

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"E" BENCH, MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA.NO. 65/MUM/2021 (A.Y: 2011-12)

Seth Damji Laxmichand Jain Dharma Sthanak 64, Dr. Ambedkar Road Opp. Kalchachowki Post Office Chinchpokli Mumbai – 400012 PAN: AACTS2218L	v.	ITO (Exemption)-1(1) Mumbai - 400012
(Appellant)		(Respondent)

Assessee by	:	Shri Hema Kataria
Department by	:	Shri B.K. Bagchi
Date of Hearing	:	17.11.2021
Date of Pronouncement	:	05.01.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)-1, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 17.03.2020 for the A.Y. 2011-12.

2. There is delay of 49 days in filing the appeal and an application has been filed for condonation of delay. As per Affidavit in this regard filed by assessee, it is stated that the Ld.CIT(A)-1, Mumbai had passed order dated 17.03.2020, and the same had been received by the assessee on 10.10.2020. The time limit for filing appeal before the ITAT expired on 09.12.2020 whereas the appeal was filed on 28.01.2021. In this regard the Ld.AR has made reference to the office order dated 30.03.2020 F.No.233/Ad (AT)2019-20 issued by Hon'ble President, ITAT extending the period of limitation in filing the appeals in all such proceedings whether condonable or not, with effect from 15th March, 2020 till further order/s.

3. The CIT(DR) has raised no objection in condoning the delay. Hence, the delay of 49 days in filing appeal is condoned in view of the office order dated 17.03.2020 issued by Hon'ble President, ITAT extending the period of limitation in filing the appeals and matter is allowed to be proceeded on merits.

4. The assessee is registered as a charitable organization with DIT(E), Mumbai u/s.12A of the Income Tax Act, 1961.

5. The brief facts of the case are that the assessee had filed its return of income for the assessment year 2011-12 declaring total income at Rs.79,870/-. The case was selected for scrutiny assessment and assessment was completed u/s 143(3) vide order dated 12.03.2014. During the year under consideration the assessee has claimed accumulation of income of Rs.1,95,00,000/- u/s 11(2) of the Act to be utilized for the objects of the trust within 5 years. However, the Assessing Officer has disallowed the claim of accumulation u/s 11(2) of the Act on the ground that in the resolution passed for making such accumulation, no definite or concrete purpose has been mentioned. Aggrieved, the assessee had preferred an appeal before the Ld.CIT (A), who has dismissed the assessee's appeal and confirmed the disallowance made by the Assessing Officer.

6. The assessee is now before us raising the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming AO's action of passing the assessment order u/s 143(3) and denying exemption thereunder, which is illegal and bad in law.

2. On the facts and circumstances of the appellant's case and in law, the Ld. CIT(A) erred in confirming the AO's action of denying exemption u/s 11 of the Income Tax Act, 1961 in respect of Rs. 1,95,00,000/- accumulated as per provisions of section 11(2) of the Act and thereby, making an addition of Rs. 1,95,00,000/-.

3. *On the facts and the circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming AO's action of holding that the accumulation was not for the specified purpose and was not spent on the objects of the Trust.*

4. *On the facts and the circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming AO's action of holding that the appellant has violated the provisions of section 11(2) of the Income Tax Act, 1961."*

7. The only grievance of the assessee as per the grounds raised are with regard to denial of benefit of claim u/s 11(2) of the Act. Hence, all the grounds are taken up together.

8. From a perusal of the assessment order, it is seen that the Assessing Officer has rejected the assessee's claim of accumulation u/s 11(2) of the Act on the ground that in the resolution forming part of Form 10, the purpose specified for accumulation of funds is general and vague in nature whereas an entity enjoying exemption under s.11 of the Act is under obligation to spell out definite and concrete purpose of accumulation. It is the finding of the Assessing Officer that the assessee has also failed to substantiate its purposes of accumulation with any concrete plan of action supported with documentary evidences. The Assessing Officer has placed reliance on the decision of Hon'ble Calcutta High Court in the case of DIT(E) vs. Trustees of Singhania Charitable Trust 199 ITR 819 wherein, it was held that the assessee is entitle to claim accumulation only if detailed

specific purpose is specified by the assessee. Accordingly, the Assessing Officer has disallowed the claim for accumulation u/s 11(2) of the Act for a sum of Rs.1,95,00,000/- and charged the same as taxable income of assessee.

9. The CIT(A) has confirmed the Assessing Officer's action and held that the assessee is not entitled to claim benefit u/s 11(2) of the Act. The CIT(A) has observed that from a reading of the objects of the assessee Trust it is seen that the assessee has numerous objects, some are charitable, some are not. Some of the objects are intended for the benefit the members of a particular sect, i.e. The Shewtamber Starakvasi Jain Sadhus/Sadhvis and since assessee has mixed objects, the purpose of accumulation ought to have been specified in concrete terms. The purpose, as per Resolution passed, is for spending on "objects of Trust by 31 March 2016". The findings of the CIT(A) are quoted below: accumulation is for purpose of has been shown, as for the reasons as reproduced below:

"7.4.1 The above facts indicate that when the Form No.10 of the assessee trust mentions that the accumulated funds are to be spent towards the objects of the trust, there is no specifications or clarity and as can be seen from the above, there are many objects which are not charitable in nature but are religious and confined to only a particular sect. The assessee trust has mixed objects which benefit a particular sect of a particular religious community and to that extent violates the

provisions of section 15 of the Act also. In the circumstances above, the case laws relied upon by the assessee are held to be no longer applicable because the objects of the assessee are not covered under the provisions of section 11 of the Act. Therefore, a bland recitation in Form No. 10 that the funds are to be accumulated for the purposes specified in the 'resolution' does not meet the conditions laid down in section 11(2) of the Act. It is another matter that even the 'Resolution' extracted above is equally nonspeaking. The argument of the assessee that its "minutes of the meeting of the trustees" should also be considered has no legal sanctity or approval in any other case laws referred to above. Without prejudice to the same, it is seen that even the minutes of the meeting mention only the fact that the amount is being accumulated for the objects of the trust. After this general accumulation, there is a suggestion by one of the trustees that some further sum should be accumulated for medical etc. but the same has not been approved by the trust as seen in the 'Resolution' finally passed. Further, it is also noted that the assessee has not been able to point out the utilisation of this 'accumulated fund' in AY 2016-17. The assessee has merely claimed that the money has been spent on general medical purposes by making unsegregated donations to various other trusts (and not on any other objects of the trust as mentioned in Form No. 10).

7.4. In view of the above discussion, it is held that the assessee has violated the provisions of section 11(2) of the Act and therefore the assessee is not entitled to claim accumulation of some of Rs.1,95,00,000/-. Therefore, this claim of the assessee as made in ground of appeal no. 1 is dismissed."

10. Before us, Ld. AR submitted that merely because the specific purpose is not mentioned in the resolution, the same does not disentitle the assessee from claiming the benefit the accumulation u/s 11(2) of the Act especially when all the other conditions necessary for claiming such benefit have been complied with by the assessee and there is nothing on record to establish that the assessee has not utilized the said accumulated

amount for the objects of the trust. The Ld. AR brought to our attention the fact that the assessee has filed Form 10 dated 07.06.2011 along with the return of income on 27.09.2011 and that said Form 10 was accompanied with the resolution wherein it has been stated that the amount is accumulated "for the objects of the trust".

11. The Ld. AR submitted that it was after detailed discussions in the meeting of Trust, as evident from the record of minutes of the proceedings, that it was resolved that the unused surplus will be accumulated for the purchase of medical equipment for use in surgery of eyes and heart and for purchase of air conditioners as well as other equipment for use in surgical operations. It was after recording of the Minutes and based on above charitable object only the Resolution was passed, and thus the Resolution is to be read along with the minutes of the meeting. The Ld.AR brought to our notice that a similar resolution was passed in the preceding years also i.e., AY 2008-09 to 2010-11 and in those years the assessment was also completed u/s 143(3) of the Act wherein, the Assessing Officer has not raised any objection in respect of generality of contents of the resolution. It is the contention of the Ld.AR that when the claim of accumulation was accepted in the earlier years there is no justification in denying the benefit in the current assessment

year on similar facts. The Ld.AR submitted that for maintaining consistency, the assessee has passed the resolution in similar manner which was accepted in the earlier years and thus applying the principle of consistency, the claim is allowable in the current year too. The Ld.AR also drew our attention to the fact that the accumulated amount was utilized in the financial year ending on 31.03.2016 and that it can be seen from the financials for the year ending 31.03.2016 that as per the income and expenditure account the amount was utilized for the purpose of medical relief, relief of poverty & education.

12. On the other hand, Ld. DR has vehemently reiterated the findings of the authorities below.

13. Considered the rival submissions and the materials placed on record. The Ld. Assessing Officer has disallowed the claim of assessee made u/s 11(2) of the Act on the ground that resolution passed in the meeting does not specify the concrete object for which the accumulation has been made. During the course of hearing, Ld AR brought to our notice the financials for the year ended 31.03.2016, as per the financials assessee utilised the accumulated sum for medical purpose in the 5th year i.e., in the year ending 31.03.2016. On the contrary the Revenue could not bring

anything on record to show that the assessee has not utilized the accumulated sum within 5 years or has utilised the same for objects other than the avowed objects of the Trust. It cannot be denied that the assessee has proved and demonstrated that the funds were utilised for the objects of the trust within the time frame of 5 years.

14. On a considered view of the matter, we have no hesitation in holding that the Revenue was not justified in denying the claim of accumulation merely on the ground that the reasons or object of the accumulation has not been specified and it is fact on record that the assessee has actually applied said funds to specific charitable purpose as resolved. We rely on the decision of Hon'ble Gujarat High Court in the case of Commissioner of Income-tax (Exemptions) v. Bochasanwasi Shri Akshar Purshottam Public Charitable Trust [2019] 102 taxmann.com 122 (Gujarat) wherein, it was held that lack of declaration in Form No 10 regarding specific purpose for which funds were being accumulated by the assessee trust would not be fatal to the exemption claimed u/s 11(2) of the Act. The Hon'ble Supreme Court in CIT (Exemption) v. Bochasanwasi Shri Akshar Purshottam Public Charitable Trust [2019] 105 taxmann.com 97 has dismissed SLP filed by the department in the above case and has upheld the findings of the

Hon'ble Gujarat High Court. Further in the case of DIT vs. Mitsui & Co. Environmental Trust [2008] 167 Taxman 43 (Delhi) it was held as under:

"5. That the trust is a charitable trust is not in dispute because the Assessing Officer has recorded that he had considered the activities of the trust as charitable activities covered by section 2(15) of the Act.

6. As regards the first issue considered by the Assessing Officer, namely, that the assessee had not specified in Form 10 the purpose for which the accumulation was sought to be made, our attention has been drawn to a decision of this Court in CIT v. Hotel & Restaurant Association 2003 261 ITR 190. In that case, a similar argument was raised by the learned senior standing counsel for the revenue to the effect that the assessee had failed to indicate in the prescribed Form the specific purpose for which the income was sought to be accumulated and, therefore, the statutory requirement had not been strictly complied with, disentitling the assessee from relief under section 11(2) of the Act.

7. This Court rejected the contention and held that the purpose or purposes to be specified cannot be beyond the objects of the trust. Plurality of purposes for accumulation is not precluded. In other words, it need not necessarily be specifically stated for which purpose the accumulation is sought."

15. Further, the Revenue itself had accepted in the preceding assessment years the claim of accumulation under similar circumstances in assessment orders passed u/s 143(3) of the Act. Also, all other requirements like filing of Form 10 within due date and application of accumulated sum for the purpose of object of trust within the time limit of 5 years are fulfilled by the assessee.

16. We accordingly direct the Assessing Officer to allow the claim of accumulation u/s.11(2) of the Act. Accordingly, grounds 1 to 4 raised by the assessee are allowed.

17. In the result, assessee appeal is allowed.

Order pronounced on 05.01.2022 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 05/01/2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum