

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER  
AND**

**SMT BEENA PILLAI, JUDICIAL MEMBER**

**ITA No.102(Bang)/2019  
(Assessment Year : 2009-10)**

M/s Ashwini Educational Association,  
Ayurvedic Medical College, Doddabathi post, P B Road,  
Davanagere  
PAN No.AAATA5248G

Appellant

**Vs**

The Deputy Commissioner of Income tax,  
Circle-1,  
Davanagere

Respondent

**Appellant by : Shri V. Srinivasan, Advocate  
Revenue by : Miss. Neera Malhotra, CIT**

**Date of hearing : 10-07-2019  
Date of pronouncement : 26-07-2019**

**ORDER**

**PER SMT BEENA PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by assessee, against order dated 04/10/2018 passed by Ld.CIT(A), Davangere for assessment year 2009-10 on following grounds of appeal:

- 1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

*2. The learned CITA] is not justified in upholding the assessment of Rs. 9,34,617/- as income of the appellant and subjecting the same to tax at maximum marginal rate by denying the legitimate exemption u/s. 11 of the Act under the facts and in the circumstances of the appellant's case.*

*3. The learned CIT[A] is not justified in upholding the denial of the accumulation claimed by the appellant on the ground that the Form No. 10 filed by the appellant in course of the assessment-proceedings pursuant to the order passed u/s. 263 of the Act cannot be treated as compliance with the mandatory requirements of filing Form No. 10 within time under the facts and appellant's case.*

*4. The learned CIT[A] is not justified in upholding the disallowance of Rs.3,97,617/- being the Depreciation claimed by the appellant by erroneously observing that the said ground was not pressed under the facts and in the circumstances of the appellant's case.*

**2. Brief facts of the case are as under:**

Assessee is a trust registered under section 12 A of the Act, with object being advancement of education and providing medical relief. Originally, order of assessment under section 143 (3) was passed on 28/12/01 assessing total income at 'NIL'. Subsequently, revision order was passed under section 263 of the Act, by Ld.CIT vide order dated 17/10/12 setting aside order of assessment under section 143.

3. On perusal of revision order passed by Ld.CIT under section 263 of the Act is observed that, proceedings were initiated for the reason that assessee had not filed Form No.10. Further, and that depreciation of Rs.3,97,617/- claimed by assessee was not in order, inasmuch as, assessee claimed double benefit. In order giving effect to order passed by Ld.CIT under section 263 of the Act, at assessment stage assessee pursuant to notice issued by Ld.AO, produced all relevant details, books of account, vouchers along with computation of application of income, in order to claim exemption under section 11 of the Act. Assessee also filed audit report in Form 10 B along with Form 10 as required under section 11 (2) of the Act on 21/01/13.

4. During assessment proceedings, Ld.AO was of opinion that, Form 10 was not submitted alongwith return of income or at stage of original assessment proceedings in normal course. The Ld.AO on basis of procedural flaws, held that Form 10 filed by assessee was invalid and therefore the surplus amount of Rs.28,29,623/-was not allowed for accumulation. Assessee also furnished details of depreciation claimed on fixed assets. It was submitted by assessee that claim of depreciation was towards deflation in value of fixed assets which was according to law. However Ld.AO observed that assessee was not entitled to as it amounts to double deduction.

5. Aggrieved by order passed by Ld.AO, assessee preferred appeal before Ld.CIT (A) who upheld the order of Ld.AO.

6. Aggrieved by the order of Ld.CIT (A) assessee is in appeal before us now.

7. Ld.AR submitted that **Ground No.1** is general in nature and therefore do not require any adjudication.

7.1 He submitted that **Ground No. 2, 3 and 4** are interlinked with each other as it relates to surplus being disallowed by Ld.AO due to failure to file Form 10 at the time of original assessment and disallowance of depreciation claimed. It has been submitted by Ld.AR that said Form No.10 was filed before Ld.AO, during assessment proceedings subsequent to directions by Ld.CIT. He placed reliance upon order of *Hon'ble Karnataka High Court* in case of *CIT vs Society of Sisters of St Anne* reported in *146 ITR 28* in respect of claim of depreciation. He submitted that Form No.10 though not filed during original assessment, however during assessment proceedings for order giving effect to CIT order, the said form was filed by assessee. He submitted that requirement of filing Form 10 at the time of assessment is only declaratory. Thus it was contended that details relevant to claim of accumulation was furnished to Ld. AO in second round of assessment proceedings and thus there is a compliance of provisions of section 11 (2) of the Act.

8. On the contrary, Ld.Sr.DR submitted that assessee has to follow procedure established by law. He submitted that Form 10 is to be filed alongwith return of income and since assessee failed to do so condonation of application has to be preferred before competent authority for accepting the same.

9. We have perused submissions advanced by both sides in the light of the records placed before us. It is observed that *Hon'able Madras High Court* in case of *CIT vs Spic Educational Foundation* in *TCA No.1593 of 2008 vide order dated 12/12/18* has dealt

with legal question as to whether the prescription to file Form 10 for purposes of accumulation under section 11 (2) of the Act is mandatory for purpose of grant of exemption in terms of section 11 of the Act or only declaration. *Hon'ble court* placing reliance upon the decision of *Hon'ble Supreme Court* in case of *CIT vs Nagpur Hotel Owners Association* reported in (2001) 247 ITR 201 held that claim under section 11 of the Act would have to be considered by assessing authority on the basis of information supplied by assessee at the time of assessment and if relevant information to set forth such a claim was not available with assessing officer the same is liable to be rejected.

In facts of case, before *Hon'ble Madras High Court* assessee filed all details in support of surplus claim not in prescribed Form 10, while assessment was carried out. *Hon'ble High Court* was still of opinion that all details relevant to consider claim of assessee under section 11 was there before assessing officer and therefore filing of Form 10 is declaratory in nature.

10. In present facts of case, assessee failed to file Form 10 at the time of original assessment. Observing the mistake, Ld. CIT passed revision order and directed Ld. AO to redetermined income of assessee for year under consideration. In subsequent assessment proceedings, assessee filed all relevant details and Form 10 to substantiate surplus claimed under section 11. Assessing officer then should have considered details of Form 10.

11. We are therefore, of considered opinion that as assessee had filed Form 10 in second round of assessment proceedings, all details relating to the claim of surplus was available before

assessing officer. Respectfully following view taken by *Hon'ble Madras High Court*, we direct Ld.AO to consider claim of assessee under section 11 as per Form 10 filed by assessee.

12. As regards the depreciation claimed, present assessment year being assessment year 2009-10, assessee is eligible to claim depreciation and would not amount to double deduction. Ld. AO is also directed to allow the claim of assessee.

**Accordingly the grounds raised by assessee stands allowed for statistical purposes.**

13. **Ground No. 6** is in respect of interest levied under section 234B of the Act which is consequential in nature and therefore do not require adjudication.

14. In the result appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 26-07-2019

Sd/-  
**(B.R.BASKARAN)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(BEENA PILLAI)**  
**JUDICIAL MEMBER**

Dated:

**\*am**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

By Order

Asst. Registrar