

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1840/Mum/2021
(निर्धारण वर्ष / Assessment Years : 2016-17)

Minim Charitable Foundation Galaxy Bungalow, 111 BJ Road, Bandra (W) – 400050.	बनाम/ Vs.	NFAC, Delhi
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAICM4172G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Mr. Sambhav Shah
प्रत्यर्थी की ओर से/Respondent by :	Shri. Kiran P. Unavekar

सुनवाई की तारीख / Date of Hearing	02.06.2022
घोषणा की तारीख/Date of Pronouncement	27.06.2022

आदेश / ORDER

PER SHRI OM PRAKASH KANT, AM:

This appeal by the assessee is directed against order dated 12/08/2021 passed by the National Faceless Appeal Centre , Delhi [hereinafter shall be referred as Ld. CIT(A)] for assessment year 2016-17, raising following grounds:

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1. On the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeal) has erred in confirming the disallowance u/s 11(2) of the Income Tax Act, 1961 merely on ground that specific outline for purpose of accumulation was not mentioned in Form 10.

2. On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeal) has erred in interpreting the Board Resolution in piecemeal wherein it has ignored the fact that assessee has clearly mentioned that accumulation shall be utilized only for Education and Medical relief and not for any other objects of the trust

3. On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeal) has erred in not appreciating the fact that assessee in its Board Resolution has clearly mentioned the specific objects for which funds are accumulated and not merely a general discussion as alleged.

4. On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeal) has erred in not appreciating that assessee has subsequently utilized the amount for the object of the trust which were in accordance with the objects mentioned in the Board Resolution.

5. On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeal) has erred in not appreciating the judicial pronouncement submitted by assessee which supports the assessee's contention.

6. Under facts and circumstances of the case the Learned Commissioner of Income Tax (Appeal) had passed the order without considering the facts and submissions put

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before him as also without allowing the appellant sufficient opportunity of being heard.

7. Each of the above ground be considered as separate from the other grounds.

2. Briefly stated facts of the case are that the assessee a charitable trust, was registered under section 12A of the Income Tax Act, 1961 (in short 'the Act') and for the year under consideration, e-filed its return of income on 30/09/2016 declaring total income at nil. During the scrutiny of the return of income, the Assessing Officer (AO) observed that the assessee claimed deduction under section 11(2) of the Act of ₹ 33,73,766/- and filed form No. 10 i.e. the form prescribed as per Income Tax Rules, 1962 (in short 'the Rules'). Assessing Officer noted that as per law, the form No. 10 should be filed within the time allowed for furnishing the return of income under section 139(1) of the Act mentioning the amount being accumulated and specifying the purpose of accumulation. The Ld. Assessing Officer vide notice dated 05/11/2018 asked the assessee as to why the deduction under section 11(2) might not be disallowed as in form No. 10 the purpose of accumulation has been only mentioned as 'for the object of the trust',

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which is not specific as to for what purpose the assessee has accumulated the amount mentioned in form No. 10. In response, the assessee filed a copy of board resolution explaining the purpose of accumulation, however same was also not found as a specific object by the Ld. Assessing Officer, and therefore he disallowed the claim of accumulation under section 11(2) of the Act and in assessment order dated 08/12/2018 , he added the amount of Rs. 33,73,766/- back to the taxable income of the assessee.

3. On further appeal, the Ld. CIT(A) upheld the addition observing as under:

Discussions and Findings :

I have carefully examined the entire material on record, including the order of the AO, the appellant's submissions and the case laws cited by him in his favour. The dispute has arisen because according to the AO, the appellant has not given any specific outline of the way in which it proposes to apply its accumulated surplus, both as per the Form -10 filed by the appellant, as well as the Board's resolution filed by the appellant is that the accumulated funds would be "applied as per the objects of the trust The resolution in fact clearly mentions that the Directors of the Company are thereby" authorised to draw up a plan for utilisation of this accumulated income

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for 2015-16 over the next five years. The inference drawn by the AO was that the appellant had no plans or outline for the utilisation of these funds, but a resolution was hastily passed to meet the statutory requirements of the Income Tax Department at a cosmetic level. The consequential denial of exemption has led to this dispute.

It is instructive to understand the meaning and full import of subsection 11(2) in this context. It deals with the accumulation of income in case of certain entities. It is instructive, in this instance, to read what the bare Act has to say of this provision of section 11(2). The said subsection reads:

" Where eighty five percent of the income referred to in clause (a) or clause (b) of subsection 1 read with explanation to that subsection 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:

1. such persons furnishes a statement in the prescribed form and in the prescribed manner to the assessing officer stating the purpose for which the income being accumulated or set apart and the period for which the income is to be accumulate for set apart which shall I no case exceed five years;

2. The money so accumulated or set apart is invested or deposited in the forms or modes specified in subsection 5;

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3. The statement referred to in clause (a) is furnished on or before the due date specified under subsection (1) of section 139 for furnishing the return of income for the previous year."

The providing of exemption from taxation is a very important licence given within the ambit of the legislative intent with regard to taxation in the country. This exemption, while important for specified purposes and objectives of the legislature, have to be very strictly regulated. It was to enforce just one such regulations of the allowance of one such exemption that subsection 11(2) was amended w.e.f. 1.4.2016 through the introduction of clauses a, b and c and proviso thereto. These impose certain reasonable, though strictly enforceable, conditions that stipulate the control of moneys accumulated or set apart, which ultimately have to be used for specified charitable or religious purposes, within stipulated time frames, not in any case, exceeding five years.

These conditions, reflected in the specified Form-10 are mandated by the legislature in order to ensure that the exemptions from taxation available to assesses are delivered equitably and only to those entities that truly are engaged in the specified purposes for which such exemptions are available. The below listed conditions clearly bring forth the fact that there has to be strict regulation of the amounts that are accumulated or set apart.

•Such trust or institution furnishes Form No. 10 - notice of accumulation of income by charitable trust or institution electronically to assessing officer, on or before the due date for filing the return of income. Mention the purpose for which income is being accumulated or set aside.

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- Income shall not be accumulated for more than 5 years and years in which income accumulated or set aside due to order or injunction of any court to be excluded in computing 5 years.*
- Money so accumulated or set aside is invested or deposited in specified mode as mentioned under section 11(5).*

The submission of the said Form is not an automatic or trivial process and reflects the actual state of affairs in the said entity. There are several processes to be undergone before the said Form can be created and made ready for submission. The intention the Form-10 is that the entity desirous of accumulating funds under section 11(2) has to give a notice in writing to the Assessing Officer of its intention and reasons for such accumulation in Form 10 under Rule 17 of the Income-tax Rules; 1962. This notice has to be made before the expiry of the due date of filing return under section 139(1). There are enclosures and details to be submitted along with the said Form. These are:

- 1. A resolution passed by the governing body of the organisation to be filed with the Form 10.*
- 2. Copies of the annual accounts of the organisation along with the details of investment and utilization, if any, of the money so accumulated or set apart – to be furnished to the Assessing Officer before the expiry of six months commencing from the end of each relevant previous year.*
- 3. For accumulation of income, it is necessary that the organisation/trust must indicate specific purpose or purposes for which it wants to accumulate the funds. A*

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general decision to accumulate listing all the objects of the organisation would not be sufficient.

The above discussion clearly brings to fore the highly non-trivial and important aspect of submission of Form 10 along with the return of income. The non-submission of the said Form in its entirety, both in form and in substance, has the effect of not putting the AO to notice of the intention of the appellant to accumulate his income in a particular manner and to stake a claim to exemption upon this income. Since it is undisputed that the AO is responsible for accepting the contents of the ROl and for the subsequent acceptance of his having been put to a valid notice through the medium of a valid and complete Form-10, there cannot be any acceptance of the returned income (returned after making claim for the said exemption) without a Form 10, which becomes an inextricable part of the return of income by virtue of the claim of exemption made by the appellant, that duly elaborates upon the method and mode of application of the income upon which exemption from taxes are being claimed.

I find that in this context, the Hon'ble Calcutta High Court in the case of DIT(E) Vs Trustees of Singhania Charitable Trust 199 TR 819 lends support to the view that accumulation is permitted only if definite and concrete purpose or purposes are specified by the appellant. The Hon'ble Bombay High Court in CIT SBI 169 IT 298 has also underlined the fact that the accumulation contemplated in section 11 has to be a conscious accumulation and not just a mass of unspent or unapplied profits. The citations relied upon by the appellant also do not help him because the case of the AO is not merely that the appellant has not fully elaborated upon the

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purpose of application of accumulated funds, but also that the same is reflected in the resolution of the board of the appellant. It is clear from this that the appellant did not indeed have any purpose outlined, but was in fact merely authorising its board members to draw out such a plan for the coming five years.

Since the uncontroverted fact is that the appellant has not submitted the form 10 in its entirety by not supplying details of application of the impugned amounts, and by merely giving a general statement of applying this income as per the objects of the trust - something that has been explicitly mandated by the legislature - and with a strong reason, in view of the discussions above, the view taken by the AO cannot be said to unlawful and the same is confirmed.

The next ground against the imitation of penalty proceedings u/s 271(1)(c), also becomes infructuous in view of the above disc assigns.

In the result. The appeal is dismissed.

4. Before us the assessee, filed a paper book containing pages 1 to 81 including the decisions relied upon.

5. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The assessee is a public charitable trust. The provisions of section 11(2) of the Act, provides

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that 85% of the income of the trust, which is not utilized by the trust for charitable or religious purposes, would not be included in the total income of the previous year of receipt of the income provided the conditions laid down in clause (a) to (c) contained therein are satisfied. The clause (a), which is applicable in the instant case provides that if such a person furnishes the statement in the prescribed form (i.e. form No. 10) and the prescribed manner to the Assessing Officer specifying 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. In the instant case, dispute is regarding whether the assessee has specified the purpose of accumulation in the form No. 10 filed. According to the Ld. CIT(A) the resolution filed by board of the directors only state of authorizing them to draw a plan for utilization of accumulated income for financial year 2015-16 over the next five years. The purpose specified by the assessee, has been found to be general by the lower authorities. The Ld. CIT(A) has relied on the decision in the case of Trustees of Singharia Charitable Trust

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(supra) by the Hon'ble Calcutta High Court and decision in the case of SBI (supra) by the Hon'ble Bombay High Court as mentioned above. Before us, the Ld. Counsel of the assessee relied on the decision of the Hon'ble Gujarat High Court in the case of **CIT Vs Bochasanwasi Shri Akshar Purshottam Public Charitable Trust** reported in 102 taxmann.com 122 (Gujrat). In the said decision Hon'ble High Court has held that lack of declaration in form No. 10 regarding a specific purpose for which funds were being accumulated by the assessee trust, would not be fatal to the exemption claimed under section 11(2) of the Act. The SLP filed by the Revenue against the said decision of the Hon'ble Gujarat High Court has been dismissed by the **Hon'ble Supreme Court as reported in 105 taxmann.com 97(SC)**. Further in the case of **CIT Exemption Vs Gokula Educational Foundation reported in 77 taxmann.com 38 (Karnataka)**, Hon'ble Karnataka High Court held that as long as object of the trust are charitable and character and purpose or purposes mentioned in form No. 10 were for achieving objects of the trust, merely because details were not furnished, the assessee

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could not be denied benefit of exemptions under section 11(2) of the Act. In the case of **Director of Income Tax (Exemption) Vs Mamta health Institute for Mother and Children reported in (2007) 162 Taxman 235 (Delhi)**, Hon'ble Delhi High Court held that if the assessee sought to accumulate funds for a charitable purpose, then assessee was entitled to benefit of accumulation under section 11(2) of the Act. We find that in the instant case before us the charitable object of the assessee has not been doubted and only dispute is that board resolution has not specified the object for which the funds were accumulated. In the Board resolution , the boards of directors have been authorized to draw a plan for utilization of the accumulated funds . But the assessee has not filed any such plan actually drawn by the board of the directors. This being only a fault in not complying before the Assessing Officer. The Ld. Counsel has submitted before us, the funds were accumulated for ongoing project of college buildings. In our opinion merely on such fault of not submitting the details, exemption to the assessee should not be denied and in the interest of substantial justice , the

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assessee should be provided one more opportunity to file the detailed plan drawn by the Board of Directors in compliance to the resolution passed, which could satisfy the requirement of law. In view of the above discussion, we feel it appropriate to restore the issue in dispute back to the file of the Ld. CIT(A) for deciding afresh, with direction to the assessee to file specific details of the purpose for which the funds were accumulated. It is needless to mention that both the assessee and the Assessing Officer shall be afforded adequate opportunity of being heard. The grounds raised by the assessee are accordingly allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for a statistical purposes.

Order pronounced in the open court 27.06.2022

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai, Dated 27.06.2022

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai