated with assessment proceedings. It is open for revenue to initiate appropriate proceedings in accordance with law. The dropping of proceedings u/s 154 could not lead to a conclusion that an opinion was formed on the issue and the case could not be reopened thereafter. The proceedings u/s 154 have limited application to correct mistakes which are apparent on the facts of the record and nothing beyond. This argument does not hold any water.

8. The Ld. AR has further argued that the case of the assessee has been reopened at the behest of audit objections. The reasons recorded by Ld. AO to reopen the case for AY 2005-06 has been

placed on record at Page Nos.74 to 76 of the paper-book. Upon perusal of the same, it could be seen that the reasons are detailed one which shows independent application of mind by Ld. AO while reopening the case of the assessee. The trigger might be audit objection, however, Ld. AO has duly considered the fact that despite shortfall in application of income, the assessee failed to file requisite Form No.10. The assessee claimed FDRs as an application of income which was not correct as per the provisions of Sec. 11(1A). The ratio of decision in the case of DIT vs. DLF Qutab Enclave Complex Medical Charitable Trust) as quoted by the assessee was not attracted. The quantum of shortfall in application has been quantified and the case has been reopened with following observations: -

In view of the above, I have reasons to believe that income amounting to Rs.46,67,779/- chargeable to tax for the Assessment Year 2005-06 has escaped assessment by reasons of the failure on the part of the assessee to disclose fully and truly material facts necessary its assessment for information, as submitted above, in the return of income. Therefore, notice u/s 148 of the Income Tax Act, 1961 is require to be issue for both the assessment years by invoking the provisions of Sec.147 of the Income Tax Act, 1961.

From the recorded reasons, it is quite discernible to us that the reopening is with due application of mind by Ld. AO though the same may be triggered by an Audit Objection. The Hon'ble Apex Court in the case of **Raymond Woollen Mills Ltd. vs ITO (236 ITR 34)** held that to determine whether the commencement of reassessment proceedings was valid, the only thing to be seen was that whether there was, prima-facie, some material on the basis of which the department could reopen the case. The sufficiency or correctness of

material was not a thing to be considered at this stage. Similarly, in the case of **CIT vs. PVS Beedies Pvt. Ltd. (237 ITR 13)**, it was held by Hon'ble Apex Court that reopening on the basis of error pointed out by the audit party was valid. Similar is the decision of Hon'ble Madras High Court in the case of **CIT vs. First leasing Co. of India Ltd. (241 ITR 248)**. These decisions duly support the reopening of the case of the assessee and have rightly been quoted by Ld. CIT(A) in the impugned order.

9. The Ld. AR has quoted the decision of Hon'ble Supreme Court in the case of **Indian & Eastern Newspaper Society (119 ITR 996)** for the proposition that audit objection could not be treated as information u/s 147 of the act. However, upon perusal of this case law, we find that this case law deal with a situation when an opinion was already formed by Ld. AO during original assessment proceedings on the heads of income whereas audit party opined differently. The same is not the case here. Similar are the facts in the case law of Hon'ble Bombay High Court in **PCIT vs. Yes Bank Ltd. (135 Taxmann.com 161)**. In this case, Ld. AO had taken a stand contrary to the view expressed in the audit objection and had even addressed a letter to the Director of Audit intimating that objections raised by audit party were not acceptable. Nevertheless, the Assessing Officer reopened and issued notice u/s 148. Thus, this is the case which was reopened merely on audit objection which was not accepted by Ld. AO. The same is not the case here. The other case laws, as quoted by Ld. AR,

are similarly distinguishable and do not render any assistance to the case of the assessee.

10. On the issue of full and true disclosure by the assessee, Ld. CIT(A) has referred to the decision of Hon'ble Apex Court in the case of **Ess Kay Engineering Co. (P) Ltd. (247 ITR 818)** affirming the findings of Hon'ble Punjab & Haryana High Court (137 ITR 446). The Hon'ble High Court had held that though the assessee may have fully disclosed the facts at the time of original assessment, however, if the same are found to be untrue on the basis of a material discovered later on by assessing authority, the assessment would be liable to be reopened because in such a case, the assessee would have failed to disclose truly all the material facts necessary for the assessment and it would not be a case of a mere change of opinion. If on the basis of fresh material, AO found that the assessee had not truly disclosed all the material particulars then reopening would be valid. Even if the assessee had made a full disclosure of material facts, the same having been found to be untrue then on the basis of discovery of new facts, it could not be said that the reassessment was the result of change of opinion. In such a case, the assessment could be said to be validly initiated. This case law fully justifies the reopening of the case of the assessee.

11. In the context of case before us, it could be seen that the assessee has neither complied with the mandatory statutory provisions nor it intimated Ld. AO, through Form No.10, about accumulation and proposed application of income. The same would

show that all the material facts necessary for the assessment were not fully and truly disclosed by the assessee. The same would also establish that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment in the present case. The decision of Hon'ble Delhi High Court in the case of **Honda Siel Power Products Ltd. (2012; 340 ITR 53)** has rightly been quoted by Ld. CIT(A). In this decision, it was held that the term 'failure' on the part of the assessee is not restricted only to the income tax return and the columns of the income-tax return or the tax audit report. This is the first stage. The said expression "failure to fully and truly disclose material facts" also relates to the stage of the assessment proceedings which is the second stage. There can be omission and failure on the part of the assessee to disclose fully and truly material facts during the course of the assessment proceedings. This can happen when the assessee does not disclose or furnish to the Assessing Officer complete and correct information and details which is required to be disclosed under an obligation. Burden is on the assessee to make full and true disclosure. The law postulates a duty on every assessee to disclose fully and truly all material facts for its assessment. The disclosure must be full and true. Material facts are those facts which, if taken into account, would have an adverse effect on the assessee by the higher assessment of income than the one actually made. They should be proximate and should not have any remote bearing on the assessment. Omission to disclose may be deliberate or inadvertent. This is not relevant, provided there is

omission or failure on the part of the assessee. The latter confers jurisdiction to reopen an assessment. Whether or not there was a failure or omission to disclose fully and truly material facts, is essentially a question of fact. We find that this case law duly support the case of the revenue in reopening the case of the assessee.

12. Finally, considering the facts and circumstances of the case, we would hold that reassessment proceeding, for both the years, were validly initiated by Ld. AO and no defect could be seen in the reassessment jurisdiction of Ld. AO. By endorsing the view of Ld. CIT(A), we dismiss the corresponding grounds of appeal as raised by the assessee, in both the years.

13. In remaining grounds of appeal, Ld. AR has pleaded that benefit of excess of application of income over receipts as incurred by the assessee in earlier years would be admissible in terms of decision of Hon'ble Apex Court in the case of **CIT vs. Subros Educational Society (96 Taxmann.com 652)**. This issue has been dealt with by Ld. CIT(A) in para-6 of its order for AY 2005-06. The Ld. CIT(A) dismissed this ground by considering the decision of this Tribunal in assessee's own case for AY 2008-09, ITA No.952/Chd/2011. Aggrieved, the assessee is in further appeal before us.

14. We find that this argument cannot be accepted at this stage of proceedings in view of the fact that the assessee has consistently been claiming the FDRs to be an application of income in earlier years also. Now, this issue, on merits, stood settled by Special Bench

against the assessee. Therefore, the benefit of set-off could not be allowed now. Further, such a claim was neither made in the return of income nor during the course of regular assessment proceedings. The reassessment proceedings are for the benefit of revenue only. Secondly, it has nowhere been factually demonstrated before us that after excluding FDRs, the assessee made excess application of income in earlier years. For all these reasons, this argument stands dismissed. The corresponding grounds of assessee's appeals, for both the years, stand dismissed.

15. In the result, the assessee's appeals, for both the years, stand dismissed.

Conclusion

16. The revenue's appeals ITA Nos.832 & 833/Chandi/2014 stand allowed. The assessee's appeals ITA Nos.824 & 825/Chandi/2014 stand dismissed.

Order pronounced on 10th March, 2026.

-Sd-
(RAJPAL YADAV)
VICE PRESIDENT

-Sd-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Dated: 10-03-2026

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT CHANDIGARH