

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'एस.एम.सी' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD

सर्वश्री राजपाल यादव न्यायिक सदस्य एवं वसीम अहमद, लेखा सदस्य, के समक्ष।
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.3271/Ahd/2016
(निर्धारण वर्ष / Assessment Year : 2009-10)

The ACIT(Exemptions), Circle – 1, Ahmedabad.	बनाम/ Vs.	State Examination Board, Near Government Library, Sector – 21, Gandhinagar – 382 021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACTS 9590 F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Prasoon Kabra, Sr. D.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Geet Mecwan & Vishal S. Verma, A.R.

सुनवाई की तारीख / Date of Hearing	23/05/2018
घोषणा की तारीख /Date of Pronouncement	31/05/2018

आदेश / ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the appellate order of the Commissioner of Income Tax(Appeals)-Gandhinagar, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)/GNR/505/2015-16 dated 29/09/2016 arising in the assessment order passed under s.143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 27/03/2015 relevant to Assessment Year (AY) 2009-10.

2. The grounds raised by the revenue per its appeal are as under:

- “1. Whether on the facts and in the circumstances of the case the Ld.CIT(A) is justified in allowing the assessee’s appeal deleting the addition of Rs.45,00,000/- being deemed income.*
- 2. Whether on the facts and in the circumstances of the case the Ld. CIT(A) is justified in holding that the appellant has utilized accumulated income within the period of five years.*
- 3. On the facts and circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the AO.*
- 4. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of the Assessing officer.”*

3. The solitary issue raised by the revenue in this appeal is that learned CIT(A) erred in deleting the addition made by the AO for Rs.45,00,000/- under provision of section 11(3)(c) of the Act.

4. The briefly stated facts are that the assessee in the present case is a trust and engaged in the activity of education. The assessee in the A.Y. 2003-04 accumulated a sum of Rs.45,00,000/- u/s 11(2) of the Act by way of filing Form 10 for 5 years which is ending on FY 2007-08 corresponding to AY 2008-09. This accumulated sum was to be utilized for the purchase of fixed asset and/or for adjustment in fee structure before 31-03-2008. However, the assessee utilized the same in the F.Y. i.e. 2008-09 corresponding to AY 2009-10 after the expiry date i.e. 31.3.2008 (F.Y. 2007-08).

Thus, the Assessee during the year transferred a sum of Rs.45,00,000/- from capital fund account to the income and expenditure account but claimed deduction for the same under section 11(3)(c) of the Act. However, the AO was of the view that the amount transferred from

capital fund to income and expenditure account for Rs.45,00,000/- represents the deemed income of the assessee and therefore, such deemed income cannot be eligible u/s 11 of the Act.

Besides the above, the AO was also of the view that the fund accumulated was to be utilized within 5 years from the A.Y. 2003-04 which expired in the AY 2008-09. Thus assessee failed to utilize the same within the specified time period i.e. F.Y. 2007-08 corresponding to A.Y. 2008-09. In fact, the assessee has utilized the accumulated fund in the subsequent financial year, which is under consideration i.e. 2008-09 corresponding to A.Y. 2009-10. Thus, the assessee failed to comply the provision of Section 11(2) of the Act.

In view of the above reasons the AO show-caused the assessee for its explanation. In compliance thereto, the assessee submitted that the provision of Section 11(3)(c) of the Act requires to utilize the accumulated fund within the specified period or in the year immediately following the expiry thereof. In the instance case, the fund was accumulated for 5 years, which came to the end in the F.Y. 2007-08 corresponding to A.Y. 2008-09 but the accumulated fund was utilized for the specified purposes immediately in the next financial year as permitted under clause (c) of Section 11(3) of the Act.

However, the AO disregarded the contention of the assessee on account of two reasons, firstly, transfer of Rs.45,00,000/- from capital fund to the income and expenditure account represents the deemed income of the assessee and therefore, it is not eligible for deduction u/s 11 of the Act.

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Secondly, the fund accumulated set apart was not utilized within the specified time i.e. 5 years. Accordingly, the AO treated the sum of Rs.45,00,000/- as deemed income and added to the total income of the assessee.

5. Aggrieve, assessee preferred an appeal to Ld. CIT(A). The assessee before the Ld. CIT(A) submitted that fund accumulated u/s 11(2) of the Act was utilized for specified purposes. The assessee was to utilize such fund up to 31-03-2008 but the same was utilized in the immediate next year i.e. 31-03-2009 corresponding to AY 2009-10, which has been permitted under clause (c) of Section 11(3) of the Act. The Ld. CIT(A) after considering the submission of the assessee deleted the addition made by the AO by observing as under:

I have carefully considered the facts of the case, assessment order and submission filed by the appellant. The undisputed facts of present appeal is that Appellant has shown total income in Profit & Loss Account at Rs.5,75,81,017/- which includes Rs.45,00,000/- being amount accumulated in A.Y. 2003-04 and transfer from capital fund in current year. Thus, net total income for the current year is Rs.5,30,81,017/-. The Appellant has submitted computation of total income wherein it is stated that exemption under Section 11 being 15% of income is at Rs.78,02,738/-. Further, total expenses in Profit & Loss Account is of Rs.3,12,78,279/- out of which Rs.43,35,054/- is claimed against accumulation made for earlier years. The Appellant has also claimed accumulation under Section 11(2) for Rs.1,85,00,000/-. Thus, Appellant claimed total expenses either claimed under Section 11 or 11(2) is of Rs.5,32,45,963/- (78,02,738 + 3,12,78,279 + 1,85,00,000 - 43,35,054) and such amount is claimed against net total income of Rs.5,30,81,017/- and thus, income was shown at NIL. The Appellant has also claimed that amount accumulated in AY 2003-04 was of Rs.45,00,000/- and such amount is to be used for fees adjustment and purchase of fixed assets or for fees adjustment and it has utilized Rs.1,64,946/- towards purchase of fixed assets in AY 2009-10 and

Rs.43,35,054/- for fee adjustment in very same year. Thus, Appellant has claimed that entire accumulated income of AY 2003-04 was utilized in current year. However, the AO has referred to provisions of Section 11(2) and 11(3) and contended that when 85% of income of Trust under Section 11(1) is not applied for charitable purpose but is accumulated either in whole or part, such income shall not be deemed to be the total income of previous year in receipt of income if appellants submits Form 10 specifying the purpose of accumulation. The AO has stated that amount set apart or accumulated is required to be used within five years. The AO has also referred to provision of Section 11(3) and contended that if amount applied u/s 11(2) is not utilized for the purpose for which it is accumulated within prescribed period, it shall be deemed to be the income of Appellant for previous year immediately following the expiry of period. On this basis, AO contended that Appellant has accumulated income in AY 2003-04 and is required to be utilized upto AY 2008-09 which Appellant failed to utilize, hence, he has taxed Rs.45,00,000/- as deemed income in current assessment year. On the other hand, Appellant has reiterated the contention as raised before the AO and argued that amount was utilized after the expiry of said five years but was utilized in the immediate year after the expiry of said period and as per provisions of Section 11(3)(c) Rs.45,00,000/- cannot be treated as deemed income of Appellant.

On careful consideration of entire facts, it is pertinent to note that provisions of Section 11(2) and 11(3) read as under:

"[(2) 2[Where 3[eighty-five] per cent of the income referred to in clause (a) or v clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—]

*[(a) such **person** furnishes a statement in the prescribed form and in the prescribed 5 manner 6 to the Assessing Officer, stating the purpose for which **the income** is being accumulated or set apart and the period for which the income is to be*

accumulated or set apart, which shall in no case exceed five years;

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

*(c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing **the return of income** for the previous year.*

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

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

[Any income referred to in sub-section (2) which -

(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

(b) Ceases to remain invested or deposited in any of the forms or modes specified in sub section (5), or]

*(c) is not utilized¹⁰ for the purpose for which it is so accumulated or set apart during the period referred to in **clause (a)** of that sub-section or in the year immediately following the expiry thereof,*

11[(d) is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust

or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10,J"

The provisions of Section 11(2)(a) clearly states that Assessee can accumulate or set apart income of current year for utilization subsequent assessment years which should not exceed five years, present case, Appellant has accumulated income in A.Y. 2003-04 for five years which expires on 31st March, 2008. The AO has not disputed the fact that Appellant has not filed prescribed form for accumulation. Further, provision of Section 11(3)(c) states that any income referred Section 11(2) if it is not utilized for the purpose for which it is accumulated in period of five years as referred in Section 11(2)(a) or in the year immediately following the expiry, it shall be deemed to be income of appellant on expiry of five years, In the present case Appellant has utilized accumulated income in A.Y. 2009-10 and AO has not denied the fact that same is not used for the purpose for which it was accumulated. The only dispute is regarding the year of utilization as AO is of the view that accumulated income is required upto 31st March, 2008, whereas Appellant is of the view that accumulation is required to be used upto 31/03/2009. The provisions of Section 11(3)(c) as discussed herein above clearly states that accumulated income can be deemed income only if it is not used within period of five years or the year immediately following the expiry and in present case Appellant has already utilized accumulated income in the year immediately following the expiry being A.Y. 2009-10 and such utilization is as per provisions of the Law, hence, AO was not justified in treating income of Rs.45,00,000/- as deemed income u/s 11(3) of the Act. This ground of appeal is allowed."

Being aggrieved by the order of Ld. CIT(A) Revenue is in second appeal before us. Both Ld. DR and AR before us relied on the order of authorities below as favorable to them.

6. We have heard rival contentions and perused the materials available on record. In the instance case, the assessee has accumulated a

sum of Rs.45,00,000/- in the A.Y. 2003-04, which was to be utilized within the period of 5 years i.e. 31-03-2008 for the specified purposes. But the assessee failed to utilize the same within the period of 5 years therefore, the same was treated as deemed income by the AO on account of two reasons as discussed below:

- i. Transfer of Rs.45,00,000/- from capital fund account to income and expenditure account represents the deemed income of the assessee therefore, same cannot be eligible for deduction u/s 11 of the Act.
- ii. The assessee failed to utilize the fund accumulated within the specified time.

At in this juncture, we find important to reproduce the relevant extract of the section 11 of the Act, which reads as under:

“⁴⁶Income⁴⁷ from property held for charitable or religious purposes.

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

⁴⁹XXXXXXXXXXXXXXXXXXXXXXXXXXXX

⁶¹[(2) ⁶²[Where ⁶³[eighty-five] per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—]

(a) such person specifies, by notice in writing given to the ⁶⁴[Assessing] Officer in the prescribed⁶⁵manner⁶⁶, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

⁶⁷[(b) the money so accumulated⁶⁸ or set apart is invested or deposited in the forms or modes specified in sub-section (5)].:]”

The provisions of Section 11(2) of the Act clearly authorize the assessee to accumulate the fund for the specific purpose for the specified period. In case on hand there is no allegation of the AO that the fund accumulated has been utilized other than the purpose for which it was accumulated. Therefore, it can be inferred that the fund accumulated has been utilized for the specified purposes. Therefore, there is no question of treating the deemed income of the assessee and therefore, we hold that the AO erred in treating the income transfer from capital fund account to the income and expenditure account as deemed income of the assessee.

Similarly, we also note that indeed assessee was to utilize the fund within the period of 5 years, which ended on 31-03-2008 but the assessee failed to do so and utilized the same for specified purpose in the immediate succeeding financial year. In this regard, we note that the provisions of Section 11(3)© of the Act clearly permits to utilize the funds either within the specified period or in the next year immediately following the expiry of the period as discussed above. The relevant extract of the section reads as under :

⁷²[(3) Any income referred to in sub-section (2) which—

(a) XXXXXXXXXXXXXXXXXXXX

⁷³[(b) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(c) is not utilised⁷⁴ for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof”

It is undisputed fact that the fund was utilized by the assessee for the specified purpose in the previous year immediately following the expiry

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of the year upto which the fund was accumulated. Therefore, there remains no doubt that the assessee was entitled for claiming the deduction u/s 11 of the Act. Thus, we do not find any reason to interfere in the order of Ld. CIT(A) and hence ground of appeal of the Revenue is dismissed.

7. In the result, appeal of the revenue is dismissed.

This Order pronounced in Open Court on 31/05/2018

Sd/-
(राजपाल यादव)
न्यायिक सदस्य
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 31/05/2018
Priti Yadav, Sr.PS

Sd/-
(वसीम अहमद)
लेखा सदस्य
(WASEEM AHMED)
ACCOUNTANT MEMBER

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

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2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-Gandhinagar, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
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