

All India Children Care and Vs. Joint Commissioner of Income Tax

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Court : Income Tax Appellate Tribunal ITAT Allahabad

Decided On : Jun-26-2002

Judge : P Kalsian, B Saini

Appellant : All India Children Care and

Respondent : Joint Commissioner of Income Tax

Judgement :

1. These four appeals filed by the assessee are directed against the common order of the CIT(A), Varanasi dt. 10th Jan., 2002, for the asst.

yrs. 1993-94, 1994-95, 1995-96 and 1997-98 and are disposed of by a single order for the sake of convenience.

These appeals were taken up by this Bench on 5th April, 2002, as the Registry has received copy of order dt. 21st March, 2002, of Hon'ble Allahabad High Court in the matter. It was directed by the High Court to the Tribunal to decide the aforesaid appeals very expeditiously preferably within three weeks from the date of communication of this order. As per above direction, we have preponed hearing and started hearing appeals from 17th April, 2002, on priority.

2. The notices under Section 148 were issued for the asst. yrs.

1993-94, 1994-95 and 1995-96 on 1st Aug., 1997, and as mentioned by the AO notices were served on 5th Aug., 1997. Notices under Section 142(1) requiring assessee to file return for asst. yr. 1997-98 was issued by ITO, Azamgarh on 31st

July, 1997. The assessee filed returns of income on 31st March, 1999. Notices under Section 148 were issued by the ITO, Azamgarh. The return of loss for the asst. yr. 1997-98 was above Rs. 10 lakhs. The case records were transferred by the ITO to Jt. CIT (Asst.) Special Range, Varanasi on the ground that the correct jurisdiction over the case lies with the Joint CIT (Asst) Special Range, Varanasi.

The case records were received by the Jt. CIT (Asst.) Special Range, Varanasi thereafter referred to as "the AO") on 7th July, 1999.

3. The AO issued notices under Section 143(2) and 142(1) of the IT Act dt. 18th Jan., 2000, along with a detailed enquiry letter for each year separately. In response to these notices, Sri A.C. Srivastava, advocate along with Sri P.R. Maurya, Office Supdt. and Sri R.P. Srivastava, incharge of accounts section of the assessee attended from time to time. The AO noted that the status was shown by the assessee as "03", which is meant for HUF(SP). The assessee was required to intimate the correct status and to prove it. The assessee vide reply fixed on 21st Feb., 2000, before the AO stated that due to clerical mistake, status was wrongly claimed as "03" instead of "08" i.e., Association of Persons (Trusts) and the status was correct as such :

4. The assessee originally claimed exemption under Section 11 of the IT Act, 1961, but during the course of assessment proceedings, the assessee changed the stand and vide letter dt. 28th Sept., 2000, claimed exemption under Section 10(22) of the Act. The AO, however, did not agree with the contention of the assessee. The AO examined the objections of the society as mentioned in its memorandum and reproduced the same on p. 4 of the assessment order, The AO came to the conclusion that the society had come into existence not solely for education but also for several other activities, such as, to provide hostel facility for working women, to provide employment, create consciousness amongst the persons belonging to scheduled castes/tribes living below poverty line, plantation, Pollution, rural development, medical aid, old age home, etc. The AO considered that the income of the society is not exempt under Section 11 of the IT Act. The income of the assessee is to be considered under Section 10(22) of the IT Act. After considering the facts stated by the assessee before the AO and after going through the material placed before the AO, he came to the conclusion that the assessee has been making huge profits year after year

and very limited expenditure is incurred as compared to receipts from various sources including fees from students, hostel receipts, grants, donation, miscellaneous income etc. The AO after considering the depreciation allowable to the assessee came to the conclusion that there are huge surpluses in asst. yrs. 1993-94, 1994-95, 1995-96 and 1997-98 as mentioned in para. 6 p. 5 of the assessment order. After allowing depreciation, the AO calculated surplus as under : From the surplus shown by the assessee after claiming depreciation the AO came to the conclusion that the assessee-society is existing for profit and there is no element of charity or an act of benevolence. The AO came to the conclusion that the assessee-company is running the show purely on commercial basis and only to evade legitimate incidence of tax. The AO has also mentioned in para. 6(viii) that there is a systematic attempt to siphon out funds of the society in the garb of purchase of fixed assets such as land, construction of building, etc.

The assessee-society claimed that the surplus is invested in acquiring various fixed assets such as, land, construction of building and other assets. The AO also observed that the society has debited the excess amount in connection with the purchase of land, which was over and above the amount shown in the purchase deeds. The details of such excess amounts have been mentioned by the AO on p. 6 para. 6(ix) of the assessment order. The AO noticed that the amounts spent for purchasing the land as per purchase deeds have been shown at Rs. 3,95,503 for asst. yrs. 1993-94, 1994-95, 1995-96 and 1997-98 [p. 6 of the assessment order para. 6(ix)] whereas in the balance sheet the investment in the land has been shown at Rs. 13,09,094. The assessee replied vide letters as well as order-sheet dt. 29th March, 2000 that though the payments have been recorded in the books at Rs. 13,09,094, yet the assessee did not have any receipt or evidence for such payments except the amount mentioned in the sale deed at Rs. 3,95,503. The AO came to the conclusion that the funds of the society to the extent of Rs. 9,13,591 (Rs. 13,09,094-3,95,503) have been siphoned off by the Management.

5. The AO also asked the assessee to produce original voucher for additions made in the fixed assets, such as, building, machinery, furniture etc. but no vouchers for labour charges and bricks, sand etc.

were available with the assessee. There was no deduction of tax at source from the payments to the contractors, architects etc. Most of payments were by cash and not by cheques. There were no vouchers for furnitures, equipments, bed and bedding etc. The AO noticed that the manager of the society Sri Bajrang Tripathi has advanced loan of Rs. 2,65,000 to the society and after considering household expenses of Sri Bajrang Tripathi, he came to the conclusion that he could hardly save the amount for investment in society, The AO has mentioned in para.

6(xv) that all the expenses claimed in income and expenditure account are not supported by vouchers. It was claimed before the AO that income of the society is exempt under Section 10(22) of the IT Act but the AO denied the claim of the society for exemption under Section 10(22) on the ground that the assessee-society does not solely exist for educational purposes and it is operating purely for profit motive. The assessee has claimed exemption under Section 11 of the IT Act also. The AO, as mentioned in para 7(i) of the assessment order, held that registration certificate dt. 10th March, 1978, issued by the CIT, Allahabad is in the name of some other society with a similar name. The same has been issued in the name of "Children Care and Educational Development Society" and not in the name of the assessee-society. On this score, the AO denied the deduction under Section 11 of the IT Act to the assessee-society. Ultimately, the AO came to the conclusion that the assessee-society is not carrying on any charitable activity and is running the business of schools and hostels, etc. and the assessee is not entitled to deduction under Section 11 of the IT Act. The AO also held that the society is not existing solely for educational purposes but for the personal profit of the management in the garb of society.

The AO denied exemption claimed under Section 10(22) and deduction claimed under Section 11 of the Act and assessed the surplus of receipts over expenses in asst. yrs. 1993-94, 1994-95, 1995-96 and 1997-98 to tax in the status of AOP. The following amounts of net profit has been assessed to tax : 6. The assessee-society field appeals before the CIT(A). In first appeal, the CIT(A) vide order dt. 10th Jan., 2002, dismissed the appeals of the assessee. The CIT(A) came to the conclusion that the assessee-society does not fulfil the condition precedent for being eligible to claim exemption under Section 11. Similarly, the CIT(A) came to the conclusion

as mentioned in para. 6 of his order that the assessee-society is not solely for educational purpose and 'profit' definitely formed part of its business. The CIT(A), therefore, denied exemption under Section 10(22) of the IT Act also. The assessee-society felt aggrieved and carried the matter before the Tribunal.

6-A. The assessee-society has filed all the appeals which were signed by the trustees. It was pointed out whether the signatory of the appeal has been appointed as trustee in the society and whether the formation of the society is claimed as a trust. Subsequently on 19th April, 2002, the memorandum of appeal (Form No. 36) was revised and the appeals were signed in the capacity of the manager of the assessee-society which are admitted.

7. It is argued by the learned counsel for the assessee that the AO has passed regular assessment order twice within the meaning of Section 2(8) of the IT Act on 29th March, 2000. According to the learned counsel on the same date i.e., 29th March, 2000, assessment within the meaning of Section 2(8) has been made by the same authority, which is evident by the photocopy of the order sheet entries dt. 29th March, 2000. According to the learned counsel when the assessment was already completed on 29th March, 2000 under Section 143(1)(a), there was no need to pass second order of assessment under Section 143(3) on 29th March, 2000, as no further notices under Section 143(2) were issued after marking first assessment on 29th March, 2000.

7-A. According to the learned counsel for the assessee processing of return under Section 143(1)(a) on 29th March, 2002, and sending of intimation under Section 143(1)(a) is different from order under Section 143(3) dt. 20th March, 2002, the second order of assessment. No notice under Section 143(2) was issued after 29th March, 2002. Hence, after issuing of notice under Section 143(2), the AO is debarred from processing the return under Section 143(1)(a).

7.B. The learned standing counsel stated that notice under Section 143(2) was issued prior to passing of assessment order under Section 143(3) on 29th March, 2002, intimation under Section 143(1)(a) has been signed on 29th March, 2000. No second notice under Section 143(2) is required after intimation under Section 143(1)(a) because notice under Section 143(2) has already been issued.

According to the learned standing counsel, there is no illegality in sending intimation under Section 143(1)(a) and assessment order under Section 143(3) on the same date on 29th March, 2002.

8. The assessee's counsel also raised a preliminary objection that the AO viz., Jt. CIT did not have the jurisdiction over the case of the assessee-society. The jurisdiction is to be conferred on various officers in the charge of Commr. of Income-tax, Varanasi, hereinafter referred to as "the CIT" through an order passed under Section 120 r/w Section 124 of the IT Act. According to the learned counsel for the assessee, territory-wise ITO, Azamgarh should have jurisdiction (if so conferred by the CIT, Varanasi) and Jt. CIT, Varanasi could have the jurisdiction only after an order under Section 127 was passed by the CIT, Varanasi transferring jurisdiction in the case of the assessee-society from Azamgarh to Varanasi. Before passing such an order, which involved transfer from one station to another station, the affected person i.e., assessee-society has to be given an opportunity of being heard by the CIT. According to the learned counsel if the Jt.

CIT has no jurisdiction to make assessment, then all the action of the authority concerned would be illegal. It is also submitted by the assessee's counsel that on 29th April, 2002 and 30th April, 2002, the CIT (Departmental Representative) as well as the learned standing counsel, Sri Shambhu Chopra, advocate have not been able to produce any such jurisdiction order, which empowered Jt. CIT, Varanasi to exercise jurisdiction over the case of the assessee-society.

9. The learned counsel further argued that the reasons recorded by the ITO, Azamgarh who issued notices under Section 148, dt. 1st Aug., 1997, for asst. yrs. 1993-94, 1994-95 and 1995-96 do not meet the requirement of law in view of the principle laid down by the Hon'ble Supreme Court in the case of ITO and Ors. v. Lakhmani Mewaldas (1976) 103 ITR 437 (SC). According to the learned counsel reasons for the formation of belief that the income has escaped assessment must have a rational connection with or relevant bearing on the formation of the belief.

There must be a direct nexus or live link between the material coming to the notice of the ITO and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his

failure to disclose fully and truly all material facts. The reason for the formation of the belief must be held in good faith and should not be a mere pretence. The learned counsel also referred to certain decisions of the Hon'ble Supreme Court.

According to the learned counsel the basis for issuing notices under Section 148 of the Act was that the assessee has been running school, an "institution" and earning income from, such institution and making investment in purchase of buses and buildings. According to the learned counsel, the income of the school is exempt under Section 10(22) of the IT Act and, therefore, on this basis it could not be said that any income has escaped assessment.

10. The learned counsel for the assessee further argued that the issue and service of valid notice is sine qua non of the proceeding under Section 148. It is argued by the learned counsel that in the case of the assessee-society notices for the asst. yrs. 1993-94, 1994-95 and 1995-96 had not been validly issued. According to the learned counsel, notices dt. 1st Aug., 1997, have been addressed to M/s manager, All India Children Care and Welfare Society, Railway Station, Azamgarh, for the asst. yr. 1993-94, manager, All India Children Care and Welfare Society, for asst. yr. 1994-95 and manager, All India Children Care and Welfare Society, for asst. yr. 1995-96. According to the learned counsel for the assessee, notice for asst. yr. 1993-94 has been addressed to "M/s manager" but there is no such entity in existence and in any case, it cannot be said to be addressed to the assessee. For the asst. yrs. 1994-95 and 1995-96, the notices have been addressed to "manager, All India Children Care and Welfare Society. The actual name of the society is. "All India Children Care and Educational Development Society". Therefore, according to the learned counsel, it cannot be said that notices for all the three years were addressed/issued to the assessee-society and it is argued by the learned counsel that no proceedings have been initiated under Section 148, in the case of the assessee-society and the assessment orders for these three years were wholly without jurisdiction. It is further stated by the learned counsel for the assessee that status of the assessee has not been mentioned in the notices and unless status is mentioned in the notices under Section 148, notices cannot be said to have been issued at all.

The learned counsel relied on the decision of the Allahabad High Court in the case of Madan Lal Agarwal v. CIT (1983) 144 ITR 745 (All), and the decision of the Tribunal in the case of Monga Metals (P) Ltd. v. Asstt. CIT (2000) 67 TTJ (All) 247. According to the learned counsel, absence of status of the assessee in the notice is an infirmity to the notice and is vital to the assumption of jurisdiction under Section 148 of the Act.

11. The learned counsel for the assessee further argued that notice should be served on the person mentioned in the notice either by post or as if it were summons issued by the Court under the CPC, 1908.

Notice should be served on the person concerned or his authorised representative or agent. It is stated by the learned counsel that none of the notices have been served on the manager of the assessee-society or any member thereof nor any person authorised by the manager or any member of the society. As a matter of fact, AO could not have met this requirement as he himself was not aware of the person for whom the notice was meant, which is clear from the fact that the status is not mentioned in the notice. Even in the reasons recorded, the name of the assessee-society has not been correctly mentioned. Initials appearing in the notices do not belong to either the manager or member of the society or any employee of the society. According to the learned counsel since the notices have not been served in accordance with the provisions of law, the assessments are void ab initio.

12. With reference to these preliminary objections raised by the learned counsel for the assessee, learned standing counsel of the Department Sri Shambhu Chopra, advocate, argued that although the Department could not produce the jurisdiction order, the assessee could not have raised this objection for the first time before the Tribunal in view of the decision of the Allahabad High Court in the case of Hindustan Transport Co. v. IAC (1991) 189 ITR 326 (All). According to the learned standing counsel of the Department that if a question arises whether the AO has jurisdiction to assess any person, the question shall be determined by the Director General or the CIT and no person shall be entitled to call in question the jurisdiction of the AO where he has made a return under Sub-section (1) of

Section 139, after the expiry of one month from the date on which he was served with the notice under Section 142(1) or 143(2) or after the completion of the assessment, whichever is earlier, and where the assessee has made no return, he was not entitled to call in question the jurisdiction of the AO after the expiry of time allowed by the notice under Sub-section (1) of Section 142 or notice under Section 148 for the making of the return or by the notice under the first proviso to Section 144 to show cause why the assessment should not be completed to the best of the judgment of the AO, whichever is earlier. Where the assessee calls in question the jurisdiction of the AO, then the AO shall, if not satisfied with the correctness of the claim, refer the matter for determination under Sub-section (2) of Section 124 to the CIT before the assessment is made.

12A. The learned standing counsel of the Department argued that the assessee-society is an institution. The letters/notices are received by the clerks in the office of the society and passed on to the person concerned, for whom the same are meant. According to the learned standing counsel of the Department, the notice has been served on some employee of the assessee-society on 5th Aug., 1997. The learned standing counsel pointed out that the infirmity in the service of notice was not argued before the AO and the CIT(A). He stated that the assessee-society has complied with the notice served under Section 148 and has filed returns of income for the asst. yrs. 1993-94 to 1995-96, Filing of the returns of income by the assessee-society itself shows that the notices under Section 148 were served on the assessee-society otherwise; the assessee would not have filed the return of income. The learned standing counsel of the Department has also stated that the notice under Section 148 has been served on one Dubey and notice server has counter-signed in token of service of notice on the society after, the notice was served.

12-B. The learned counsel for the assessee, however, stated that it is not known on whom the notice under Section 148 was served. The notice was found on the table of the manager after about 7 months from the date of the notice. The manager tried to contact the ITO, Azamgarh, who issued notice and then filed the return of income for the asst. yrs.

1993-94 to 1995-96.

13. In reply to the Department's standing counsel's argument, it was submitted by the learned counsel for the assessee that the issue regarding jurisdiction of the AO has been raised before the learned CIT(A) through written submissions (p. 14 to 37 of the paper book). It was further contended that the issue of jurisdiction cannot be raised after the proceedings have been initiated by the AO having jurisdiction in terms of an order passed under Section 120 r/w Sub-section (1) or Sub-section (2) of Section 124. It is argued by the learned counsel that in the present case no such order has been passed by the learned CIT, Varanasi after the charge was created in June, 1997, and the issue of jurisdiction could very well be raised by the assessee at any stage.

It is argued by the learned counsel that in the absence of any order having been passed by the CIT, Varanasi, the decision of the Hon'ble Allahabad High Court in the case of Hindustan Transport Co. v. IAC (supra) relied upon by the Revenue is not applicable. According to the learned counsel since no order regarding Jurisdiction has been passed, the assessment orders dt. 29th March, 2000 are non est.

14. As regards the issue of notice under Section 147 of the IT Act for the asst. yrs. 1993-94, 1994-95 and 1995-96, it is argued by the learned counsel for the assessee that the reasons recorded by the AO did not meet the requirement of law in view of the principles laid down by the Hon'ble Supreme Court in the case of ITO v. Lakhmani Mewaldas (supra). The learned counsel for the assessee argued that before notice under Section 148 is issued reasons should be recorded by the AO. Secondly, the reasons should be such which could provide a reasonable nexus between the "formation of reasons to believe" and "escapement of income". It is argued by the learned counsel that reasons recorded by the ITO, Azamgarh, who issued notices dt. 1st Aug., 1997, for asst.

yrs. 1993-94, 1994-95 and. 1995-96 do not meet the requirement of law laid down by the Hon'ble Supreme Court in the case of Gangs Saran & Sons (P) Ltd. v. ITO and Ors. (1981) 130 ITR 1 (SC). According to the assessee's counsel, the AO, who issued notice under Section 148 should have reasons to believe that income

has escaped assessment and such escapement is by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. If either of these conditions is not satisfied, the notice under Section 148 would be without jurisdiction; According, to the learned counsel, the basis of issue of notice under Section 148 was that the assessee has been running schools, earning income from such institutions and making investment in purchase of buses and buildings.

According to the learned counsel, the income of the school is exempt under Section 10(22) of the IT Act and it cannot be said that any income has escaped assessment unless there has been some basis to hold that there was no fulfilment of the requisites of Section 10(22), The learned counsel relied on the decision of the Orissa High Court in the case of Secondary Board of Education Orissa v. ITO (1972) 86 ITR 408 (Ori).

15. The learned standing counsel on behalf of the Department referred to the provisions of Section 147 as have been brought on the statute book with effect from 1st April, 1989, and submitted that Sub-section (a) and (b) as contained in Section 147 have been done away with.

Therefore, the distinction, which used to be on the statute book earlier, was not applicable to the first three years under appeal, as all these fell in the post-amendment period. According to the learned standing counsel of the Department, after the amendment of the provisions of Section 147 w.e.f. 1st April, 1989, the AO can issue notice under Section 148 if he is satisfied that income has escaped assessment, even if the information relating to such escapement is all along on the record.

15.A The learned standing counsel for the Department referred to the reasons recorded by the AO for the issue of notice under Section 148.

The learned standing counsel then referred to paras 6(ix) and 6(xi) of the assessment order to show that the assessee has made investment in land and building. As regards the name of the society, the learned standing counsel stated that no objection was raised before the AO and the CIT(A) about the name of the

society mentioned in the body of the notices issued under Section 148 of the Act. It is argued by the learned standing counsel of the Department that the reasons mentioned by the AO for the issue of notice, gave rise to formation of belief in the AO's mind that income has escaped assessment. The learned standing counsel stated that the assessee has not denied having made investment in building, which created impression in the mind of the AO that income has escaped assessment. The learned standing counsel referred to Section 2(35), which defines "principal officer". The learned standing counsel referred to Section 292(2) and said that notice can be issued to the manager and mentioning of M/s manager in the body of the notice under Section 148 is of no consequence. He also argued that belief formed by the AO for the purpose of issue of notice under Section 148 cannot be set at naught. It is sufficient compliance with the provisions of Section 148 if the reasons are recorded by the AO, showing that he was satisfied above the escapement of income. How the AO was satisfied cannot be subject-matter of enquiry by Court.

16. The learned counsel for the assessee replying to the arguments of the Department's standing counsel, stated that none of the cases cited by the standing counsel of the Department are applicable to the facts of the present case and the ratio laid down in those cases is not applicable to the case of the assessee. According to the learned counsel for the assessee, there is no rational nexus or link between the formation of reasons to believe and escapement of income in the reasons recorded by the AO in the case of the assessee.

17. On merits, the learned counsel for the assessee has raised the following arguments.

The assessee-society has claimed exemption under Section 10(22) on the ground that the society is an educational institution but the AO refused the claim of the assessee relying on certain decisions which were on different footings. In the case of the assessee-society, it has been claimed that whatever is the surplus received by the income and expenditure account, such surplus will be treated to be falling in the category of exempted income. The AO did not examine the claim of the assessee, though the claim of the assessee goes to the very root of the

assessment and even can be made at the subsequent stage of appeal or second appeal also. The learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of NTPC v. CIT (1998) 229 ITR 383 (SC). According to the learned counsel, the entire surplus revealed by income and expenditure accounts for all the four years represented.

"income of the educational institution existing solely for educational purposes" and not for the purposes of "profit" and specifically exempt under Section 10(22) of the IT Act. The learned counsel placed reliance on the decision of the Orissa High Court in the case of Secondary Board of Education, Orissa v. ITO Ward-E, Cuttak (supra). The entire income was from the schools run by the assessee and only nominal receipts were on account of rent realised from the inmates of working women hostel, which has been constructed long back with the financial assistance provided by the Central Government. Whatever was the surplus, the same had been utilised in acquisition of fixed assets, etc. and the assets so created were only for educational purposes and not for any other purpose. Therefore, the assessee is entitled to exemption under Section 10(22) of the IT Act. According to the learned counsel, so long as the income is applied or even earmarked to be applied for educational purposes only, it cannot be said that it has been existing for purposes of profit. The learned counsel also referred to the decision of the Hon'ble Supreme Court in the case of Aditanar Educational Institution v. Addl. CIT (1997) 224 ITR 310 (SC). Accordingly to the learned counsel, a combined reading of the two judgments (1972) 86 ITR 408 (Ori) (supra) and (1997) 224 ITR 310 (SC) (supra) would go to show that the correct test for determination as to whether the educational institution was existing "solely for educational purposes" and not "for purposes of profit" is that the income should be utilised for educational purposes and not for the purposes of personal gain or benefit of an individual. According to the learned counsel for the assessee this test stood fully satisfied as can be seen from the analysis of income and expenditure account and utilisation thereof as contained in pp. 34 and 35 of the paper book, The learned counsel for the assessee also placed reliance on the decision of Andhra Pradesh High Court in the case of Governing Body of Rangaraya Medical College v. ITO (1979) 117 ITR 294 (AP), which has been approved by the Hon'ble Supreme Court in the case of Aditanar Educational Institution v. Addl.

CIT (supra).

18. The learned standing counsel of the Department referred to various paras in the assessment order, particularly paras. 6(i) to 6(xi) which contained detailed grounds to reject the assessee's claim under Section 10(22) of the Act. It was argued by the learned standing counsel that the assessee-society existed for its own sake and no educational objects were carried on by it, The assessee-society has been earning huge profits year after year as per the figures given in paras 6(v) of the assessment order, which shows that the society is being run solely for the purpose of profit. The learned standing counsel placed reliance on the decision in the case of Rao Bahadur AKD Dharam Raja Charity Trust v. CIT (1990) 182 ITR 80 (Mad). In this case, the Hon'ble High Court upheld the rejection of the assessee's claim of exemption under Section 10(22) on the ground that only a small portion of the income was utilised for educational purposes and, therefore, it cannot be said that the assessee in that case existed solely for educational purposes.

According to the learned standing counsel of the Department, the same situation is applicable in the present case, where a small portion of income was utilised for educational purposes. Onus was on the assessee to show that utilisation of fund was for educational purposes only which it has failed to discharge. According to the learned standing counsel, the assessee-society stood disqualified in its claim for exemption under Section 10(22) and, there is no infirmity in the order passed by the AO. The learned standing counsel also referred to the decision of the Hon'ble Supreme Court in the case of Aditanar Educational Institution v. Addl. CIT (supra) and argued that if the profit is incidental then the claim under Section 10(22) is not adversely affected but if it is a matter of course, then it has to be held that the institution existed for the purpose of profit and exemption cannot be allowed. The learned standing counsel also placed reliance on the decision of the Tribunal, Allahabad Bench in the case of Asstt. CIT v. Bal Bharati Nursery School and relied on various paras from the said judgment.

19. Replying to the arguments of the Standing counsel of the Department, the learned counsel for the assessee stated that the decision of the Madras High

Court in the case of Rao Bahadur AKD Dharam Raja Educational Chanty Trust v. CIT (supra) has no application to the case of the assessee because in that case only a small amount has been spent for educational purposes and rest of the funds were not spent for educational purposes and, therefore, on the facts available in that case it was held by the Hon'ble High Court that the assessee's claim for exemption under Section 10(22) is not maintainable. But this is not so in the case of the present assessee-society. The present assessee-society is running schools and colleges and the income received by way of donations from public at large, contribution made by members, membership fee paid by them, rent received from the inmates of the working women hostel have been utilised for educational purposes only and reliance is placed on receipt and payment accounts college/school-wise and activity-wise, which has been given at pp. 254 to 257 of the second paper book. The learned counsel also stated that the institutions run by the society have been awarded recognition as most reputed schools in the State of U.P.²⁰. It is further argued by the learned counsel that the reasons for denying exemption under Section 10(22) by the AO is that the assessee has come into existence not for any educational purposes but also for several other purposes/activities and mentioned in paras 6(i) and 6(iii) of the assessment order. It is argued by the learned counsel for the assessee that initially in the year 1976, the society got registered with a very few objects, which cover educational objects only. All such objects fall within the meaning of the term "education", which got extended from time to time and, therefore, the existence of various other objects, will not take the assessee out of purview of educational institution.

21. Learned standing counsel of the Department Sri Shambhu Chopra, referred to the objects of the society, which have been reproduced by the AO in para. 6(i) of the assessment order itself. He stated that first seven objects were only for educational purposes but the remaining objects are not educational. According to Sri Chopra, the remaining objects are charitable objects and do not meet the requirement of educational institution and, therefore, the assessee cannot claim exemption under Section 10(22) of the IT Act, 1961.

22. The learned counsel for the assessee, in reply, argued that if the objects of the assessee-society are examined from the angle of values in educational system,

then all the objects are for educational purposes except 2-3 objects that relate to setting of children hospital, hostel for working women and old age home. The learned counsel for the assessee also referred to the order of the Tribunal in the case of City Montessori School in what the "document on social, moral and spiritual values in education" as brought out by National Council of Educational Research and Training (NCERT) and document brought out by Planning Commission were referred. According to the learned counsel if the objects of the assessee-society are examined in the context of social, moral and spiritual values in education brought out by NCERT and document brought out by Planning Commission, then all the objects of the society are for educational purposes. As regards working women hostel, no such activity was carried on by the assessee-society at its own and certainly not in the years under appeal. Way back in the year 1981, such a hostel was constructed with the aid of the Government which is a source of income now and rent is charged from the inmates which formed part of the income and expenditure account under the head "building rent". No boarding facilities are provided to the inmates, no expenditure is incurred on this account except salary of the chowkidars, maidservant and maintenance expenses. Inmates of the hostel are only lady teachers and lady members of the staff and it serves the purpose of educational institution. As regards the setting up of children hospital and old age homes, no such activities have been carried out by the assessee-society and, therefore, no expenditure was incurred on such objects which are non-educational purposes.

23. As regards the siphoning off the assessee-society's funds as mentioned by the AO in pp. 6(viii), 6(ix), 6(x), 6(xi) of the assessment order, it is argued by the learned counsel for the assessee that regular assessment proceedings were initiated by issue of notices for all the years under Sections 143(2) and 142(1) on 18th Jan., 2000, and various queries were made by the AO from 18th Jan., 2000 to 29th March, 2000. It is argued by the learned counsel that the books of accounts and books, etc. were duly produced on 21st Feb., 2000, and voluminous details were filed by the assessee which were test-checked also. It is argued by the learned counsel that by accepting the cost of fixed assets with reference to which claim for depreciation was allowed and by accepting the quantum of income as revealed by income and expenditure account, all the objections about alleged

unverifiability of investment in fixed asset as also the revenue expenditure stand completely decimated. The AO had referred the matter of valuation of building to the valuation cell on 17th May, 2000 and according to the Departmental Valuation Officer, the value of the building, etc. was more than what was stated in the books of account of the appellant and, therefore, the finding given in the assessment order about alleged siphoning of funds has no meaning. It is further pointed out by the learned counsel that when it was necessary, the manager of the society has lent his personal funds to the assessee even by encashing his own fixed deposit receipt wherein investment has been made by him out of his own sources.

24. As regards investment in land, it is argued by the learned counsel for the assessee that as per the provisions contained in Section 54 of Transfer of Property Act, sale price can be paid at the time of execution of sale deed and at a later date also. A promise to pay the sale consideration also meets the requirement of payment on this score in view of the said provision. It is stated that during the course of assessment proceedings, copies of the sale deeds were made available and with regards to payments made over and above the figure mentioned in the sale deed, it was stated that the said payments were made in part and according to the availability of means. It is stated that the relevant receipts of the payees (pp. 229 to 253 of the first paper book) were duly shown at the assessment stage. An affidavit under Rule 10 of the IT (Appellate Tribunal) Rules, 1963, was also filed duly sworn by Sri P.R. Maurya, the person who has appeared before the AO till the case was finally discussed on 13th March, 2000.

25. The learned standing counsel of the Department, Sri Shambhu Chopra argued that the finding given by the AO with regard to siphoning of funds could not be considered as unreasonable and faulty. He referred to the decision of the Hon'ble Supreme Court in the case of McDowell & Co. Ltd. v. CTO (1985) 154 ITR 148 (SC) and also the decision of the Hon'ble Supreme Court in the case of Workmen of Associated Rubber Industries Ltd. v. Associated Rubber Industries Ltd. (1986) 157 ITR 77 (SC) and argued that the society has been brought into existence just to provide a cover and veil to the personal affairs of the manager of the society, Sri Bajrang Tripathi. According to the learned standing counsel, income and expenditure account was not verifiable as the expenditure claimed therein are not

supported by vouchers and on account of such unverifiability there is a lot of scope for misappropriating the funds and some specific details of such misappropriation of funds has even been brought on record by the AO by referring to investment in purchase of land.

26. In reply it was argued by the learned counsel for the assessee that there is no substance in allegation about siphoning of funds of the society. According to the learned counsel, the AO after perusal of the details and verification of the same from the books of accounts, was fully satisfied about the cost of such fixed assets and he allowed the claim of depreciation on them. According to the learned counsel for the assessee, the revenue expenditure as appearing in the income and expenditure account was fully supported by the relevant bills of the parties except some small payments for which bills of the registered parties were not available. There is no difference or variation in the appellant's version and figures of assessed income as taken by the AO. The manager has been given the power to operate the bank account as per decision of the management committee because it was convenient.

Otherwise all the powers of the manager are subject to superintendence and control of the management committee. The accounts were subject to approval by the management committee. The assessee is running schools and manager of the school does not have any vested right or interest in the assets of the society. In the event of dissolution such assets shall be dealt with according to Sections 13 and 14 of the Societies Registration Act. The entire property stood in the name of the society only and in the event of dissolution such assets shall vest mainly in the society having similar objectives or as per the decision of the Court.

27. As regards the counter-affidavit filed by the AO, the learned counsel referred to Order XIX Rule 3 of CPC. The verification clause of the counter-affidavit says that various paragraphs of the affidavit are "true to my knowledge and belief". It is argued by the learned counsel that in order to make his counter worthy of admission, he should have clearly stated in his affidavit as to how much or which part of the statement in the affidavit is based on his belief and the basis for entertaining the belief should also have been clearly stated. Since the affidavit did

not satisfy these requirements, it has no meaning or value. The learned counsel placed reliance on following decisions :A.K.K. Nambiar v. Union of India AIR 28. It is argued by the learned standing counsel that Order XIX Rule 3 of the CPC does not prescribe at all anywhere that those paragraphs which are based on belief must be clearly set out in the verification clause. Order XIX Rule 3 of CPC is totally silent in this respect. It is nowhere laid down in Order XIX Rule 3 that each and every para of the affidavit must be ascribed to either knowledge or belief in the verification clause. According to the learned standing counsel, the accepted and established format in all law Courts, except the High Courts and Supreme Court, which have their own High Court and Supreme Court rules prescribing the format for the verification clauses, are to be in accordance with Order XIX Rule 3 of CPC. The judgments relied upon by the assessee's counsel are of Hon'ble High Court of Rajasthan and Hon'ble Supreme Court respectively which do not apply to the case of the assessee in respect of the affidavit filed by the AO. The affidavit can be submitted before the Tribunal as per Rule 10 of the IT (Appellate Tribunal) Rules, which does not specify or lay down any particular format for the verification of the affidavit. Therefore, in the absence of any prescribed or specified format in the IT (Appellate Tribunal) Rules, the general format used in the affidavits, which are not notarized, has been used in the affidavit of Sri Ram Samujh, Joint CIT. According to the standing counsel, the affidavit of Sri Ram Samujh, Joint CIT is legally correct and legally tenable and acceptable and valid.

29. The learned counsel for the assessee alternatively claimed deduction of income under Section 11 of the IT Act, 1961, on the ground that the assessee-society is a charitable trust, The AO has rejected the claim of the assessee on the ground mentioned in para. 7 of the assessment order. It is stated by the learned counsel of the assessee that none of the grounds mentioned by the AO militates against the assessee's claim for deduction under Section 11 of the Act. As far as the discrepancy in the name is concerned, the necessary intimation has been given to the learned CIT as soon as the words "All India" were added as a prefix to the name of the society, which can be seen from the letter dt. 12th Aug., 1985, pp. 111 and 112 of the paper book, relied upon by the assessee-society and due note of such a change in the name has been considered by the CIT, Allahabad while issuing renewal of approval under Section 80G on 1st July, 1996, in the name of

"All India Children Care and Educational Development Society". As far as the claim for deduction under Section 11 is concerned, it is nowhere laid down that if return of income is not filed in time under Section 139(1), the claim for exemption shall stand forfeited.

30. In so far as objection regarding backdating of audit report in Form No. 10B is concerned, the said objection is also not valid as no time-limit is laid down for filing the audit report in the IT Act though the time-limit is prescribed under the rule. But the rules cannot lay down what has not been provided in the Act itself.

31. The learned standing counsel of the Department relied on the order of the AO ad also referred to the decision of the Hon'ble Bombay High Court in the case of Director of Income-tax (Exemption) v. Malad Jain Yuvak Medical Relief Centre (2001) 250 ITR 488 (Bom). He stated that the provision of Section 139(4A) are mandatory for the appellant to file the return and the assessee cannot claim benefit under Section 11 of the IT Act because return of income was not filed under Section 139(1).

32. The learned counsel for the assessee in reply stated that case of Malad Jain Yuvak Medical Relief Centre has no bearing on the admissibility of the claim for exemption under Section 11 and the ratio laid down in that case is not applicable to the facts of the case of assessee.

33. We have considered the facts of the case, rival submissions and the material on record. The assessee's counsel has raised following preliminary issues/objections : (i) Whether the AO has no jurisdiction and, therefore, it has to be considered whether the Jt. CIT has jurisdiction over the case of the assessee for assessment purposes (ii) Whether the valid reasons have been recorded by the AO before issue of notice under Section 148 for all the three years (iii) Whether the notice under Section 148 has been properly issued and served (iv) Whether the assessment proceedings are completed twice by the AO on 29th Mach, 2000? Whether the impugned order passed under Section 143(3) of the Act on 29th March, 2000 is valid? (i) Whether the assessee is entitled to exemption of income under Section 10(22) of the IT Act, 1961? (ii) Or in the alternative whether the assessee is entitled to relief under Section 11 of the IT Act We have given

various opportunities to the Department to produce order of jurisdiction passed by the CIT, Varanasi to confer jurisdiction on assessee-society under Section 124 or 127 of the IT Act. The notices under Section 148 of the Act were issued by the ITO, Azamgarh on 1st Aug., 1997, for the asst. yrs. 1993-94, 1994-95 and 1995-96. The ITO, Azamgarh falls under the charge of CIT, Varanasi after the creation of independent charge of the CIT, Varanasi by the CBDT with effect from June, 1997. under Section 120(1) of the IT Act, IT authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and powers and performance of the functions by all or any of those authorities. Under Sub-section (2) of Section 120 of the IT Act, the Board may authorise any other IT authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other IT authorities who are subordinate to it. Under Sub-section (4)(b) of Section 120 of the Act, the CBDT may by general or special order or/and subject to such conditions, restrictions or limitations as may be specified therein, empower the Director General or Chief CIT or CIT to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the AO under this Act in respect of any special area or persons or classes of persons or incomes or classes of incomes or cases or classes of cases, shall be exercised or performed by a Jt. CIT. under Section 127 of the IT Act, Chief CIT or CIT may, after giving the assessee a reasonable opportunity of being heard in the matter, and after recording his reasons for doing so, transfer any case from one or more AOs subordinate to him to any other AO or AOs also subordinate to him.

35. It is clear from the above mentioned provisions that the CBDT under Section 120 of the Act may issue directions to IT authorities and after issue of such directions, the concerned IT authorities shall exercise such powers and functions which are assigned to them under the Act. The CBDT may also authorise any IT authority to issue orders in writing for the exercise of the powers and performance of functions by other IT authorities who are subordinate to him. Despite various opportunities given to the Department to produce jurisdiction order authorising the Jt. CIT, Varanasi to perform functions relating to assessment and collection of

taxes from the assessee-society, no such jurisdiction order has been produced before us. On 17th April, 2002, the learned Departmental Representative was directed to file the copy of the order of the CIT, Varanasi conferring jurisdiction to the AO and the case was adjourned to 18th April, 2002. On 18th April, 2002, the learned Departmental Representative did not file copy of the said order. Again on 22nd April, 2002, when learned standing counsel, Shri Shambhu Chopra, was present to argue the case, he was asked to file the copy of the order of the CIT conferring jurisdiction on the Joint CIT, Varanasi over the case of the assessee, who sought time to file by the next day.

On 23rd April, 2002, it was explained by Shri Shambhu Chopra, standing counsel of the Department that the jurisdiction order must have been passed, but it could not be traced and efforts are being made to trace the jurisdiction order. Again on 24th April, 2002, the learned standing counsel, Shri Shambhu Chopra, was asked to file the copy of the jurisdiction order passed by the CIT conferring jurisdiction on Jt.

CIT, Varanasi over the case of the assessee. It was stated by Shri Shambhu Chopra, learned standing counsel, that the jurisdiction order is not readily available. The learned standing counsel was again asked to file written reply regarding the issue of jurisdiction order and the appeal was fixed for hearing on 29th April, 2002. On 29th April, 2002, Shri Rajiva Deva, CIT Departmental Representative gave in writing that they were not able to get the same so far due to mismanagement of records. The matter was adjourned to 30th April, 2002, 2nd May, 2002 and 6th May, 2002. But by the last date of hearing on 13th May, 2002, no copy of the jurisdiction order was filed either under Section 124 or under Section 127 of the Act as, according to Mr. Chopra, jurisdiction order is not traceable. These facts clearly prove that no jurisdiction order is passed in the matter under Section 124 or 127 of the IT Act.

The notices under Section 148 for all the three years were issued by the ITO, Azamgarh and subsequently, the case was transferred from ITO, Azamgarh to Jt. CIT, Varanasi after the returns of the assessee were received on the ground that the return of loss for the asst. yrs.

1997-98 was of Rs. 10 Lakhs and the assessment records were transferred by the ITO, Azamgarh to Jt. CIT, Varanasi on 7th July, 1999, but no order of the CIT conferring jurisdiction on the Jt. CIT, Varanasi over the case of the assessee under Section 124 or under Section 127 has been produced before us. The learned counsel for the assessee stated that under Section 127 before the case is transferred from one place to another, the assessee is entitled to opportunity of hearing by the CIT and only after recording the reasons and after giving opportunity of hearing, the CIT can transfer the jurisdiction from one AO to another AO on different place. But in the case of the assessee since no opportunity of hearing was given, it seems that no order under Section 127 was passed. Whatever may be the position, the learned standing counsel of the Department has not been able to produce any jurisdiction order of the CIT, Varanasi to show that the Jt. CIT, Varanasi exercised jurisdiction over the case of the assessee, It is, therefore, clear that the Jt. CIT, Varanasi in the absence of jurisdiction order passed by the CIT to confer jurisdiction over the case of the assessee, was not competent to exercise jurisdiction over the case of the assessee.

In the absence of jurisdiction order passed by the CIT, Varanasi or by the GBDT to confer jurisdiction over the case of the assessee to the Jt. CIT, Varanasi, the Jt. CIT, Varanasi was not competent to exercise power and perform functions with regard to assessment and collection of taxes in the case of the assessee-society. An order passed by an authority without jurisdiction is a nullity and its invalidity can be challenged whenever and wherever sought to be enforced or relief upon.

36. In the case of *Ajantha Industries and Ors. v. CBDT and Ors.* (1976) 102 ITR 281 (SC), it was held that the requirement of recording reasons under Section 127(1) of the IT Act, 1961, for the transfer of a case from one ITO to another, is a mandatory direction under the law and non-communication thereof to the assessee is not saved by showing that the reasons exist in the file although not communicated to the assessee. Recording of reasons and disclosure thereof are not a mere idle formality. In this case it was held that non-communication of the reasons in the order passed under Section 127(1) was a serious infirmity and the order was invalid. In the case of the assessee-society, there is no order under Section 127 transferring jurisdiction from ITO, Azamgarh to Jt. CIT, Varanasi has

been produced before us. It has been explained by the learned counsel for the assessee that the assessee has not received any notice under Section 127 of the IT Act from the CIT, therefore, it can be safely presumed that no order under Section 127 has been passed by the CIT conferring jurisdiction over the Jt. CIT over the case of the assessee. The learned counsel has relied on various case laws, but it is not necessary to refer to those case laws in view of the decision of the Hon'ble Supreme Court cited supra. In the case of the assessee-society no jurisdiction order has been produced before the Tribunal to show that the Jt. CIT has exercised jurisdiction validly over the case of the assessee. The assessment order dt. 29th March, 2000, is invalid because in the absence of jurisdiction order passed by the CIT or by the CBDT under Section 120 or under Section 124 or under Section 127, the Jt. CIT, Varanasi is not competent to exercise jurisdiction over the case of the assessee.

37. It is argued by the learned standing counsel that in view of the provisions of Sub-section (2) of Section 124, where a question arises under this section as to whether an AO has jurisdiction to assess any person, the question shall be determined by the Chief CIT or the CIT. The learned standing counsel referred to Sub-section (3) of Section 124 and argued that no person shall be entitled to call in question the jurisdiction, of the AO where he has made a return under Sub-section (1) of Section 139, after the expiry of one month from the date on which he was served with a notice under Sub-section (1) of Section 142 or Sub-section (2) of Section 143 or after the completion of the assessment, whichever is earlier. Where he has made no such return, after the expiry of the time allowed by the notice under Sub-section (1) of Section 142 or under Section 148 for the making of the return or by the notice under the first proviso to Section 144 to show cause why the assessment should not be completed to the best of the judgment of the AO, whichever is earlier. The standing counsel also referred to Sub-section (4) of Section 124 and argued that where an assessee calls in question the jurisdiction of the AO, then the AO, if not satisfied with the correctness of the claim, refer the matter for determination under Sub-section (2) of Section 124 before the assessment is made.

38. The learned standing counsel relied on the decision of Allahabad High Court in the case of Hindustan Transport Co. v. IAC (supra). In this case, the issue of jurisdiction under Section 124 of the IT Act was considered by the Hon'ble Allahabad High Court. It was held by the Hon'ble High Court that Section 125 of the IT Act covers territorial jurisdiction as well other kinds of jurisdiction and that an objection raised at the appellate stage as to the jurisdiction of the particular ITO to assess the assessee is hit by Sub-section (5) of Section 124 of the Act. But in the case of the assessee, transfer of records or transfer of jurisdiction from one place i.e., Azamgarh to another place, Varanasi is involved. Therefore, it was incumbent on the part of the CIT to pass order under Section 127; and to record reasons for transferring the case from ITO, Azamgarh to Jt. CIT Varanasi before passing the order under Section 127, it was incumbent on the CIT to give opportunity of hearing to the assessee. No copy of the order has been produced before us and the assessee has also denied that he has not received any notice under Section 127 in connection with the transfer of his case from ITO, Azamgarh to Jt. CIT, Varanasi, Since the assessee has not received any notice under Section 127 of the IT Act and no order under Section 127 has been placed before the Tribunal by the Department it is clear that there is no order under Section 127 transferring the case of the assessee from ITO, Azamgarh to Jt. CIT, Varanasi and, therefore, the ratio laid down in the case of Hindustan Transport Co. v. IAC (cited surpa) is not applicable to the case of the assessee.

39. In this connection, we may refer to the decision of the Bombay High Court in the case of CIT v. Bharkumar Modi and Ors. (2000) 246 ITR 693 (Bom). In this case it was held by the Hon'ble Bombay High Court that it is a well settled principle of law that there is a difference between lack of jurisdiction and irregular exercise of authority/jurisdiction. A proceeding is a nullity when the authority taking it has no power or seisin over the case. It is also clear from the ratio laid down in this case that if an authority passes an assessment order without jurisdiction, such an order passed by the authority due to lack of jurisdiction is a nullity. We are, therefore, of the considered opinion that since there is no jurisdiction order under Section 124 or 127 conferring jurisdiction over the case of the assessee to the Joint CIT, Varanasi, the assessment order passed by him is a nullity and the preliminary objection is allowed in favour of the assessee and against the Department.

40. The second preliminary issue raised by the learned counsel for the assessee is that the reasons for issue of notice under Section 148 dt.

1st April, 1997, for asst. yrs. 1993-94, 1994-95 and 1995-96 do not meet the requirement of law. The assessee's counsel's arguments have been mentioned in paragraphs 14 and 9. The AO has recorded the following reasons for issue of notice under Section 148 of the Act.

It has come to my notice that the assessee runs an institution in the name of All India Children Care Welfare Society, Azamgarh and earns income from it. In addition, the assessee purchased buses etc.

and invested huge amount. For this institution, building is also constructed. Since the assessee earns huge income and invested in buses and building, therefore, I have reason to believe that the assessee in the years 1993-94, 1994-95, 1995-96 has concealed the income. Therefore, notice under Section 148 of the IT Act is issued for the asst. yrs. 1993-94, 1994-95 & 1995-96." 41. It is clear from the reasons mentioned above that no facts and figures have been mentioned by the AO to come to the conclusion as to how much was income and how that income has escaped assessment. The reasons recorded by the AO are not based on any information but based on presumptions and assumptions. The AO assumed that the assessee-society runs institution in the name of All India Children Care and Educational Development Society and obtained income from it.

But how that income is earned and how much income is earned have not been mentioned. It may be that the assessee may be suffering losses or showing income below taxable limit. Another reason given by the AO for issue of notice under Section 148 is that the assessee purchased buses and invested huge amounts in buildings also. Simply because the assessee is purchasing buses and invest in building, it does not mean that income has escaped assessment, No facts have been mentioned by the AO to come to a reasonable conclusion that the income has escaped assessment. It is a fact that the assessee has not filed the return of income for any earlier assessment years, including asst. yrs. 1993-94, 1994-95 and 1995-96 but that fact has also not been mentioned by the AO for the purpose of issue of notice under Section 148. The reasons recorded for issue of

notice under Section 148 should be based on facts and figures and not on the basis of imagination. The conclusion of the AO based on imagination cannot justify that there was reasonable belief regarding escapement of income when notice under Section 148 was issued.

42. In the case of ITO v. Lakhmani Mewal Das (supra), it was held by the apex Court that the reasons for the formation of belief for the reopening of an assessment must have a rational connection or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the formation of the belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the Court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the ITO on the point as to whether action should be initiated for reopening the assessment. At the same time we have to bear in mind that it is not any and every material, however, vague and indefinite or distant, remote or far-fetched, which would warrant the formation of the belief relating to the escapement of the income of the assessee from assessment.

43. In the case of the assessee, it is clear that the AO has not mentioned any facts and figures to show that there was escapement of income. The AO has not given any facts to show how much income was earned and whether the income earned by the assessee-society was above taxable limit. The AO has not given any facts or figures to show that the investment in buses and buildings was out of the income earned by the assessee. Therefore, reasons recorded by the AO for issue of notice under Section 148 for asst. yrs. 1993-94, 1994-95 and 1995-96 are vague and imaginary, which cannot form reason to believe for escapement of income. The AO has not even mentioned that the assessee has not filed the return of income for these years. No facts and figures have been mentioned by the AO, which could justify the conclusion that the AO has reasonable belief that the income for three years has escaped assessment.

44. In the case *Ganga Saran & Sons (P) Ltd. v. ITO* (supra), the apex Court held that belief entertained by the ITO must not be arbitrary or irrational. It must be based on records which are relevant and material.

45. In the case of the assessee before, us, it is clear that no reasons have been mentioned by the AO to come to the conclusion that income has escaped assessment. Reasons recorded by the AO are based on his own imagination because reasons are not based on facts and figures.

Therefore, there were no valid reasons before the AO as on 1st Aug., 1997, when the notice under Section 148 was issued and, therefore, notices issued by the AO for the asst. yrs. 1993-94, 1994-95 and 1995-96 are invalid.

46. The learned standing counsel of the Department has also relied upon the decision of the Delhi High Court in the case *Rakesh Aggarwal v. Asstt. CIT* (1997) 225 ITR 496 (Del). In this case, the Hon'ble Delhi High Court held that under Section 147 of the IT Act w.e.f. 1st April, 1989, the AO could initiate reassessment proceedings if he had reasons to believe that the income chargeable to tax has escaped assessment by reason of omission or failure on the part of the assessee to make a return under Section 139(1) for any assessment year or to disclose fully and truly all material facts necessary for assessment. The only condition for taking action under Section 148 of the Act is that the AO should have reasons to believe that the income has escaped assessment, which belief can be entertained in any manner not qualified by the precondition of failure of the assessee to disclose fully and truly all material facts as contemplated under the amended Section 147(a). In the case of *Rakesh Kumar Aggrawal* (supra) Hon'ble Delhi High Court held that the condition for issuing notice is that the AO has reasons to believe that the income has escaped assessment though the escapement of income may not be due to failure, of the assessee to make full and true disclosure, The AO must have reasons to believe on the basis, of some facts and figures available on record though the assessee might not have failed to disclose fully and truly all-material facts. As already discussed, the AO has not mentioned any facts and figures on the basis of which he acquired the belief that income has escaped assessment.

Therefore, it cannot be said that the AO has reason to believe that income has escaped assessment. It was only his imagination that income has escaped assessment because no facts and figures have been mentioned to justify the reasons to believe before issue of notice under Section 148. Therefore, the case *Rakesh Aggarwal v. Asstt. CIT (supra)* is not helpful to the Revenue.

47. The Department's standing counsel has relied on the decision of Hon'ble Gujarat High Court in the case of *Stock Exchange v. Asstt. CIT (1997) 227 ITR 906 (Guj)*. In this case also, the Hon'ble Gujarat High Court held that the reasons for formation of believe for reopening of assessment must have a rational connection or relevant bearing on the formation of belief. In this case notice under Section 148 was issued because the AO gave finding that the assessee was not entitled to exemption under Section 10(23A) of the IT Act in the relevant assessment year. It was held that the assessment proceedings were validly initiated. But in the case of the assessee-society no finding is given by the AO before issue of notice under Section 148 that the assessee is not entitled to exemption either under Section 11 or under Section 10(22) of the Act. Therefore, the decision of the Hon'ble Gujarat High Court in the case of *Stock Exchange (cited supra)* is not applicable to the case of the assessee.

48. The facts in the other cases relied upon by the Department's standing counsel were different from the facts in the case of the assessee and, therefore, it is not necessary to mention all the cases relied upon by the Department's standing counsel because before issue of notice under Section 148 to the assessee for for the asst. yrs.

1993-94, 1994-95 and 1995-96, the AO has not mentioned any facts or figures on the basis of which he has acquired the belief that the income has escaped assessment and there was no reason to believe that the income has escaped assessment in all the three years. A perusal of Section 147 of the IT Act shows that, it has two important aspects : Hon'ble Supreme Court in the matter of *Sheo Nath Singh v. AAC (1971) 82 ITR 147 (SC)* has held : "The words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the ITO may act on direct or

circumstantial evidence but not on mere suspicion, gossip or rumour. The ITO would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section." Considering the above important ingredients of Section 147 of the IT Act and the authorities referred to above, the reasons given by the ITO clearly fails to satisfy the requirement of law for issuing notice under Section 148 of the IT Act. The AO was aware that some educational institute is being run therefore, the AO should have given reasons about it in the notice under Section 148 of the IT Act that the income of institution is either misused or used for other than educational purposes. The reasons about construction of building or purchase of buses are wrong as the same were stated to be used for educational purposes only. There should be a reasonable nexus in between reasonable belief and escapement of income in order to proceed under Section 147/148 of the IT Act. The notices for all the three years were issued on the basis of imagination, presumptions and assumptions by the AO which is not justified. The notices under Section 148 are, therefore, void ab-initio. This issue is decided in favour of the assessee and against the Revenue.

49. The third preliminary issue raised by the learned counsel for the assessee is that the notices under Section 148 of the Act have not been properly issued and served. According to the learned counsel for the assessee, the name of the assessee-company has not been properly mentioned in the body of the notices issued under Section 148. The name of the assessee-society has been mentioned as "M/s manager, All India Children Care and Welfare Society, Railway Station, Azamgarh". The first objection of the assessee's counsel was against the use of the word "M/s manager" because there is no such entity in existence. The second objection was against the name of the society. The third objection of the assessee's counsel has been mentioned in para. 10 and arguments of the learned standing counsel of the Department have been mentioned in p. 12-A of the order. After considering the arguments of the learned counsel for the assessee and the learned standing counsel of the Department, we are of the opinion that there is defect in the issue of notices which would render the notices under Section 148 for the asst. yrs. 1993-94, 1994-95 and 1995-96 as invalid under Section 292B of the IT Act no return of income, assessment, notice, summons or other proceedings,

furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceedings is in substance and effect in conformity with or according to the intent and purpose of this Act. During the course of argument, we have directed the learned Departmental Representative to produce the original record of the assessment before us, out of which the learned Departmental Representative has filed photocopy of the reasons recorded for issuing notice under Section 148 of the IT Act along with the copy of the notice under Section 148 of the IT Act. The learned Departmental Representative also filed a copy of the order sheet from the original record from November, 1999 to 29th March, 2000. The same are placed on the record. We have seen that the AO, while recording the reasons for issue of notice under Section 148 has mentioned the name of the assessee on the top as "All India Children Care and Welfare Society, Azamgarh." Similarly, while giving reasons for issue of notice under Section 148 of the IT Act, the AO has mentioned name of the assessee as "All India Children Care and Welfare Society, Azamgarh." It was in Hindi and we have mentioned its translation in para 40 of the order.

Accordingly, notice under Section 148 was also issued by the AO in the name of "M/s manager, All India Children Care & Welfare Society, Railway Station, Azamgarh". The correct name of the appellant is "All India Children Care and Educational Development Society, Azamgarh." Therefore, the AO has committed error in writing the correct name of the assessee in the order dt. 1st Aug., 1997 for issuing notice under Section 148 of the IT Act as well as in the reasons for the same and lastly notice under Section 148 was issued in the wrong name. The same cannot be considered as mistake in the notice. The AO in fact has issued notice under Section 148 on the basis of the reasons recorded on 1st Aug., 1997, but the same was never in the name of the assessee. The AO accordingly never intended to record reasons for issuing notice under Section 148 in the name of the assessee. We may also refer here that it is one of the condition necessary before proceeding under Section 148 that the AO in addition to recording reasons for his

belief under Section 147 should have also served notice upon the assessee. The AO in this case has never recorded reasons for issuing notice under Section 148 of the IT Act in the name of the assessee, therefore, there is no question of the notice under Section 148 being -validly served upon the assessee. Hence, it cannot be said that it was a mistake in notice only. The above facts and circumstances clearly show that the AO has committed glaring illegality in recording reasons for issuing the notice under Section 148 as it was not in the name of the assessee, Therefore, the issue of notice was consequential to that which resulted that the notice is also invalid. As we have held that the AO never issued notice and reasons in the name of the assessee, therefore, the same cannot be considered to be validly served upon the assessee.

Though the learned counsel for the assessee has stated that the notice has never been served upon the assessee but in view of our above finding, there is no need to go into this controversy. Accordingly, we are of the considered view that the AO has not validly issued notice under Section 148, which goes to the root of the matter and resulted into the illegality in proceeding under Section 148 of the IT Act. As a result, the assessment order has become null and void. Accordingly, this preliminary objection is allowed in favour of the assessee and against the Revenue.

The fourth preliminary objection of the assessee's counsel is that the assessment proceedings were already completed on 29th March, 2000, when the assessee's returns of income were accepted on 29th March, 2000 under Section 143(1)(a) and the AO was not justified in passing second assessment order under Section 143(3) on 29th March, 2000, the same date. The arguments of the assessee's counsel have been mentioned in para 7 and the arguments of the learned standing counsel are mentioned in para 7-B of the order.

50. We have considered the facts of the case, rival submissions and the material on record. The following entries appear on the order-sheet dt.

29th March, 2000 : "29th March, 2000--Order is passed under Section 143(3). Sd. Joint CIT." The recording of entries on 29th March, 2000, shows that the AO has processed the return of income under Section 143(1) and has also passed

assessment order under Section 143(3) on the same date. The word "assessment" has been defined in Section 2(8) of the IT Act, 1961 as under : "regular assessment" means the assessment made under Sub-section (3) of Section 143 or Section 144." Both these definitions under Section 2(8) and 2(40) have to be read together. In the case of the assessee, only definition of regular assessment under Section 2(40) is relevant. In that sub-section "regular assessment" has been defined as assessment made under Section 143(3) or Section 144. The provisions of the Act relating to assessment have been amended w.e.f. 1st April, 1989, by Taxation Laws (Amendment) Act, Now under Section 143(1) where a return has been made under Section 139, or in response to a notice under Sub-section (1) of Section 142, if any tax on interest is found due on the basis of such return, after adjustment of any tax deducted at source or paid by the assessee, then, without prejudice to the provisions of Sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under Section 156 and all the provisions of this Act shall apply accordingly. If any refund is due on the basis of such return, it shall be granted to the assessee and intimation to this effect shall be sent to the assessee. The first proviso to Section 143(1) also lays down that the acknowledgement of the return shall be deemed to be intimation under this sub-section where either no sum is payable by the assessee or no refund is due to him. The second proviso to Section 143(1) also lays down that no intimation under this sub-section shall be sent after the expiry of two years from the end of the assessment year in which the income was first assessable.

"Where a return has been made under Section 139, or in response to a notice under Sub-section (1) of Section 142, the AO shall, if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return.

Provided that no notice under this sub-section shall be served on the assessee after the expiry of twelve months from the end of the month in which the return is

furnished." 52. Notices under Section 143(3) were issued to the assessee and as per provisions of Section 148, provisions of the Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139. The provisions of Section 143(1) and Section 143(2) are equally applicable to the case of the assessee.

53. It is clear from the provisions of Section 143(1) and 143(2) that these provisions deal with different aspects. The provisions of Section 143(1) deal with processing of return under Section 143(1) only if any tax or interest is found due on the basis of such return or refund is due on the basis of such return, it shall be granted to the assessee and an intimation to this effect shall be sent to the assessee. But if no tax or interest is payable to the assessee or no refund is due on the basis of such return, then the acknowledgement of return shall be deemed to be intimation under Sub-section (1) of Section 143. If any intimation is required to be sent, then such intimation can be sent only within a period of two years because no intimation can be sent after the expiry of two years from the assessment year in which income was first assessable. Sub-section (1) of Section 143, therefore, lays down only the procedure for sending the intimation and does not lay down procedure of regular assessment as defined in Section 2(40) of the IT Act because for the purpose of regular assessment under Section 143(3) or 144, the AO will have to issue notice under Section 143(2) after the return is filed, but no such notice is required to be sent if an intimation is sent to the assessee. Such intimation is deemed to be a notice of demand under Section 156 of the IT Act only for the purposes of recovery of tax and does not mean that intimation under Section 143(1) is an assessment in any manner as defined under Section 2(40) of the IT Act.

54. In the case of Pradeep Kumar Har Saran Lal v. AO (1998) 229 ITR 46 (All), the Hon'ble Allahabad High Court held as under as per headnote : "The scheme of Section 143(1)(a) of the IT Act, 1961, and the clarificatory circular dt. 31st Oct., 1989, issued by the CBDT, makes it amply clear that unlike the past practice, assessments are not required to be made in each and every case and assessment orders, will be passed only in a very limited number of cases, selected for scrutiny under Section 143(1)(a), the AO has to accept the return on its face value and

make minor adjustments consistent with the information given in the return without touching upon debatable and controversial issues, There is a lot of difference between an assessment and an intimation, as contemplated by Section 143(1)(a) and if it were not so, then Parliament would not have used the word intimation as a substitute for assessment. The intimation under Section 143(1)(a)(i) is only fictionally taken as a notice of demand under Section 156. From all this it follows that the intimation is nothing but an acknowledgement slip to the effect that the return filed has been accepted and the AO has acted upon that and for the purposes of recovery, that shall be deemed to be a notice of demand as if issued under Section 156. Jurisdiction to make adjustment under the provisions of Section 143(1)(a) is co-extensive and coterminous with the jurisdiction vested in the AO under Section 154 for making obvious corrections, as no item of debatable nature can be corrected under Section 154 of the Act.

Similarly, the AO cannot enter into any controversial item to make permissible adjustments under the proviso to Section 143(1)(a).

The only requirement of Section 147 is that the AO must have good reason to believe that some income had escaped assessment. Once this belief is well-founded, recourse to reassessment proceedings cannot be said to be illegal. So long as the ingredients of Section 147 are fulfilled, the AO is free to initiate reassessment proceedings and failure to take steps under Section 143(2) will not render the AO powerless to initiate the reassessment proceedings." 55. The provisions of Sub-section (1) and Sub-section (2) of Section 143 are totally independent and deal with different situations. The decision of the Hon'ble Allahabad High Court in the case of Pradeep Kumar Har Saran Lal (supra) clearly maintained the distinction between intimation under Section 143(1) and assessment under Section 143(3), The Ad has issued notice under Section 143(2) only for the purpose of making regular assessment under Section 143(3) and not for the purpose of sending intimation under Section 143(1). Therefore, processing the return under Section 143(1) on 29th March, 2000, does not act as a bar to make the assessment under Section 143(2) of the IT Act.

56. In the case of Mahanagar Telephone Nigam Ltd v. Chairman, CBDT (2000) 246 ITR 173 (Del). The Hon'ble High Court held as under : "The intimation under Section 143(1)(a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. The intimation under Section 143(1)(a) was deemed to be a notice of demand under Section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery of the amount indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision." 57. It is clear from the decision of the Hon'ble Delhi High Court also that intimation under Section 143(1)(a) and regular assessment under Section 143(2) operate in different fields and that intimation under Section 143(1)(a) is not an assessment.

58. The learned counsel has relied on decisions of the Courts in Kazan Mal Kuthiala (Firm) v. ITO (1956) 30 ITR 500 (Punj) and AM Lakshman Shenoy v. ITO (1958) 34 ITR 275 (SC). These decisions have been rendered prior to Amendment of Section 143(1) and are not applicable in the case of the assessee because now after 1st April, 1989, there is clear distinction between intimation under Section 143(1)(a) and regular assessment under Section 143(3). Therefore, this preliminary objection of the assessee is decided against the assessee and in favour of the Revenue.

Keeping in view above findings on preliminary issues, we are of the considered view that the assessment order and impugned order of CIT(A) are liable to be set aside. We accordingly set aside and quash the assessment order dt. 29th March, 2000, and impugned order dt. 10th Jan., 2002, of CIT(A) for all assessment years involved in appeals.

59. As regards merit of the case, the argument of the learned counsel for the assessee as well as the learned standing counsel of the Department have been reproduced in paras. 17 to 32. The assessee filed return of income on 31st March, 1999, for asst. yrs. 1993-94 to 1997-98. The assessee claimed exemption of income under Section 11 of the IT Act, in the return of income. The AO denied exemption of income under Section 11 on the ground that the CIT has issued

registration certificate dt. 10th March, 1978 and the name of the society has been mentioned as "Children Care and Educational Development Society". The registration certificate was not issued in the name of "All India Children Care and Educational Development Society". The AO, therefore held that the assessee is not entitled to any deduction or exemption under Section 11 of the IT Act, but the reasons given by the AO is that the returns of income have been submitted by the assessee after issue of notice under Section 148. According to the AO since the assessee has not filed returns of income in accordance with the provisions of Section 139(4A), the assessee is not entitled to benefit of Section 11 of IT Act as the provisions of Section 148 are not for the benefit of the assessee, but the same are of the benefit of the Revenue. The AO also held that the assessee is not carrying on any charitable activity and is running the business of school and hospital. He, therefore, denied exemption to the society under Section 11 of the IT Act.

60. Though the assessee-society claimed under Section 11 of the IT Act in the return of income filed on 31st March, 1999, for the asst. yrs.

1993-94, 1994-95, 1995-96 and 1997-98, but during the course of assessment proceedings, the assessee also claimed deduction under Section 10(22) of the IT Act. The AO examined the surplus of income over expenditure after allowing depreciation as mentioned in para.

6(vi) p. 6 of the assessment order. The AO observed that the assessee has shown following surplus after allowing depreciation : The AO came to the conclusion that the assessee is existing solely for profit and there is hardly any element of charity or an act of benevolence. According to the AO, the assessee is running the school purely on commercial basis and to evade legitimate incidence of tax.

The AO also considered that there is systematic attempt to siphon out funds of the society under the garb of fixed assets, such as, construction of building, etc. The siphoning of fund according to the AO has been mentioned in para. 6(ix) p. 6 of the assessment order. The AO worked out the excess amount shown by the assessee in respect of purchase of lands at Rs. 9,13,591, which was over and above the amount shown in the purchase deeds. This amount of Rs. 9,13,591 has

been shown as excess payment for purchase of land over and above the amount mentioned in the purchase deeds during asst. yrs. 1993-94 to 1995-96 and 1997-98 as per para. 6(ix) p. 6 of the assessment order. The AO has also observed that there are no vouchers for certain expenditures incurred by the assessee-society on the purchase of vehicles at Rs. 3,24,171, labour charges, bricks, sand, furniture, equipments and buildings, etc. The AO referred to the decisions of the Hon'ble Supreme Court in the case of McDowell & Co. Ltd. v. CTO (supra) and Workmen of Associated Rubber industries Ltd. v. Associated Rubber Industries Ltd. (supra) and came to the conclusion that the assessee-society is evading payment of tax, which is not permissible in the light of these two decisions. The AO as per para 6(xiv) at p. 8 held that there is much scope for misappropriating the funds for personal gain of management in the garb of society. As the assessee has not made claim of exemption under Section 10(22) in the return of income filed on 31st March, 1999, but the claim for exemption under Section 10(22) was made during the course of assessment proceedings, the AO considered that the claim is an afterthought. However, the AO came to the conclusion that both the conditions mentioned in Section 10(22) are missing. In other words, according to the AO, the assessee-society was not existing solely for educational purposes but it was existing for the purposes of profit.

Hence, the AO denied exemption under Section 10(22) of the IT Act, 1961.

61. We have considered the facts of the case, rival submissions and the material on record. During the course of hearing, we also asked the assessee to furnish income and expenditure statements of all the three schools run by it and the assessee-society has furnished details of income and expenditure of all the three schools. The surplus of income over expenditure as mentioned by the AO in para 6(vi) at p. 6 and reproduced in the preceding paragraph, is correct. The assessee-society claimed exemption under Section 11 in the return of income filed by it, but the AO denied exemption under Section 11 on the ground that the name of the society in the registration certificate issued by the CIT, Allahabad dt. 10th March, 1978, is mentioned as "Children Care and Educational Development Society". The prefix "All India" was added by the society subsequently and the CIT has issued another certificate on 1st July, 1996, granting exemption under Section 80G to the

assessee-society. The name of the assessee-society has been mentioned as "All India Children Care and Educational Development Society". The assessee-society changed its name to All India Children Care and Development Society in July, 1985, and the assessee filed certificate dt. 15th July, 1985, issued by the Registrar of Societies in the name of All India Children Care and Development Society. This change in name was intimated by the assessee-society to the CIT, Allahabad, vide letter dt. 12th Aug., 1985. It is, therefore, argued that the AO was not justified because the name of the society in the registration certificate dt. 10th May, 1978, issued by the CIT, Allahabad was mentioned as "Children Educational and Development Society". Similarly, the AO was not justified in not considering the claim of the assessee-society that the return of income was filed under Section 148 on the ground that the assessee has not filed the return of income under Section 139(4A). Even during the course of proceedings under Section 148, the assessee can claim exemption of income under Section 11 of the IT Act and it is the duty of the AO to consider the claim according to the provisions of law. Therefore, the AO committed error in not considering the claim of the assessee-society under Section 11 in accordance with the provision of law. During the course of argument, the learned counsel for the assessee submitted that in the relevant period, the assessee was running three educational institutions like : The learned counsel for the assessee submitted that all these institutions were registered with the U.P. Board, CBSE, ICSE. He has further submitted later on that the assessee has added medical and pharmacy colleges. Therefore, the assessee was running only educational institutions. The learned counsel for the assessee in his first paper book has filed the copies of the papers relating to granting affiliation certificates issued by the various Boards mentioned above giving recognition to the educational institutions of the assessee. The learned counsel for the assessee also filed in the paper book the copy of the sanction letter dt. 23rd March, 1992, by the Ministry of Human Resources Development for granting aid under various schemes during the relevant financial year to the educational institution. As stated above, the copies of all the income and expenditure statements of the school was furnished. This was filed giving bifurcation for all the schools. Copy of the consolidated receipt and payment account was also furnished in the paper book although with other details with regard to receipt and payment of the different

educational institutions as directed by the Bench. The learned counsel for the assessee also on the direction of the Bench has filed the receipt and payment account of girls hostel and for vocational education. The learned counsel for the assessee also filed the copy of the bye-laws of the society, since its inception and copies of the case laws decided by the different Benches of the Tribunal on the issue. The learned counsel for the assessee also filed the details of the income of the manager, which was questioned by the AO. The learned counsel for the assessee also filed certified copy of the resolution of the Institution as taken from the minute books.

We have heard both the parties and considered the material available on record at length on each and every aspects, which were raised by the AO and the CIT(A) in their order. We have considered all the objections raised by the authorities below. Prima facie, we are satisfied from these explanations that the assessee was running educational institution. But since we have already set aside and quashed the assessment orders on the preliminary issues, therefore, we are not giving findings whether the assessee is entitled to deduction under Section 11 of the IT Act. Similarly, we are also not giving findings whether the assessee-society is entitled to exemption of its income under Section 10(22) of the IT Act as the decision would be of academic use only because each accounting year is a separate and self-contained period of assessment and whether the assessee-society is existing solely for educational purposes or for the purposes of profit, has to be considered by the AO independently for each year. We are fortified in our view by the judgment of Hon'ble Supreme Court in the matter of Aditanar Educational Institution v. Addl CIT (supra). Therefore, the assessment orders for the asst. yrs. 1993-94, 1994-95 and 1995-96 are quashed. Hence, the appeals for the asst. yrs. 1993-94, 1994-95 and 1995-96 are allowed.

62. Though the return of income filed by the assessee is valid in the sense that it is a voluntary return of income under Section 139(4) of the IT Act for the asst. yr. 1997-98, but since the AO [Joint CIT(Asst.)] who has made assessment under Section 143(3) has no jurisdiction over the case of the assessee-society, the assessment is illegal for want of jurisdiction. We, therefore, cancel the assessment for the asst. yr. 1997-98 also as illegal for want of jurisdiction of the AO [Joint

CIT(Asst)], who completed the assessment. For the reasonings mentioned above, we are not giving any finding whether the assessee-society is entitled to exemption under Section 11 or Section 10(22) of the IT Act, 1961 on the reasons in above connected appeals which we have disposed of above.

63. The assessment for the asst. yr. 1997-98 is also quashed and the appeal of the assessee is allowed on preliminary grounds.

64. In the result, appeals of the assessee for the asst. yrs. 1993-94, 1994-95, 1995-96 and 1997-98 are allowed.

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