

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "ए" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A",
CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & Dr. B.R.R. KUMAR , AM

आयकर अपील सं./ ITA No. 207/Chd/2018

निर्धारण वर्ष / Assessment Year : 2014-15

DCIT (Exemption) Circle-2, Chandigarh	बनाम	M/s Aggarwal Vidya Pracharni Sabha, Tigaon Road, Ballabgarh, Faridabad
स्थायी लेखा सं./PAN No: AABTA3409Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None
राजस्व की ओर से/ Revenue by : Smt. Chandrakanta
सुनवाई की तारीख/Date of Hearing : 25/09/2018
उदघोषणा की तारीख/Date of Pronouncement : 04/10/2018

आदेश/Order

PER DR. B.R.R. KUMAR, A.M.:

The present appeal has been filed by the Revenue against the order of the Ld. CIT(A), Faridabad dt. 13/12/2017.

2. In the present appeal Revenue has raised the following grounds:

1. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in not appreciating the findings of the A.O. that there is a discrepancy in the claim of the assessee as in the computation it has claimed accumulation under explanation 2 of section 11(1) and in the audit report the same has been claimed u/s 11(2) of the IX Act, 1961.
2. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in not appreciating the finding of the A.O. that the figures of accumulation are different in form No. 10B at Rs. 2,42,47,364.10 as certified by the Auditor whereas in Form No. 10 amount shown was Rs. 1,82,41,063/- which defeats the very purpose of filing Form No. 10 i.e. to help the AO to arrive at the correct income.
3. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in accepting an unduly delayed Form 10 with figures at variance with that in the audit report and thereby negating the rationale of the form intended to help the A.O. arrive at exempt income.

4. That on the facts and circumstances of the case the Ld. CIT(A) has failed to appreciate that not only has the assessee given different sections and different figures for claiming accumulation but has also given a very general purpose for accumulation i.e." Providing the quality education to the students of our society" in clear defiance of statutory provisions that purposes of accumulation have to be specific.

3. The assessee has shown in the computation of income amount deemed to be applied as per Clause 2 of Explanation 2 Section 11(1) of I.T.Act of Rs.1,82,41,063/-The assessee was specially asked by the Assessing Officer to furnish the details of this accumulation as the Explanation 2 Section 11(1) prescribes any income which has not been received or which could not be utilized due to any other reason in the previous year. The assessee in the written submission showed this amount as accumulation of income as prescribed u/s 11(2) of I.T.Act. The Form no. 10 dated 26.09.2014 has been filed in support. The specific purposes have been shown in the Form 10 have been shown as:-

- (i) For the construction of building at 12 acres of land at Mirapur, Palwal.
- (ii) For providing the quality education to the students of our society.

4. The computation of total income however showed this amount as accumulated under Clause 2 of the Explanation 2 of Section 11(1) of the Act while though the Form no. 10, the same amount has shown to be accumulated u/s 11(2) of I.T.Act. The Assessing Officer held that as per provisions to Proviso 2 Rule 12(2) of IT.Rules the submission in Form 10 was to be electronically filed / uploaded after 01.04.2014. The assessee filed an uploaded copy of Form 10 which has been filed on 22.11.2016. The amount of accumulation has been shown as Rs.1,82,41,063/-.

Amount in (Rs.)

	Group A	Group B	Total
Income applied for the charitable purposes during the year	9,91,90,886.70	9,27,36,166.00	19,19,26,313.00
Income accumulated to its extent it does not exceed 15% of the total income	2,17,83,097.30	92,98,969.00	3,70,88,367.00
Accumulated income in addition to the above under section 11(2) of the Income Tax Act, 1961	2,42,47,364.10	-----	1,82,41,036.00
Total Income	14,52,20,648.00	10,20,35,135.00	24,72,55,782.00

That Form. No. 10B filed online also contains consolidated figures of the Institution as stated above.

The Assessing Officer completed assessment at an income of Rs. 1,82,41,063/- on the grounds that the Form No. 10 was not uploaded and no resolution was passed regarding the accumulation of income of Rs. 1,82,41,063/-.

5. The Ld. CIT(A) deleted the addition holding as under:

10. The Ld. AR has pleaded that the form No. 10B was duly signed by the auditors of the company, who must have verified the books of accounts and other relevant records of the appellant before issuing this audit report. The appellant, by filing the online form No. 10 which is statement to be furnished to the Assessing Officer/ prescribed Authority under sub-section(2) of section 11 of the Income Tax Act, 1961 had informed the AO vide point no 3 of the said form No. 10, that this amount of RS. 1,82,41,063/- was "Aggarwal Vidya Pracharni Sabha had in respect of an assessment year preceding the relevant assessment year given the statement regarding the accumulation or setting apart of an amount as required under sub-section(2) of section 11 of the Income Tax Act, 1961." The copy of the said form no 10 along with other documents have been annexed in the paper book. During the course of assessment proceedings under section 143(3) of the Income Tax Act, 1961 also, the Ld. AR has claimed that he had handed over the copy of this form No. 10 to the AO. This fact has also been accepted by the AO in the assessment order itself.

11. In this background, the assessment order and the contentions of the appellant are being examined.

Thus, there are four issues that need to be adjudicated. Firstly, there is a confusion regarding the claim of the appellant under the relevant section i.e. whether the appellant has claimed relief u/s 11(1)(2) or u/s 11(2). The confusion is on account of the fact that as per the AO in computation the appellant has claimed u/s 11(1)(2) and in the audit report u/s 11(2).

13. On this issue the Ld. AR has pleaded that the computation of total income showed this amount as accumulated under Clause 2 of the explanation 2 of Section 11(1) of the Act, does not have any relevance because of the fact that in all the relevant forms i.e. in form no 10B, form no 10, and its submissions during the course of assessment proceedings, the appellant has declared that this was under section 11(2) of the Act. The Ld. AR has pleaded that the computation of income in which the appellant has by clerical mistake and has shown this under section 11(1)(2) of the Act, was not filed anywhere and was just for the records of the assessee. I find merits in the submissions of the appellant and thus I find that addition cannot be made on solely this basis.

14* Secondly while disallowing the claim of the assessee, the AO has further Stated that " As per provisions to proviso 2 Rule 12(2) of the I.T. Rules the submission inform 10 was to be electronically filed/uploaded after 01.04.2014. When pointed out, the assessee filed an uploaded copy of Form 10 which has been filed on 22.11.2016. The amount of accumulation has been shown as Rs 1,82,41,063/-.

15. This is the main plank on which the addition has been made by the AO. Consequently, this issue is discussed in greater detail by me in this order. At this juncture it shall be pertinent to examine the provisions of law for the assessment year 2014-15, the conditions specified under section 11(2) of the Income tax Act, 1961 were as under:

"Where eighty five percent of the income referred to in clause(a) or clause (b) of sub-section (1) read with the explanation to that subsection is not applied, or is not deemed to have been applied, charitable or religious purposes in India during the previous 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 Assessing Officer in the prescribed manner, 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.
- (b) The money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5)^

16. Under proviso to rule 12(2) notice was required to be furnished electronically.

17. The Ld. AR has pleaded that these conditions were satisfied by the appellant and also has been admitted by the AO in his assessment order. The contention of the AO has been that the online form had to be filed before filing the return and not later. On this issue I find that the time of uploading the said notice in Form no 10 was settled by Finance Act, 2015. The said finance bill stated as under:

"In order to remove the ambiguity regarding the period within which the assessee is required to file Form 10, and to ensure due compliance of the above conditions within time, it is proposed to amend the Act to provide that the said Form shall be filed before the due date of filing return of income specified under section 139 of the Act for the fund or institution. In case the Form 10 is not submitted before this date, then the benefit of accumulation would not be available and such income would be taxable at the applicable rate. Further, the benefit of accumulation would also not be available if return of income is not furnished before the due date of filing return of income.

These amendments will take effect from 1st April, 2016 and will, accordingly, apply in relation to assessment year 2016-17 and subsequent assessment years."

18. Further the note on relevant clauses of Finance Bill 2015, states as under:

"Clause 8 of the Bill seeks to amend section 11 of the income-tax Act relating to income from property held for charitable or religious purposes.

Sub-section (2) of the aforesaid section provides that where eighty-five per cent, of the income 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, for application to such purposes in India, then, such income accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income. However, the said exemption is subject to fulfillment of the following conditions that:

(i) such person specifies by notice in writing in Form 10, prescribed for such purpose, providing details of the purpose for which the income is being accumulated or set apart and that the period for which the income is to be accumulated or set apart does not exceed five years; and (ii) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5) of section 11.

With a view to amend the conditions specified in sub-section (2) of the aforesaid section, it is proposed to insert a new clause to provide that the statement referred to in the said clause (a) is required to be furnished on or before the due date specified under sub-section (1) of section 139 by furnishing the return of income for the previous year. It is also proposed to substitute the existing first and second provisos with a new proviso to provide that in computing the period of five years referred to in the said 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.

This amendment will take effect from 1st April, 2016 and accordingly apply in relation to the assessment year 2016-17 and subsequent years."

19. Thus for the assessment year 2014-15, filing of this form no 10 was mandatory, but the date before which it had to be filed was not settled. It is only from A.Y. 2016-17 that the date of filing Form No. 10 was mandated (i.e. as per the dates specified u/s 139(1)) in the Act w.e.f. 01.04.2016. Thus, in view of these facts, I find that the appellant had fulfilled both the conditions for getting this benefits of Section 11(2) of the Income Tax Act, 1961. In this regard, i find support from the following judgments:

In CIT v. Nagpur Hotel Owner's Association, (2001) 114 taxman 255 (SC) the Hon'ble Supreme Court has held that "the application in Form 10 can be filed before the completion of the assessment".

In Commissioner of Income-tax V. Simla Chandigarh Diocese Society [2009] 318 ITR 96 (Punjab & Haryana), it was held "It was pointed out that the appellant has accordingly modified Form No. 10 in the course of assessment proceedings. The modified Form No. 10 has also been rejected by the Assessing Officer on the ground that there is no provision in the Act for revising Form No. 10. It was submitted that there is no specific bar prohibiting the appellant from modifying the figure of accumulation. In the light of the ratio laid down by the Supreme Court in the case of SIT v. Nagpur Hotel Owners' Association [2001] 247 ITR 201, Form 10 may be furnished before the assessing authority completes the concerned assessment".

In the case of Association of Corporation & Apex Societies of Handlooms V. Assistant Director of Income-tax[2013] 30 taxmann.com 22 (Delhi), it was held that, "On going through the above extract we find that the Supreme Court observed that it was necessary that the assessing authority must have the information under Form-10 at the time he completes the assessment and in its absence it is not possible for the assessing authority to give benefit of such exclusion. Furthermore, once the assessment is so completed it would be futile to find fault with the assessing authority for having included such income in the assessable income of the assessee. The Supreme Court held categorically that without the particulars of this income as given in Form-10, the assessing authority cannot entertain the claim of the assessee under section 11 of the Act and therefore, compliance with the requirement of the Act will have to be at any time before the assessment proceedings are completed. The Supreme Court also observed that any claim for giving the benefit of section 11 on the basis of information supplied subsequent to the completion of assessment would mean that the assessment order will have to be reopened. The Supreme Court noticed that the Act did not contemplate such re-opening of the assessment.

In the case of CIT V. Anjuman Moinia Fakharia [1994] 208 ITR 568(Raj.) it was decided "From the circular issued by the Department dated June 3, 1980, and the judgment of the apex court referred to above , it can be considered that the requirement to prescribe (sic) the time limit is only directory and not mandatory. Non compliance within the time should not disentitle an appellant from the exemption to which he is otherwise entitled."

Thus this particular basis of the AO for rejecting the claim of the appellant is also unfounded.

20. Thirdly, in the assessment order the AO has also stated that " moreover there is no resolution passed regarding the accumulation of income of Rs 1,82,41,063/-. On this issue the Ld. AR has pleaded that the form no 10 filed online by the appellant clearly states that the - Aggarwal Vidya Pracharini Sabha having - anent number AABTA3409Q hereby brings to your notice that it has been decided by a resolution passed by the trustees/governing body, by whatever name led, on 26/09/2014 that out of income of the trust for the previous year relevant to the assessment year 2014-15 an amount of Rs 1,82,41,063/- which is

7.38% of the income of the trust for the said previous year shall be accumulated or set apart for carrying out the purposes of the trust.

21. The Ld. AR has further pleaded that by furnishing a copy of form 10, the appellant had informed the AO during the course of assessment that the relevant resolution for accumulation of income under section 11(2) was passed on 26/09/2014. The Ld. AR pleaded that the AO had never doubted the existence of this resolution and never asked for the copy thereof, and therefore the appellant did not find any requirement for submitting a copy with the AO. A copy of the resolution however was annexed with the paper book filed by the appellant during appellate proceedings. Thus, of this issue again I agree with the contention of the appellant.

6. Before us, the Ld. DR heavily relied on the order of the Ld. CIT(A).

7. We have perused the order of the Ld. CIT(A) and the submissions reproduced in the order of the Ld. CIT(A) and we find that Ld. CIT(A) has passed order in a cogent manner by taking into consideration the facts on record, confusions of the Assessing Officer, the provisions of the Act, clauses of the Finance Bill 2015, the requirements of mandatory filing of Form 10 for the A.Y. 2014-15 and A.Y. 2015-16 and the judicial pronouncement on the issue of filing of Form 10 before the A.O. Hence we hereby decline to interfere in the order of the Ld. CIT(A) in deleting the addition.

8. As a result, appeal of the Revenue is dismissed.

Order pronounced in the open Court.

Sd/-
दिवा सिंह
(DIVA SINGH)
न्यायिक सदस्य/ Judicial Member
AG
Date: 04/10/2018

Sd/-
डा. बी.आर.आर. कुमार,
(Dr. B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File