

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

**(Before Sri J. Sudhakar Reddy, Hon'ble Accountant Member & Shri Satbeer Singh Godara, Hon'ble Judicial Member)
[VIRTUAL COURT HEARING]**

**ITA No. 1804/Kol/2019
Assessment Years: 2011-12**

M/s. Sahara Utsrga Welfare Society.....Appellant
Michael Nagar
Kalibari Sarani
Kolkata - 700 133
[PAN : AADTS 6744 E]

Vs.

Deputy Commissioner of Income Tax (E), Circle-1, Kolkata.....Respondent

Appearances by:

Shri A.K. Tulsyan, CA, appeared on behalf of the assessee.
Smt. Ranu Biswas, Addl. CIT, D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : October 21st, 2020

Date of pronouncing the order : January 8th, 2021

ORDER

Per J. Sudhakar Reddy, AM :-

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) – 25, Kolkata, (hereinafter the “ld.CIT(A)”), passed u/s. 250 of the Income Tax Act, 1961 (the ‘Act’), dt. 27/05/2019 for the Assessment Year 2011-12.

2. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

3. Ground No. 1 is on the issue as to whether 15% accumulation for the purpose of claiming exemption u/s 11 of the Act, is to be calculated on the net receipt or the gross receipts of the assessee. This issue is no more res-integra. This Bench of the Tribunal in the assessee’s own case in *ITA No. 927/Kol/2019; Assessment Year 2013-14, order dt. July 13th, 2020*, held as follows:-

“3. The Hon’ble Supreme Court of India in the case of *CIT vs. Programme for Community Organisation* reported in [2001] 248 ITR 0001 (SC) has held as follows:-

“Charitable trust- Accumulation of income- Charitable trust is entitled to accumulate 25 per cent of its income derived from property held under trust and not 25 per cent of the income remaining after application of income for charitable purposes – therefore, assessee-trust was entitled to accumulate 25 per cent of donations received by it and not merely 25 per cent of unspent balance.”

The ‘B’ Bench of the ITAT in the assessee’s own case in *ITA No. 2436/Kol/2018, order dt. 22/01/2020, for the Assessment Year 2012-13, on the same issue held as follows:-*

"....We note that in the provisions of section 11(1) it has been clearly mentioned "... 15% of the income", hence it is gross income of the assessee trust and not the net income. Therefore, based on this factual position as mentioned in Section 11(1) as noted above, we direct the Assessing Officer to allow 15% exemption on gross receipts.

4. *Respectfully following the same, we hold that the assessee is entitled to the accumulation of 15% on the gross receipt as per provisions of Section 11 of the Act.*

4. Consistent with the view taken therein, we allow this claim of the assessee.

5. Ground No. 2 is against the Id. CIT(A) confirming the disallowance of claim u/s 11(2) of the Act, of Rs.90,00,000/- by the Assessing Officer.

5.1. The Id. Counsel for the assessee submitted that the accumulation u/s 11(2) of the Act should have been granted to the assessee as it filed Form No. 10B, as required under the Act. He argued that the Assessing Officer as well as the Id. CIT(A) were wrong in rejecting the claim of the assessee on the ground that the specific expense for which it is set aside, was not mentioned and a general statement was made as the purpose for which accumulation is made u/s 11(2) of the Act. He relied on the judgment of the Hon'ble Karnataka High Court in the case of *CIT vs. Gokula Education Foundation (2017) 394 ITR 236* and submitted that as per the proposition laid down therein, even when the amount is set aside for general purpose, exemption should be granted.

5.2. The Id. D/R, opposed these contentions of the Id. Counsel for the assessee and relied on para 8 of the assessment order.

6. After hearing rival contentions, we find that the Hon'ble Karnataka High Court in the case of *Gokula Education Foundation (supra)*, has held as under:-

*"19. The learned counsel for the appellants-Revenue did contend that if the revised Form No. 10 was found to be not acceptable, then in IT Appeal No. 300 of 2015 the purpose is too general and too vague. Hence, the assessee would not be entitled to claim benefit under section 11(2) of the Act. In furtherance to his submission, he relied upon the decision of the apex Court in case of *CIT v. Nagpur Hotel Owners' Association (2001) 247 ITR 0201* and contended that in the said decision, the apex Court found that if Form No. 10 was not filed by the assessee. the benefit could not be claimed nor could be granted under section 11(2) of the Act.*

*20. Whereas, learned counsel appearing for the assessee contended that the appeal is a continuous proceeding and hence, if the CIT(A) has permitted the assessee to file revised Form No. 10, such could not be said as prohibited by law. He also submitted that the aforesaid decision of the apex Court in the case of *Nagpur Hotel Owners' Association (supra)* came to be considered by a Division Bench of the High Court of Gujarat in the case of *CIT v. Magur Foundation, (2005) 274 ITR 562* and the High Court of Gujarat, after considering the aforesaid decision of the apex Court, found that additional ground can be entertained when the appeal is pending even before the Tribunal. Hence, he submitted that it is not a case where no Form No. 10 whatsoever was filed.*

21. In the decision of the apex Court in the case of Nagpur Hotel Owners' Association (supra), the facts were that the assessee did not file Form No. 10 at all, which is not the fact situation in the present case. The facts situation in the present case are that Form No. 10 was already filed and the Revised Form No. 10 filed for sub-head of the purposes falling under the main head of the objects of the Trust, was accepted by the Commissioner (A) in the proceedings of the appeal. If the matter is considered in light of the above referred decision of the High Court of Gujarat in the case of Mayur Foundation (supra) and is considered that the appeal is a continuous proceeding, it cannot be said that the CIT(A) had no authority to accept Revised Form No. 10 nor can it be said that Revised Form No. 10 could not at all be considered for allowing the claim made under section 11(2) of the Act.

22. In view of the aforesaid, we find that the Tribunal was right in allowing the claim of the assessee under section 11 (2) of the Act. Hence, the question is answered in the affirmative in favour of the assessee against the Revenue.

23. Resultantly, no interference would be required to be made to the impugned order passed by the Tribunal. Hence, the appeals are dismissed."

7. Respectfully following the propositions of law laid down in the above case-law, we allow this ground of appeal of the assessee.

8. Ground No. 3, is on the issue as to whether, depreciation could be considered as application of funds. This issue is no more res-integra. The Hon'ble Supreme Court in the case of *Rajasthan and Gujarati Charitable Foundation, [2018] 402 ITR 441 (SC)*, adjudicated the issue in favour of the assessee. Respectfully following the same, we allow this ground of the assessee.

6. Ground No. 4 is general in nature.

7. In the result, appeal of the assessee is allowed.

Kolkata, the 8th day of January, 2021.

Sd/-
[S.S. Godara]
 Judicial Member

Sd/-
[J. Sudhakar Reddy]
 Accountant Member

Dated : 08.01.2021
 {SC SPS}

Copy of the order forwarded to:

1. M/s. Sahara Utsrga Welfare Society
Michael Nagar
Kalibari Sarani
Kolkata - 700 133

2. Deputy Commissioner of Income Tax (E), Circle-1, Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches