IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI. A. K. GARODIA, ACCOUNTANT MEMBER

ITA No.244/LKW/2003
Assessment Year:1993-94

M/s Bharat Sewa Sansthan 2, Rana Pratap Marg Lucknow	v.	Dy. CIT Circle 1(1) Lucknow
(Appellant)		(Respondent)

ITA No.228/LKW/2003
Assessment Year:1993-94

Asstt. CIT Range II Lucknow	v.	M/s Bharat Sewa Sansthan 2, Rana Pratap Marg Lucknow
(Appellant)		(Respondent)

Assessee by:	Shri. P. K. Kapoor, C.A.		
Department by:	Shri. Alok Mitra, D.R.		
Date of hearing:	25	07	2014
Date of pronouncement:	23	09	2014

O R D E R

PER SUNIL KUMAR YADAV:

These appeals are preferred by the assessee as well as the Revenue against the order of the ld. CIT(A) pertaining to assessment year 1993-94 on various grounds.

2. These appeals were disposed of by the Tribunal vide its order dated 12.10.2007 quashing the assessment proceedings for want of jurisdiction, having admitted the additional ground that notice under section

148 of the Income-tax Act, 1961 (hereinafter called in short “the Act") dated 20.5.1998 was issued after expiry of a period of four years from the end of the relevant assessment year by an Income-tax authority of the rank of Asstt. Commissioner of Income-tax in violation of the provisions of section 151(2) of the Act, without adjudicating the issues on merit. The Tribunal’s order was challenged by the Revenue before the Hon'ble High Court of Allahabad in Income Tax Appeal No.85 of 2008 and vide order dated 6.9.2011, the Hon'ble Court has set aside the Tribunal’s order dated 12.10.2007 in the light of the amendment brought in section 151 of the Act by adding Explanation under sub-section(2) by the Finance Act No.2 of 2008 with retrospective effect from 1.10.1998 and remitted the matter back to the Tribunal to consider and decide the controversy afresh on merit after providing an opportunity of being heard to the parties, keeping in view the amendment done through Finance Act No.2 of 2008. Accordingly, the matter was listed for hearing and the arguments advanced by the parties were heard.

3. In the assessee’s appeal, the assessee has assailed the order of the ld. CIT(A) on other legal grounds also beside raising a ground for issuance of notice under section 148 of the Act by a incompetent person. Though the assessee has challenged the sufficiency of reasons recorded by the Assessing Officer while issuing notice under section 148 of the Act and also validity of service of notice under section 148 of the Act upon the competent person through grounds No.1.1 to 3.2, but during the course of hearing, no argument was advanced by the ld. counsel for the assessee in this regard. Moreover, no ground was raised in this regard before the ld. CIT(A). Since there is no adjudication of these grounds in the order of the ld. CIT(A) and no argument was raised before us, we find no merit in these grounds and we accordingly dismiss the same.

4. Through ground No.4, the assessment order is challenged on the ground that notice under section 143(2) of the Act was not issued and the finding of the ld. CIT(A) that it is only a procedural formality and purely aimed at just being an opportunity of being heard to the assessee are not proper, as the Assessing Officer will assume jurisdiction to frame assessment by issuing notice under section 143(2) of the Act.

5. In this regard, the ld. counsel for the assessee has contended that as per provisions of section 148(1) of the Act, notice under section 143(2) of the Act is required to be issued upon the assessee before initiating proceedings for completing the assessment. During the course of hearing, the order of the Tribunal in the case of Chand Bihari Agrawal vs. ACIT in IT(SS)A No.5/PAT/2010 was referred by the ld. D.R., in which identical issue was examined by the Tribunal and the Tribunal has held that in terms of the judgment in ACIT vs. Hotel Blue Moon [2010] 321 ITR 362 (SC) non-issuance of notice as per time provision of section 143(2) of the Act would be fatal only when block return is filed under section 158BC of the Act and the Assessing Officer in repudiation of return so filed in terms of section 158BC of the Act, proceeds for making inquiry. The Tribunal further held that it is just quite obvious from the aforesaid judgment that notice under section 143(2) of the Act is required to be issued only when block return is furnished in terms of section 158BC of the Act. The ld. counsel for the assessee has simply reiterated its contentions despite confrontation of this order of the Tribunal.

6. In the instant case, undisputedly the return was not filed under section 139(1) of the Act, it was rather a belated return as it was filed on 19.1.1995 and due date for filing of return was 31.10.1993. The return of the assessee was, however, processed under section 143(1) of the Act on 22.2.1995. Thereafter notice under section 148 of the Act was issued on 20.5.1998 and in response thereto the return was filed on 10.8.1998.

Therefore, the return of income was not filed within the period specified under section 148 of the Act and as per aforesaid order of the Patna Bench of the Tribunal, the Assessing Officer was not under any obligation to get the notice served under section 143(2) of the Act. Moreover, the assessee has joined the assessment proceedings and represented its case by putting appearance before the Assessing Officer on different dates, therefore, it cannot be said that the Assessing Officer has framed assessment without affording valid opportunity of being heard to the assessee. Since the issue of issuance of notice under section 143(2) of the Act in the case of reassessment or the block assessment has already been examined by the Tribunal in the light of various judicial pronouncements and legal provisions of the Act, we find no justification to re-adjudicate the issue afresh. However, for the sake of reference, we extract the relevant observation of the Tribunal made in the case of Chand Bihari Agrawal vs. ACIT (supra) as under:-

> *"9. Keeping the above principles in view, we shall now consider as to what has been laid down in ACIT v. Hotel Blue Moon (supra). Careful perusal of the judgment shows that the Hon'ble Supreme Court has laid down the following propositions:*
>
> *a. In respect of searches on or after 1.1.1997 the statutory time limit for furnishing the block return of undisclosed income under section 158BC is 45 days.*
>
> *b. Where the Assessing Officer, in repudiation of the return filed under section 158BC(a), proceeds to make enquiry, he has necessarily to follow provisions of section 142 and sub-section (2) and (3) of section 143.*
>
> *10. Before we consider the applicability of the aforesaid judgment to the case of the assessee, it may be relevant to mention that notice under section 143(2) is required to be issued to give an opportunity to the assessee to produce, or cause to be produced, any evidence*

on which the assessee may rely in support of his return. The return contemplated by section 143(2) is a return which is valid and filed in conformity with law and not a return which is non-est in law or not filed within the statutory period fixed for filing the return or is not otherwise in conformity with law. Thus section 143(2) would not come into operation unless a valid return is filed within the statutory period.

11. Section 158BC prescribes the procedure for block assessment. In a case where search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132A, the Assessing Officer is empowered to serve a notice on a person who has been subjected to proceedings under section 132/132A requiring him to furnish a block return within such time not being less than 15 days but not more than 45 days in the prescribed form and verified in the prescribed manner. It is quite apparent from the judgment of the Hon'ble Supreme Court in Hotel Blue Moon (supra) that the statutory time limit for furnishing the block return u/s 158BC is 45 days. It is stated in Sutherland, Statutory Construction, 3rd Edition, Vol. 3, page r97 that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Besides, it is equally settled that when the law requires a particular thing to be done in a particular manner, it must be done in that manner otherwise it should be ignored.

12. In the context of the provisions of section 139, it has been held by the Hon'ble Supreme Court in CIT v. S Raman Chettiar, 55 ITR 630 (SC) that the return filed after lapse of limitation period mentioned in section 139(4)(b) would be non-nest. At page 634 of the said Reports, the position is stated thus: "Therefore it may be implied, as laid down in S. Santosha Nadar v. First Additional Income-tax Officer, Tuticorin and Commissioner of Income-tax v. Bhagwandas Amersey that the return must be filed before the time

mentioned in section 34(3)." It therefore follows that a return filed after the expiry of the statutory period would not only be not in conformity with law but also non-est. This principle is also in conformity with the decision in Hotel Blue Moon (supra). Both the Assessing Officer and the assessee are equally bound by the time limitation placed on them by section 143(2) and 158BC respectively. The assessee cannot be heard to say that the AO is bound by the time prescription of section 143(2) but he himself is not bound by the statutory period of limitation as laid down in section 158BC. The period of limitation as laid down in section 143(2) and 158BC applies to both of them in equal measure and with equal force.

13. Let us look at the issue from another angle. In case no such time limit as prescribed for filing the return u/s 158BC is placed, the assessee would be free to furnish return on the last day of the limitation period for completion of assessment. In such a case, it would be almost impossible for the Assessing Officer to issue notice under section 143(2) so as to give reasonable opportunity to the assessee to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of return. In order to obviate such problems and absurdity, section 158BC lays down time limit within which return must be furnished. The fact that no authority is empowered to extend the aforesaid time limit fixed u/s 158BC also lends credence to the view that the said time limit is mandatory and therefore the return must be filed within the aforesaid time limit. A block return furnished after the expiry of statutory time limit as laid down in section 158BC would not be in conformity with law and therefore non-est.

14. In terms of the judgment in Hotel Blue Moon (supra), non-issue of notice as per time provision of section 143(2) would be fatal only when the block return is filed u/s 158BC and the AO, in repudiation of the return so filed in terms of section 158BC, proceeds to make inquiry. It is thus quite obvious from the aforesaid judgment that the

notice under section 143(2) is required to be issued only when block return is furnished in terms of section 158BC. Return not furnished within the statutory time limit or in the manner laid down in section 158BC cannot be said to be one furnished under section 158BC of the Act. In order to attract the applicability of the said judgment, an assessee must show that he has filed a valid return in conformity with the requirements of section 158BC.

15. In the present case, it is quite apparent on bare perusal of the details furnished by both the parties that the return was not filed within the statutory time limit laid down in section 158BC and therefore the return filed by the assessee after the expiry of the said time limit would not only be not in conformity with law but also non-est in law. In this view of the matter, the Assessing Officer was not required to issue notice under section 143(2) on the basis of the aforesaid return which was non-est in law. Ground Nos. 1 to 4 3 and 7 taken by the assessee are therefore rejected.

16. Both the parties have referred to the provisions of section 292BB. According to the Department, section 292BB would cure the non-service of notice as the assessee has participated in the assessment proceedings before the AO. Learned CIT(A) has also taken the same view. The learned counsel for the assessee however submits that section 292BB has been inserted in the Income-tax Act with effect from 1.4.2008 and therefore has no retrospective operation. In support of his submission, he has relied upon a number of decisions referred to in his submissions/grounds of appeal.

17. We have considered the rival submissions and also perused the authorities cited by the parties. Section 292BB inserted in the Income-tax Ac by the Finance Act 2008 w.e.f. 1.4.2008 reads as under:

"Notice deemed to be valid in certain circumstances. 292BB. Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was-

(a) not served upon him; or

(b) not served upon him in time; or

(c) served upon him in an improper manner:

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."

18. It was contended by the learned counsel for the assessee that section 292BB has not been given retrospective effect and therefore it would apply prospectively with effect from AY 2008-09 onwards and not to the earlier assessment years. In our view, the relevant issue is not whether the provisions of section 292BB are retrospective in nature. The relevant issues, in our view, are as under:

(i) By the Finance Act, 2008, section 299BB has been inserted in the Income-tax Act with effect from 1.4.2008 and not with effect from assessment year 2008-09. Provisions in the Income-tax Act take effect with effect from a given date as also from a given assessment year. The Finance Act by which the provisions in the Income-tax Act are inserted indicates as to which provision in the said Act would take effect from assessment year and which provision would take effect from a given date which could be 1st April or 1st June or 1st October or any other date. In fact, the proviso to section 143(2), which

contains time stipulation, was inserted by the Finance (No.2) Act 1991 with effect from 1.10.1991. Section 292BB has been made effective from 1.4.2010 and not from A Y 2008-09.

(ii) According to section 292BB, any notice, which is required to be served upon an assessee under any provision of the Income-tax Act, shall be deemed to have been served upon him in accordance with the provisions of the said Act if he has appeared in any proceeding or co-operated in any inquiry relating to an assessment or re-assessment without raising any objection before the completion of such assessment or re-assessment. There can be no manner of doubt that the fiction created by section 292BB can be drawn with effect from 1.4.2008 and not before 1.4.2008 as section 292BB has not been given retrospective effect. But that is not the issue here. The relevant issue here is whether section 292BB operative prospectively from 1.4.2008 can draw a part of its requisites, i.e., as to whether an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or re-assessment without raising any objection before the AO, from time antecedent to its being made effective. In other words, the issue, which is purely legal, is whether a prospective legislation can draw a part of its requisites from time antecedent to its passing. A statute is not required to be given retrospective effect just because it seeks to draw a part of the requisites from time antecedent to its passing. Judgment of a Bench of 5 Judges of the Hon'ble Supreme Court in DS Nakara v. Union of India, AIR 1983 SC 130, p. 143 and other judgments, e.g., State of Bombay v. Vishnu Ramchandra, AIR 1961 SC 307; Sajjan Singh v. State of Punjab, AIR 1964 SC 464 are quite apposite. This proposition can also be appreciated in the context of repealing statutes. Though prospective in operation, a repealing statute completely obliterates all past

actions and transactions, except those past and closed, after it comes into effect. It therefore follows that a prospective statute can draw a part of its requisites from time antecedent to its passing. Similar principles apply to curative statutes, e.g., those seeking to cure the deficiencies in past actions. If that be so, the relevant question would be whether section 292BB can draw, with effect from 1.4.2008, a part of its requisites from time antecedent to its passing, i.e., events and actions prior to 1.4.2008.

(iii) The judgment of the Hon'ble Supreme Court in Director of Inspection v. Pooran Mat, 96 ITR 390 (SC) is quite relevant. The said judgment was rendered in the context of the provisions of Rule 112A of the Income-tax Rules read with section 132(5) of the Income-tax Act. Like section 143(2), Rule 112A also provided time limit for issue/ service of notice. There was failure on the part of the Assessing Officer in issuing the notice within the time limit laid down in Rule 112A. The assessee had participated in the proceedings before the Assessing Officer. The assessee challenged the order passed by the Assessing Officer on the ground of non-service of notice within the prescribed time limit. The Hon'ble High Court accepted the plea of the assessee. On appeal by the Revenue, the Hon'ble Supreme Court reversed the order of the High Court. The Hon'ble Supreme Court has quoted, with approval, the observations made by the Hon'ble Chief Justice in Phillips v. Martin, 11 NSWLR 153 which are as follows: "It is to my mind a clear principle of equity, and I have no doubt there are abundant authorities on the point, that equity will interfere to prevent the machinery of an Act of Parliament being used by a person to defeat equities which he has himself raised, and to get rid of a waiver created by his own acts." Both the provisions, namely, Rule 112-A and section 143(2) contain time

limitations in the matter of service of notice on the assessee. Therefore the judgment in Pooran Mal (supra) would also need to be considered.

(iv) Section 292BB gives statutory effect to the principle of waiver. Section 292BB provides that where an assessee has appeared or co-operated in any inquiry relating to an assessment or re-assessment, it shall be deemed that any notice under any provision of the Income-tax Act, which is required to be served upon him, has been duly served upon him. He is statutorily precluded from challenging, inter-alia, that the notice was not served upon him. Should an assessee, who has chosen to appear and co-operate in the inquiry u/s 143(2) without raising any objection, be allowed to raise the plea of non-service of notice? If he has any objection as to non-service of notice, nothing prevents him from taking the objection before the Assessing Officer. In fact, the proviso to section 292BB itself provides that the fiction of section 292BB would not apply where the assessee has raised objection before the Assessing Officer before completion of assessment or re-assessment. In such a situation, i.e., a situation where the assessee takes the objection before the Assessing Officer as regards non-service, the Assessing Officer may, instead of proceeding with the matter, prefer to take other actions as permissible under law. Can an assessee, who, instead of taking the objection before the Assessing Officer as regards non-service of the notice, cooperates with the Assessing Officer and thereby enables him to complete the assessment, be allowed to turn back and challenge the assessment on the ground of non-service of notice as per time provision?

19. As stated earlier in paragraph 8 of this Order, the Hon'ble Supreme Court has held that the generality of the expressions found in a judgment are not intended to be exposition of the whole law but

governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. None of the aforesaid issues has been considered in any of the judgments/orders referred to by the learned counsel for the assessee. For the present, we are not inclined to deal with them as also the applicability of section 292BB to the case of the assessee for the reason that we have already held earlier in this Order that the provisions of section 143(2) are not applicable to the case of the assessee as the return furnished by him is non-est in law having been filed after the expiry of limitation period laid down in section 158BC. Section 292BB comes into operation only when a notice is required to be issued under the Income-tax Act but has either not been issued at all or not issued/served in time or in proper manner. Section 292BB is not required to be invoked if the notice itsejf was not required to be issued in terms of the provisions of the Income-tax Act. We have already held earlier that notice u/s 143(2) was not required to be issued in the case before us for the reasons given earlier in this Order and therefore there is no need to examine the applicability of section 292BB in the present case.

20. In view of the aforesaid, ground Nos. 1 to 4 and 7 taken by the assessee are dismissed."

7. Accordingly in the light of the aforesaid order of the Tribunal, we reject this ground of the assessee.

8. Through ground No.5, the assessee has assailed the order of the ld. CIT(A) that notification issued under section 10(23C)(iv) of the Act upto the assessment year 1992-93 stood extended to the period covering to the year under assessment as well as in the absence of repudiation of the same by the competent authority. Whereas the ld. CIT(A) and the Assessing Officer has taken a view that benefit of section 10(23C)(iv) of the Act would not be available in the impugned assessment year i.e. assessment year

1993-94, as the notification under section 10(23C)(iv) of the Act was issued upto assessment year 1992-93.

9. In this regard, we have carefully examined the orders of the lower authorities and we find that by letter dated 17.9.1998 CBDT rejected the application seeking approval for assessment year 1993-94. Since the approval being mandatory requirement for grant of exemption, the assessee was not eligible for exemption under section 10(23C)(iv) of the Act for the year under consideration. The ld. CIT(A) accordingly rejected the benefit of exemption under section 10(23C)(iv) of the Act. Before us nothing has been placed by the assessee to establish that it still enjoys the benefit of exemption under section 10(23C)(iv) of the Act by any notification of the competent authority. Under these facts, we are of the considered view that the ld. CIT(A) has rightly rejected the benefit of exemption under section 10(23C)(iv) of the Act for the year under consideration in the absence of any approval from the CBDT. Accordingly, we confirm the order of the ld. CIT(A).

10. Through ground No.6, the assessee has assailed the order of the ld. CIT(A) on the ground that the ld. CIT(A) has erred in holding that appellant could not have been allowed the benefit of accumulation of Rs.10 lakhs as earmarked and credited to the building construction fund for benefit of public at large, as nature and purpose for which building was to be used had not been specified and condition laid down in rule 17, which required the notice of accumulation to be given in form No.10 before the due date for filing the return, had not been satisfied.

11. In this regard, the ld. counsel for the assessee has submitted that notice of accumulation of Rs.10 lakhs was given to the Assessing Officer on 6.7.1998 along with return filed in response to notice under section 148 of the Act. Therefore, notice of accumulation was available before the Assessing Officer while completing the assessment. In this notice, it has

been specifically mentioned that accumulation of funds were made for the building construction on account of building construction fund. Therefore, there cannot be disallowance on the ground that specific purpose has not been mentioned in the notice to the Assessing Officer. The ld. counsel for the assessee has also placed reliance upon the orders of the Tribunal in the assessee's own case for assessment years 1994-95 to 1998-99, in which the Tribunal has held that the object of building construction is charitable and is in consonance with the object of the trust unless it is shown by the Assessing Officer that the building construction was not meant for charitable purpose but was for business. The Tribunal accordingly directed the Assessing Officer to allow exemption to the assessee on the accumulated funds.

12. The ld. D.R., on the other hand, has submitted that in the instant case, the ld. CIT(A) has already allowed exemption of the accumulated funds under section 11(1)(a) of the Act. Therefore, no further allowance can be given to the assessee even if this notice of accumulation is to be considered to be a valid notice given to the Assessing Officer.

13. Having carefully examined the orders of the lower authorities in the light of the rival submissions and the relevant provisions of the Act, we find that exemption under section 11(1)(a) of the Act is to be allowed with respect to the income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of 25% for the impugned assessment year of the income from such property; meaning thereby accumulation to the extent of 25% of total income from such property is permissible for claiming exemption under section 11(1)(a) of the Act.

14. As per section 11(2) of the Act, where 75% of the income referred to in clause (a) or clause (b) of sub-section (1) of section 11 of the Act relevant to the impugned assessment year is not applied or is not deemed to have been applied to charitable or religious purpose in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in respect of the income subject to certain conditions and one of the conditions was that such person specifies noting in writing given to the Assessing Officer in prescribed manner the purpose for which income is being accumulated or set apart and not exceeding 10 years. Meaning thereby, as per sub-section (2), the accumulation of income is different than the accumulation of income referred in section 11(1)(a) of the Act. In section 11(1)(a) of the Act, accumulation of income is only to the extent of 25% of the income of the trust property held by the assessee. Whereas under section 11(2) of the Act, the accumulation would be to the extent of 75% of the total income from the property held by the trust. Therefore, the claim of the assessee for accumulation under section 11(2) of the Act was denied by the ld. CIT(A) on the ground that notice for accumulation was not given in time to the Assessing Officer. Whereas notice under section 11(2) of the Act was given to the Assessing Officer along with the return of income filed in response to notice under section 148 of the Act. Meaning thereby, at the time of completing the assessment, notice of accumulation of income was available before the Assessing Officer. The other objection of the Revenue was that in the notice of accumulation, the purpose of accumulation was given to be building construction fund instead of specifying the purpose for which the building was to be constructed. This aspect was examined by the Tribunal in the assessee's own case for assessment years 1994-95 to 1998-99 in which the Tribunal has categorically held that the object of building construction is charitable in consonance with the object of the trust

unless it is shown by the Assessing Officer that building construction was not meant for charitable purpose but was in exercise of business. The relevant observations of the Tribunal are extracted hereunder for the sake of reference:-

> *"34. Ground No.2 in Revenue's appeal and surviving ground which is pressed for adjudication relates to granting exemption on the accumulated funds within the meaning of section 11(2)(a). The object/purpose mentioned by the assessee in form No.10 in this case is "building construction". For the reasons discussed by us in assessment year 1998-99, we hold that the object of building construction is charitable and is in consonance with the object of the trust unless it is shown by the Assessing Officer that building construction was not meant for charitable object but was an exercise for business. The contention of the assessee has been that funds are accumulated for investment in building construction which are utilized for charitable purposes. We accordingly hold that the ld. CIT(A) was not correct in not allowing exemption to the assessee on the funds of the sum of Rs.15 lakhs accumulated for the charitable purposes. The order of the ld. CIT(A) is reversed to this extent and appeal of the assessee is allowed. In Revenue's appeal as held in assessment year 1998-98, we restore the matter to the file of the Assessing Officer to calculate the taxable income after allowing exemption to the funds accumulated/set apart as held above. This ground of the Revenue is, therefore, allowed for statistical purposes."*

15. Following the aforesaid order of the Tribunal, we are of the view that notice of accumulation given by the assessee along with the return of income filed in response to notice under section 148 of the Act is a valid intimation to the Assessing Officer. Therefore, benefit of exemption with regard to accumulation should be allowed to the assessee, as there is no

evidence on record that this much of accumulation has exceeded 75% of the income of the property held by the trust. Accordingly, this ground is decided in favour of the assessee.

16. Ground No.7 relates to the disallowance of Rs.9,49,071/- claimed as exemption under section 11 of the Act. Since we have already given instruction in the forgoing paragraph that accumulation of Rs.10 lakhs for the purpose of building construction is to be allowed to be exempted under section 11(2) of the Act, this ground will not sustain and accordingly the same is disposed of.

17. Ground No.7.1 relates to the charging of interest under section 234B of the Act, which is consequential in nature and needs no independent adjudication.

18. In the Revenue's appeal in I.T.A. No.228/LKW/2003, the Revenue has disputed the benefit of exemption under section 11 of the Act. The same issue has alreadybeen adjudicated by us in the forgoing paragraph while dealing with assessee's appeal. Therefore, for the reasons discussed therein, the grounds raised by the Revenue are rejected.

19. In the result, appeal of the assessee is partly allowed and that of the Revenue is dismissed.

Order was pronounced in the open court on the date mentioned on the caption page.

Sd	Sd
[A. K. GARODIA]	[SUNIL KUMAR YADAV]
ACCOUNTANT MEMBER	JUDICIAL MEMBER

DATED:23rd September, 2014

JJ:1209

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar