

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य

BEFORE: SHRI. N.K.SAINI, VP & SHRI , R.L. NEGI, JM

आयकर अपील सं./ ITA NO. 1412/Chd/2019

निर्धारण वर्ष / Assessment Year : 2016-17

The Institution of Civil Engineers Society Bindra Complex, Model Town, Ludhiana- Punjab	बनाम	The ACIT, Exemptions, C-1 CR Building, Sec. 17 Chandigarh
स्थायी लेखा सं./PAN NO: AABAT4612M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 28/07/2021

उदघोषणा की तारीख/Date of Pronouncement : 30/07/2021

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the assessee against the order dt. 14/08/2019 of Ld. CIT(A)-4, Ludhiana.

2. Following grounds have been raised in this appeal:

1. That the Ld. CIT(A) has erred in confirming the order of the Assessing Officer and which is against the facts and circumstances of the case.

2. That the Ld.CIT(A) has erred in giving a finding that the accumulated fund for Asstt. Years 2012-13 and 2013-14 amounting to Rs. 52,59,279/- and Rs. 20,88,114/- respectively, totaling to Rs. 73,47,393/- has been applied during the year under consideration and which is factually incorrect finding.

3. That the finding of the CIT(A) that the above application of previous years funds amounts to double deduction, is again factually incorrect, since no application of income for the earlier years accumulated fund have taken into consideration, therefore, since

those accumulated funds have already been utilized in the earlier years and, therefore, the finding of the CIT(A) in concluding in para 4.1 at page 4 is not correct.

4. *That the Ld. CIT(A) has erred in giving a finding in para 4.2 that the claim of the assessee out of application of capital expenditure out of the fund accumulated u/s 11(2) of the I.T. Act 1961 for the earlier year, is without any basis.*

5. *That the Ld. CIT(A) has erred in holding that Form No. 10, which was filed during the course of assessment proceedings and having not been filed at the time of filing the return of income and, therefore, the said accumulated fund could not be carried forward to the next year. Further, the assessee can make a claim during the assessment proceedings and the Assessing Officer is bound to consider the same.*

6. *That the Ld. CIT(A) has failed to appreciate and follow the CBDT Circular No. 7/2018, dated 20.12.2018, which authorized the department to admit belated application on Form No. 10 particularly for Asstt. Year 2016-17, since this provision was introduced for the first time in Asstt. Year 2016-17 only.*

7. *That the finding of the CIT(A) on all the issues is against the facts and circumstances of the case.*

8. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard off.*

3. Ground Nos. 1,7 & 8 are general in nature, so do not require any comment on our part.

4. Vide Ground Nos. 2 to 4 the grievance of the assessee relates to the application of capital expenditure out of the fund accumulated u/s 11(2) of the Income Tax Act, 1961 (for short the 'Act') for the earlier years.

5. The facts related to this issue in brief are that the assessee has been established and is functioning since August 2003 with primary object of providing technical education in the field of Civil & Architectural Engineering. The Assessee is registered under section 12AA(1)(b)(i) of the Act vide order dt. 11/09/2009 of CIT-III, Ludhiana. The assessee filed its return of income on 01/09/2016 declaring NIL income. Later on the case was selected for scrutiny.

5.1 During the course of assessment proceedings the A.O. noticed that in the computation of income as well as in Form No. 10 submitted, the assessee mentioned

that the new assets acquired during the year amounting to Rs. 73,47,393/- were out of accumulated funds of the earlier years, the bifurcation of which was as under:

A.Y. 2012-13	Rs. 52,59,279/-
A.Y. 2013-14	Rs. 20,88,114/-
TOTAL	Rs. 73,47,393/-

The A.O. observed that the assessee had taken the above amount as application of income for the year under consideration whereas the assessee could not be allowed to claim it as application of income during the year and if allowed it would amount to double deduction as the assessee had already claimed benefit of this amount in the earlier years.

5.2 The Assessee submitted to the A.O. as under:

"..As per Return & form 10B report the capital expenditure is claimed to be incurred from current year income only for statistical purpose and as per intention of Sec. 11(2) provisions, for carry forward purposes the expenses (not only capital but Revenue also) are treated as utilization of accumulated funds, OTHERWISE HOW ACCUMULATED FUNDS WILL WIPE OFF WITH IN THE PERIOD ALLOWED? Therefore, the interpretation made by your goodself is not correct. And both Capital & revenue expenses are considered charitable as per provisions of Sec. 11 of the Act."

5.3 The A.O. however was not satisfied from the aforesaid submissions and disallowed the claim of the assessee by observing in para 6 & 7 of the assessment order dt. 08/12/2018 as under:

6. I have considered the submission of the assessee, however, the same is not acceptable. As per form 10, during the assessment year preceding the relevant assessment year, the assessee had accumulated funds of Rs. 52,59,279/- in the year 2012, Rs. 5,00,10,118/- in the year 2013 and Rs. 4,05,55,014/- in the year 2014. The assessee had taken benefit u/s 11(2) of the Act in these earlier years when the accumulation was made. This issue was also discussed with the authorised representative of the assessee, Sh. Harinder Pal Singh, Advocate, as noted vide order sheet entry dated 26.11.2018. While the assessee is required to use the accumulated or set apart funds u/s 11(2) of the Act within a period of 5 years, the assessee cannot be allowed to claim the utilization of these accumulated funds in the year in which these are actually utilized as the benefit u/s 11(2) has already been derived in the earlier years. As per section 11 of the Act, the assessee is allowed to accumulate or set apart 15% of the income derived from the property held under the trust. The assessee is further given the option to accumulate or set apart funds in excess of 15% of the income u/s 11(2) of the Act subject to fulfillment of certain conditions. Therefore, section 11(2) of the Act gives the benefit of claiming exemption of the entire income derived from the property held under the assessee trust/society even if the amount accumulated or set apart is more than 15% of the income. If the assessee is allowed

benefit of application of income out of accumulated funds, it will amount to giving double benefit for the same amount.

7. In view of the above, capital expenditure of Rs. 73,47,393/- out of old accumulated funds is disallowed from being claimed as application of income during the year under consideration.

6. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and furnished the written submissions which have been incorporated in para 3 of the impugned order and read as under:

In support of ground of appeal furnished we place on record as follows:-

Both Grounds are linked to Form 10 filed u/s 11(2) read with Rule 17 of the Income Tax Act '1961 (hereinafter called the 'Act') on 17.11.2018 viz. submitted during assessment to the Ld. Assessing officer ACIT-Exemption circle-1. Chd. (hereinafter called the 'AO').

Vide submission dt. 21-11-2018 it was emphasized that electronically filing of Form 10 utility being new for previous year under assessment, Instructions were not much publicized, not being properly functional, due to last date hassles and ITR-7 utility not prompting for filing Form 10 , the Form remained to be filed before filing the return. Otherwise there was no malafide intention as the figures of accumulation of funds were duly filed in the ITR-7 return & Form 10B audit report.

It was further submitted that there are judicial precedents which cast an obligation on the AO to demand and if not demanded to accept the Form 10 filed even during assessment condoning the delay.

Considering the problems faced by general public as mentioned above , even the Central Board of Direct Taxes(hereinafter called the CBDT) has come out with circular no. 07/2018 dt. 20-12-2018 (copy enclosed) authorizing the department to admit the belated application in Form 10 particularly for the A. Y -2016-17. Please refer highlighted portions of the circular.

Had the AO waited till 20-12-2018 as requested, the Form 10 filed by assessee society was in order even specifically as per law. However the-Ld.AO was in unusual hurry and passed the assessment order u/s 143(3) of the Act on 08-12-2018.

In the light of above said circular, you are now requested to accept Form -10 filed electronically Belatedly on 17-11-2018. Copy of acknowledgement of same is enclosed and also available on Income Tax e-portal.

Even the judicial decisions are there to establish that in case of genuine omissions, Form 10 and even Form 10B audit report can be filed by assessee even during first appeal proceedings as such proceedings are mere extension of regular 143(3) proceedings. Please refer the following case laws whose texts are enclosed:

Mali Ram Gopi chand Charitable Trust vs. Addl. CIT-Range-2, Muzaffanagar (ITA No467/Del/2011 dt. 14.6.2013); and C.I.T vs. Hardeodas Agarwalla Trust dt. 24/07/1991 (1992 198ITR511 Cal)

Thus in view of acceptance of belatedly filed Form 10, the exemption available to assessee u/s 11(2) of the Act comes in the picture and addition of Rs. 2,15,46,952/- loses its validity. Therefore you are preyed to delete this addition.

Addition of Rs. 73,47,393/- incurred on capital assets during the year 2015-16(A. Y 2016-17) is quite baffling one. Funds accumulated in one year u/s 11(2) of the Act are considered deemed application of income for charitable purpose in that year. And when those funds are actually utilized so in next years it is called utilization of those accumulated funds. In such case how there will be double deduction? and how there is double benefit claimed as alleged by Ld. AO in para 6 of the order.

The Ld. AO has literally erred on facts, in misinterpreting the computation of income and table given in Form 10 submitted. (Interestingly indirectly she had accepted the Form 10 filed belatedly but she wrote an opposing order just in haste). The computation and Form 10B report, as attached, clearly reflect that capital expenses of Rs. 73,47,393/- are part of income applied for charitable purpose and which fact the LD. AO has also accepted. Moreover they are reduced from income available for application viz., 3,57,98,654/- of previous year under assessment and only the balance portion of Rs. 2,54,51,265/- is considered deemed application under provisions of Sec. 11(1) &(2). The tables presented just showing the utilization of accumulated funds for statistical purposes only as accumulated funds can not be carried forward for more than five years.

Further if applying the contention of Id AO, the expense of 73,47,393 is considered utilization of funds of year under assessment, the table will be as follows:-

Utilisation of Funds accumulated			
Year	Funds accumulated	Used in current year	Balance c/f
2012-13	52,59,279		52,59,279
2013-14	5,00,10,118		5,00,10,118
2014-15	4,05,55,014		4,05,55,014
2015-16	3,57,98,658	73,47,393	2,84,51,265
Total C/f			12,42,75,676

Madam you may observe that total funds c/f remain the same , but the assessee is losing the advantage (as per the intention of Sec. 11(2)) of utilizing the earlier year funds and pathetically the funds of year 2012-13 will not be available for application in next year (due to five year condition).

Thus the interpretation of the Ld. AO of figures filled in ITR and in Form 10 tables of utilization of earlier year accumulated funds is totally out of place and her conclusion that double deduction being claimed is hollow, devoid of facts and unwarranted. When the capital expenses Of Rs. 73,47,393/- have been accepted as incurred for charitable purpose as per Sec. 11 of the Act, they can not be put to tax on any ground whatsoever. Therefore you are requested to delete this addition also and oblige.

6.1 The Ld. CIT(A) after considering the submissions of the assessee sustained the disallowance made by the A.O. by observing in para 4.2 of the impugned order as under:

4.2 I have carefully considered the facts of the case and submissions of the appellant. The assessee has accumulated funds u/s 11(2) of the Income Tax Act, 1961 from A.Y. 2012-13 onwards out of which an amount of Rs. 73,47,393/- was applied during the previous year as capital expenditure on new assets. The assessing officer has disallowed this amount being claimed as application of income during the year under consideration. However, while passing the order, in the computation sheet on page 2 in column 11 (ii), the amount was mistakenly written as applied for charitable purposes - Rs. 73,47,393/-. However, while determining total income only revenue expenditure was taken into

account and capital expenditure was not taken into account. The claim of the assessee out of application of capital expenditure out of funds accumulated u/s 11(2) of the Income Tax Act, 1961 for earlier years is without basis.

The funds accumulated u/s 11(2) of the Income Tax Act, 1961 are required to be utilized for charitable purposes in the specified period within the subsequent five years. The application out of accumulated funds is separate from application of current year's funds for capital and revenue expenditure for charitable purposes of the trust. The assessee cannot be allowed deduction on account of application of funds on capital expenditure which have been spent out of the accumulated funds u/s 11(2) of the Income Tax Act, 1961 during the earlier years.

In view of the above, the disallowance made by the assessee is upheld. This ground of appeal is dismissed.

7. Now the assessee is in appeal.

8. The Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the figures mentioned by the A.O. and also in the Form No. 10 were taken wrong, due to oversight and clerical mistake. Our attention was drawn towards page no. 4 of the assessee's paper book wherein figure for utilization of the funds accumulated had been mentioned which read as under:

Utilisation of Funds Accumulated

Year	Funds Accumulated	Used in Current Year	Balance c/f
2012-13	5,259,279.00	5,259,279.00	
2013-14	50,010,118.05	2,088,114.00	47,922,004.05
2014-15	40,555,013.85		40,555,013.85
2015-16	35,798,658.00		35,798,658.00
	131,623,068.90	7,347,393.00	124,275,675.90
			124,275,675.90

It was stated that the above said figures were related to the financial year and were wrongly considered for assessment year, for that reason only the A.O. was of the view that the claim of the assessee resulted into double benefit. It was contended that there was an error in the presentation of brought forward accumulated funds under section 11(2) of the Act in the computation of income for the A.Y. 2016-17 which has lead to the entire confusion and the consequent addition. The Ld. Counsel for the assessee furnished a chart (copy of which is placed at page no. 28 of the assessee's paper book) and submitted that the figures in this chart are taken from the audit report

available with the department and these figures are correct figures. The said chart reads as under:

Client: The Institution of Civil Engineers Society
Case for the period: AY 2016-17

CHART SHOWING UTILIZATION OF ACCUMULATED FUNDS U/s 11(2) upto 31.03.2016

Financial Year	Asstt. Year	Funds actually accumulated	Funds utilized	Balance available for C/f as on 31.3.2016	Supporting Documents
2012-13	2013-14	216,771	2,16,771 utilized in FY 2014-15	NIL	Audit Report in Form 10B, Computation of Income, Assessment Order
2013-14	2014-15	NIL	NA	NA	Computation of Income, Assessment Order
2014-15	2015-16	1,306,689	NIL	1,306,689	Audit Report in Form 10B, Computation of Income
2015-16	2016-17	14,417,439	NIL	14,417,439	Audit Report in Form 10B, Computation of Income
Total Amount Actually Carried Forward as on 31.3.2016				15,724,128	

8.1 The Ld. Counsel admitted that the said chart was not available to the A.O. as well as the Ld. CIT(A) for their perusal, also furnished copy of the affidavit of the then counsel for the assessee stating therein that the figures of funds accumulated brought forward from the earlier years and utilization made in the year under consideration had been wrongly presented, copy of the said affidavit is placed at page no. 30 to 31 of the assessee's paper book.

8.2 Ld. Counsel for the assessee requested to remand this issue back to the file of the A.O. to be decided afresh after verification and taking into consideration the correct figures. The reliance was placed on the following case laws:

- Vijay Vishin Meghani Vs. DCIT, Circle-23(2), Mumbai [2017] 86 Taxmann.com 98 (Bom)
- Premier Motor Garage Vs. Commissioner, Central Excise Commissionerate, Chandigarh [2016] 70 taxmann.com 18 (P&H)
- Manoj Ahuja and Anr. Vs. Inspecting Assistant [1984] 150 ITR 696 (P&H)
- Mukesh Jesangbhai Patel Vs. ITO, [2013] 29 taxmann.com 389 (Gujarat)
- M/s Bhagwati Colonizers Pvt. Ltd. Vs. ITO ITAT, Amritsar Tribunal (Third Member) [2019] 57 CCH 0274
- Tek Ram (Dead Through Lrs.) Vs. CIT [2013] 357 ITR 133 (SC)

9. In his rival submissions the Ld. DR strongly supported the orders of the authorities below and further submitted that the Ld. Counsel for the Assessee furnished a chart first time before the ITAT and the same was not available to the A.O. as well as the Ld. CIT(A) for their consideration, therefore, it should not be admitted at this stage.

10. We have considered the submissions of both the parties and perused the material available on the record. In the present case the claim of the assessee is that the figures which were considered by the A.O. while considering the claim for utilization of the accumulated funds were wrongly mentioned in Form No. 10. In this regard the then counsel for the assessee has already furnished an affidavit which read as under:

I, Arun Varshney S/o Shri Narayan Varshney, resident of 58, Engineers Enclave, Pitampura, New Delhi - 110024, do hereby solemnly affirm and declare as under;

1. That I am a Professional Chartered Accountant and having my office at 206-B, Apra Plaza, DDA Complex, Road no. 44, Pitampura, Delhi, 110034.

2. That I have been the Statutory Auditor of The Institution of Civil Engineers Society ('ICES') having PAN AABAT4612M for the past many years including the Assessment year (AY) 2016-17. I have also been preparing and filing their Income Tax Returns for the past many years including the AY 2016-17.

3. That the assessment year 2016-17 was the first year when the electronic filing of Form 10 was introduced for the purposes of making a declaration of funds accumulated for future application as per the provisions of Section 11(2) of the Income Tax Act, 1961 ('the Act').

4. That for the AY 2016-17, the Audit Report of ICES in Form No. 10B was signed by me wherein the amount accumulated under the provisions of Section 11(2) of the Act is clearly certified at Rs. 1,44,17,439/-. That this certification was done by me on the basis of the Resolution dated 16.08.2016 passed by the members of the ICES.

5. That the above said Audit report in Form No. 10B was duly uploaded electronically on the Income-tax portal on 25.08.2016 i.e. within the due date of filing of return for the AY 2016-17. That the Income Tax Return of ICES for the said year was also prepared and filed by me within the due date on 01.09.2016.

6. That the additional compliance of electronic filing of Form 10 for the Assessment Year 2016-17 before the due date of filing of Income Tax Return was omitted to be made due to an inadvertent error as it was a new requirement and it only came to my knowledge during the course of assessment proceedings before the Assessing Officer. That the said Form 10 was then filed electronically immediately on 17.11.2018 vide E-filing Ack. no. 376855871171118 which was available with the Assessing Officer before she concluded the Assessment vide her Assessment Order dated 08.12.2018 passed u/s 143(3) of the Act.

7. That my client ICES had provided all the information relating to Form 10 to the undersigned in due time and such informal was also furnished in due time in the Audit Report in Form 10B.

8. That the delay in filing of Form 10 was only on account of the above reasonable cause and is liable to be condoned in terms of CBDT Circular No. 7/2018 dated 20.12.2018.

9. That besides the above, the figures of funds accumulated brought forward from the past years [AY 2013-14 and 2014-15] and utilization made in the AY 2016-17 amounting to Rs.73,47,393 as mentioned in the computation of income have been wrongly presented whereas there was no such brought forward accumulated funds except for Rs.13,06,689 pertaining to the AY 2015-16 and as such no double benefit has been claimed by ICES in its ITR.

10.1 The Ld. Counsel for the assessee also furnished a chart (copy of which is placed at page no. 28) which had been reproduced in the former part of this order, mentioning therein the amount of accumulated funds utilized under section 11(2) of the Act. The said chart was not furnished either before the A.O. or before the Ld. CIT(A), however, it is very relevant to resolve the present controversy.

10.2 On a similar issue the Hon'ble Apex Court in the case of Tek Ram (Dead Through Lrs.) Vs. CIT [2013] 357 ITR 133 (supra) held as under (Head Note):

" Where in his appeal before the Supreme Court, the assessee placed a number of documents before the court, the court, observed that the documents were of some relevance and should be looked into by the High Court before it came to a conclusion whether the appeal required to be allowed or rejected. The court, set aside the order passed by the High Court and remanded the matter to the High Court for fresh disposal of the appeal, after accepting the documents that were or might be filed by the assessee and leaving all the contentions of both parties open."

10.3 Similarly the Hon'ble Jurisdictional High Court in the case of CIT Vs. Mukta Metal Works [2011] 336 ITR 555 (P&H) held as under:

" (ii) That the report of the Forensic Sciences Laboratory was a relevant material and so was the affidavit of the searched person. The additional evidence was necessary for just decision of the matter. The Tribunal was not justified in declining to consider the additional evidence comprising the opinion of the laboratory of the Government examiner and also the affidavit of the author of the diary, though the documents had a direct bearing on the issue."

10.4 In the present case also as we have already pointed out that the Ld. Counsel for the assessee furnished a chart first time before this Bench of the Tribunal and claimed that the figures taken in this chart are from the record which is available with the department and that the wrong figures were considered by the A.O. which were wrongly mentioned in form No. 10 due to oversight. Since the chart furnished by the assessee has the direct bearing on the issue under consideration and the then counsel

for the assessee had also furnished an affidavit stating therein that the figures were wrongly mentioned. We therefore deem it appropriate to set aside this issue back to the file of the A.O. to be adjudicated afresh after considering the aforesaid chart furnished by the assessee and claim of the assessee to be considered after proper verification of the figures mentioned in the chart vis a vis the record already available with the department.

11. Vide ground nos. 5 & 6 the grievance of the assessee relates to the submissions of the Form No. 10 during the course of assessment proceedings which was not considered by the A.O.

12. The facts related to this issue in brief are that the A.O. during the assessment proceedings observed that for claiming the benefit under section 11(2) of the Act the assessee filed Form No. 10 on 17/11/2018 i.e; during the assessment proceedings and claimed the benefit of accumulation of Rs. 1,44,17,439/- for the purpose of "Construction of Research and Training and Examination Centre Buildings". He also observed that as per Section 11(2) of the Act read with Rule 17 of the Income Tax Rules as amended w.e.f A.Y. 2016-17, the assessee was required to e-file Form No. 10 by the due date mentioned under section 139 of the Act, i.e. 30th September but extended to 17th October 2016 for the A.Y. 2016-17. As the assessee had failed to do so, therefore, the assessee was asked by the A.O. to show cause as to why in view of non fulfillment of the conditions laid down in section 11(2) of the Act, this income should not be included in the total income. In response the assessee submitted as under:

"As Form 10 Utility was not introduced/ functional till filing of ITR-7 for A. Y 2016-17 (being a new digital provision), it was not clear where Form 10 was to be attached (otherwise Resolution duly passed by society on 16.08.16) Minutes can be produced and as total details of Fund to be accumulated & Carried Forward were duly filled in ITR, the requirements of Section 11(2) gets complied. Also the provision of Filing Form-10 was in the form of attaching with return and there was no provisions in ITR-7 for attaching Balance sheet or any form.

Further it was only after 31.03.2017 that the facility of filing Form 10 was opened even for previous years and here in Delhi, the department advised to file Form 10 even for A. Y 2016-17 online. Thus it implies that provisions is only directory in nature and not mandatory and so lapse, if any, can be corrected before completion of assessment (otherwise why CBDT facilitating its filing now).

It is further stated that all figures to be mentioned in the Form 10 have already been mentioned in the Income Tax Return and Form 10B and were already available with your goodself. Hence there was no intention of any misdoing.

Reliance was placed on the judgment of the Hon'ble Allahabad High Court in the case of CIT Vs. Moti Ram Gopi Chand Charitable Trust reported at 360 ITR 598.

12.1 The A.O. however did not find merit in the submissions of the assessee and denied the claim of the assessee under section 11 (2) of the Act by observing as under:

10. I have considered the reply of the assessee, however, the same is not acceptable. Section 11 (2) of the Act was amended by the Finance Act, 2015 w.e.f. A.Y. 2016-17. The amended section is reproduced hereunder:-

"(2) Where 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 furnishes a statement in the prescribed form and in the prescribed manner 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."

11. The manner has been prescribed in Rule 17 of the Income-tax Rules which is reproduced hereunder:-

"Exercise of option etc under section 11.

17. (1) The option to be exercised in accordance with the provisions of the Explanation to sub-section (1) of section 11 in respect of income of any previous year relevant to the assessment year beginning on or after the 1st day of April, 2016 shall be in Form No. 9A and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income of the relevant assessment year.

(2) The statement to be furnished to the Assessing Officer or the prescribed authority under sub-section (2) of section 11 or under the said provision as applicable under clause (21) of section 10 shall be in Form No. 10 and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139, for furnishing the return of income.

(3) The option in Form No. 9A referred to in sub-rule (1) and the statement in Form No. 10 referred to in sub-rule (2) shall be furnished electronically either under digital signature or electronic verification code.

(4) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall—

- (i) specify the procedure for filing of Forms referred to in sub-rule (3);
- (ii) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule(3), for purpose of verification of the person furnishing the said Forms; and
- (iii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to Forms so furnished. "

Therefore, it is seen that w.e.f. A.Y. 2016-17, the assessee had to file form 10 electronically and by the due date mentioned in section 139 of the Act.

12. It is also pertinent to refer to the memorandum to Finance Bill, 2015 which brought this amendment, the relevant portion of which is reproduced hereunder:-

"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 the assessment year 2016-17 and subsequent assessment years."

13. The above makes it absolutely clear that e-filing of form 10 by the due date specified u/s 139 of the Act is a mandatory condition for claiming benefit u/s 11(2) of the Act w.e.f. A.Y. 2016-17.

14. In view of the above, the assessee is denied the benefit claimed u/s 11 (2) of the Act as the mandatory condition of filing form 10 by the due date mentioned u/139 of the Act has not been fulfilled.

13. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who confirmed the action of the A.O. by observing in para 5.2 of the impugned order as under:

5.2 I have carefully considered the facts of the case and submissions of the appellant. The assessing officer has denied the benefit claimed u/s 11(2) of the Income Tax Act, 1961 because w.e.f. A.Y. 2016-17 it was mandatory for the assessee to file form 10 by due date mentioned u/s 139 of the Income Tax Act, 1961. During the appeal proceedings the Ld. Counsel has argued that considering the problems faced by general public, CBDT vide Circular no.07/2018 dated 20 Dec 2018 authorised the department t.o admit the belated

application form 10 particularly for Asst. year 2016-17. The relevant paras of the circular are as under:-

4. Representations have been received by the Board/ field authorities stating that the Form No. 9 A and Form No. 10 could not be filed in the specified time for AY 2016-17. which was the first year of e-filing of these forms. It has been requested that the delay in filing of Form No. 9A and Form NO.10 for AY 2016-17 may be condoned under section 119(2) (b) of the Act.

5. Accordingly, in supersession of earlier Circular/Instruction issued in this regard, with a view to expedite the disposal of applications filed by trusts for condoning the delay and in exercise of the powers conferred under section 119(2)(b) of the Act, the Central Board of Direct Taxes hereby authorizes the Commissioners of Income-tax, to admit belated applications in Form No. 9A and Form No. 10 in respect of AY 2016-17 where such Form No. 9A and Form No. 10 are filed after the expiry of the time allowed under the relevant provisions of the Act.

6. The Commissioners will, while entertaining such belated applications in Form No. 9A and Form No. 10, satisfy themselves that the assessee was prevented by reasonable cause from filing of applications in Form No./9 A and Form No. 10 -within the stipulated time. Further, in respect of Form No. 10 the Commissioners shall also satisfy themselves that the amount accumulated or set apart has been invested or deposited in anyone or more of the forms or modes specified in subsection (5) of section 11 of the Act.

It is observed that the power for condoning the delay have been given to the Commissioner of Income Tax after considering the reasons and satisfying themselves that the assessee was prevented by reasonable cause from filing of application in form 9A and form 10 with the stipulated time. The assessing officer does not have the power to condone the delay in filing of form 10. The assessee has not brought on record whether it has obtained permissions from the concerned Commissioner of Income Tax to file form 10 belatedly. In view of these facts, the findings of the assessing officer are upheld. This ground of appeal is dismissed.

14. Now the assessee is in appeal.

15. The Ld. Counsel for the Assessee reiterated the submissions made before the authorities below and further submitted that the legal consultant of the assessee prepared the statutory audit report in Form No. 10B and the said report was electronically uploaded on the Income Tax Portal on 25/08/2016 i.e; before filing of the return by the assessee. It was also submitted that prior to A.Y. 2016-17 the Form No. 10 was being manually filed with the department and for the A.Y. 2016-17, it was the first year when the facility of e-filing of Form No. 10 was mandated by the law and this requirement skipped the attention of the Ld. Counsel for the assessee. However, as soon as the counsel realized this lapse the Form No. 10 (declaring the same particulars as already declared by the statutory Auditor in his audit report) were uploaded by him on 17/11/2018 during the course of assessment proceedings.

15.1 It was further submitted that the assessee also filed the copy of Form No. 10 before the A.O. for his consideration before the conclusion of the assessment proceedings and also reiterated the above fact before the Ld. CIT(A), however no cognizance was given to the same even though the assessee had proved its bonafide intention and also established beyond any doubt that the amount accumulated by the assessee under section 11(2) of the Act was duly declared in the audit report in Form No. 10B and the investment was also already made by the assessee in the modes prescribed under section 11(5) of the Act before filing of the return of income.

15.2 It was contended that it was only the non compliance of the procedural aspect of filing of Form No. 10 but there has been no extra financial benefit to the assessee or loss to the Revenue on account of such non compliance. It was emphasized that the CBDT realized the unjust, arbitrariness of this provision and also realized that it is incomprehensible that the entire exempt income will become taxable just because a Form was not filed in time and since then it is issuing circulars directing the A.O. not to collect tax in this regard. Copies of the Circular nos. 6/2020 dated 19/02/2020 and 7/2018 dated 20/12/2018 issued by CBDT were furnished which are placed at page no. 1 to 3 of the assessee's paper book.

15.3 It was submitted that the relying upon the Circulars of the CBDT, the delay in filing of Form No. 10 deserves to be condoned. The reliance was placed on the following case laws :

- CIT Vs. Nagpur Hotel Owners Association [2001] 114 Taxman 255 (SC)
- Trust for Reaching the Unreached Through Trustee Vs. CIT (Exemptions), Ahmedabad [2021] 126 taxmann.com 77 (Gujarat)
- Chandrabhujji Maharaj Jain Vs. Dy. CIT, (Exemptions), Chennai [2019] 110 taxmann.com 11 (Madras)
- Commissioner of Income-tax-III, Pune Vs. Sakal Relief Fund [2017] 81 taxmann.com 396 (Bombay)
- Commissioner of Income-tax Vs. Mayur Foundation [2005] 274 ITR 562 (Gujarat)

- Shree Dadar Jain vs. ITO(E), [2019] 111 Taxmann.com 272 (Mumbai-Trib)

16. In his rival submissions the Ld. DR strongly supported the orders of the authorities below and further submitted that the assessee did not furnish Form No. 10 electronically before filing of the return of income which is requirement under section 11(2) of the Act, therefore, the A.O. was fully justified in denying the claim of the assessee under section 11(2) of the Act and the Ld. CIT(A) was fully justified in confirming the action of the A.O.

17. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is not in dispute that as per section 11(2) of the Act read with Rule 17 of the Income Tax Rules, as mandated with effect from A.Y. 2016-17 the assessee was required to e-file Form No. 10 by due date mentioned under section 139 of the Act. However, in the present case the assessee filed Form No. 10 on 17/11/2018 i.e; during the course of assessment proceedings. The A.O. denied the claim of the assessee since the Form No. 10 was not furnished before filing the return of income under section 139 of the Act.

17.1 In this regard the CBDT has issued Circular No. 6/2020 dt. 19/02/2020 which read as under:

Circular No. 6/2020

*F.NO.197/55/2018-ITA-I
Government of India,
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

New Delhi, the 19 February, 2020

Sub: Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Return of Income for A.Y 2016-17,2017-18, and 2018- 19 and Form No.9A and Form No. 10.- Reg.

Representations have been received seeking condonation of delay in filing Return of Income by the Charitable institutions for the Assessment Year 2016- 17 onwards on the grounds of hardship. The Board has issued Circulars authorizing the Commissioners of Income Tax to admit belated applications of Form 9A and Form 10 and to decide on merit the condonation of delay U/S 11 9(2)(b) of the Income-tax Act, 1961 (Act). However, in those cases where the Income Tax Returns have also been filed beyond the due date prescribed under section 139(1) of the Act, the condonation of delay in filing of Form 9A & Form 10 by the Commissioners is not of any help to the assessee, as section 13(9) of the Act, inserted w.e.f. 01.04.20 16, stipulates twin conditions of filing of Form 9A/Form 10 and also of filing Return of Income before the due date.

2. Accordingly, in continuation of earlier Circulars issued in this regard, with the view to prevent hardship to the assessee and in exercise of powers conferred under section 119(2)(b) of the Act, the CBDT has decided that where the application for condonation of delay in filing Form 9A and Form 10 has been filed, and the Return of Income has been filed on or before 31st March of the respective assessment years i.e. Assessment Years 2016-17, 2017-18 and 2018-19, the Commissioners of Income-tax (Exemptions) are authorised u/s 119(2)(b) of the Act, to admit such belated applications for condonation of delay in filing Return of Income and decide on merit.

3. For all other application for condonation of delay not mentioned above, the power of condonation of delay u/s 119(2)(b) of the Act will continue with the respective authorities as per the extant Rules and Practice.

17.2 Earlier also a Circular No. 7/2018 dt. 20/12/2018 was issued by the CBDT which read as under:

SECTION 119 OF THE INCOME-TAX ACT, 1961 - CONDONATION OF DELAY UNDER SECTION 119(2)(b) OF THE INCOME-TAX ACT, 1961 IN FILING OF FORM NO. 10 AND FORM NO. 9A FOR AY 2016-17

CIRCULAR NO. 7/2018 [F.NO.197/55/2018-ITA-I], DATED 20-12-2018

Under the provisions of section 11 of the Income-tax Act, 1961 (hereafter 'Act') the primary condition for grant of exemption to trust or institution in respect of income derived from property held under such trust is that the income derived from property held under trust should be applied for the charitable purposes in India. Where such income cannot be applied during the previous year, it has to be accumulated and applied for such purposes in accordance with various conditions provided in the section.

2. The Finance Act, 2015 amended section 11 and section 13 of the Act with effect from 1-4-2016 (A.Y. 2016-17). Consequently, Income-tax Rules, 1962 (hereafter 'Rules') were also amended vide the Income-tax (1st Amendment) Rules, 2016. As per the amended provisions of the Act read with rule 17 of the Rules, while 15% of the income can be accumulated indefinitely by the trust or institution, 85% of income can only be accumulated for a period not exceeding 5 years subject to the conditions, inter alia, that such person submits the prescribed Form No. 10 electronically to the Assessing Officer within the due date specified under section 139(1) of the Act

3. Further, where the income from the property held under trust and applied to charitable or religious purposes falls short of 85% of the income derived during the previous year for the reason that the income has not been received during that year or any other reason, then on exercise of the option by submitting in Form No.9A electronically by the trust/institution on or before the due date of furnishing the return of income, such income shall be deemed to have been applied for charitable or religious purpose.

4. Representations have been received by the Board/ field authorities stating that the Form No. 9A and Form No. 10 could not be filed in the specified time for AY 2016-17, which was the first year of e-filing of these forms. It has been requested that the delay in filing of Form No. 9A and Form No.10 for AY 2016-17 may be condoned under section 119(2) (b) of the Act.

5. Accordingly, in supersession of earlier Circular/Instruction issued in this regard, with a view to expedite the disposal of applications filed by trusts for condoning the delay and in exercise of the powers conferred under section 119(2)(b) of the Act, the Central Board of Direct Taxes hereby authorizes the Commissioners of Income-tax, to admit belated applications in Form No. 9A and Form No. 10 in respect of AY 2016-17 where such Form No. 9A and Form No. 10 are filed after the expiry of the time allowed under the relevant provisions of the Act

6. The Commissioners will, while entertaining such belated applications in Form No. 9A and Form No. 10, satisfy themselves that the assessee was prevented by reasonable cause from filing of applications in Form No. 9A and Form No. 10 within the stipulated time. Further, in respect of Form No. 10 the Commissioners shall also satisfy themselves that the amount accumulated or set apart has been invested or deposited in any one or more of the forms or modes specified in sub-section (5) of section 11 of the Act.

17.3 From the aforesaid Circular it would be clear that in the genuine case of belated application in Form No. 10, the delay may be condone. In the present case the assessee furnished the Form No. 10 before completion of the assessment.

17.4 On a similar issue the Hon'ble Apex Court in the case of CIT Vs. Nagpur Hotel Owners' Association (supra) held as under:

"It is abundantly clear from the wordings of sub-section (2) of section 11 that it is mandatory for the person claiming the benefit of section 11 to intimate to the assessing authority the particulars required, under rule 17 in Form No. 10. If during the assessment proceedings the Assessing Officer does not have the necessary information, the question of excluding such income from assessment does not arise at all. As a matter of fact, the benefit of excluding this particular part of the income from the net of taxation arises from section 11 and is subject to the conditions specified therein. Therefore, it is necessary that the assessing authority must have this information at the time it completes the assessment. In the absence of any such information, it will not be possible for the assessing authority to give the assessee the benefit of such exclusion and 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. Therefore, even assuming that there is no valid limitation prescribed under the Act and the Rules, even then it is reasonable to presume that the intimation required under section 11 has to be furnished before the assessing authority completes the concerned assessment because such requirement is mandatory and without the particulars of the income, the assessing authority cannot entertain the claim of the assessee under section 11. Therefore, compliance of the requirement of the Act will have to be any time before the assessment proceedings."

17.5 Similarly their Lordships of the Hon'ble Bombay High Court in the case of CIT Vs. Sakal Relief Fund (supra) observed in para 13 as under:

"13. It is only with regard to the decision of the Apex Court in Nagpur Hotel Owners' Association (supra) that Mr. Tejveer Singh expressed reservation. According to him, the observations of the Apex Court that Form 10 has to be filed before completion of Assessment Proceedings were rendered in the context of fact that it was not filed during the Assessment Proceedings. Therefore, the fact situation being different, the observations therein cannot be applied to the present facts. In fact, we note that the Apex Court in the above case has observed that for the purposes of excluding an income of the trust from the net of taxation, the intimation in Form 10 has to be filed with the Assessing Officer before he completes the Assessment. In fact, it is the context of the above finding of the Apex Court, that it observed that Form 10 has to be filed before completion of Assessment Proceedings. In fact, the Delhi High Court in the case of Association of Corporation & Apex Societies of Handlooms (supra) has also relied upon and so understood the decisions of the Apex Court in Nagpur Hotel Owners' Association (supra). Therefore, we do not find any merit in the reservations expressed by Mr. Singh, learned Counsel for the Revenue on the

applicability of the Supreme Court order in case of Nagpur Hotel Owners' Association {supra} to the present facts."

18. We therefore by considering the totality of the fact as discussed hereinabove and by keeping in view the ratio laid down by the Hon'ble Apex Court and the Hon'ble Bombay High Court in the aforesaid referred to cases, are of the view that the Form No. 10 furnished by the assessee during the course of assessment proceedings before completion of the assessment should have been considered by the A.O. while considering the claim for benefit under section 11(2) of the Act. We order accordingly.

19. In the result, appeal of the assessee is partly allowed for statistical purposes.

(Order pronounced in the open Court on 30.07.2021)

Sd/-

आर.एल. नेगी
(R.L. NEGI)

न्यायिक सदस्य/ Judicial Member

AG

Date: 30.07.2021

Sd/-

एन.के.सैनी,
(N.K. SAINI)

उपाध्यक्ष / VICE PRESIDENT

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

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar