

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

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| ITA Nos. 584 & 563/Bang/2022 |
| Assessment Year : 2016-17 |

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| Rajiv Gandhi University of Health Sciences, 4 th "T" Block, Jayanagar, Bangalore – 560 041. PAN: AAALF0023C | Vs. | The Deputy Commissioner of Income Tax (CPC), Bangalore. |
| APPELLANT | | RESPONDENT |

| | | |
|-------------|---|--------------------------|
| Assessee by | : | Mrs. Suman Lunkar, CA |
| Revenue by | : | Smt. S. Praveena, CIT DR |

| | | |
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| Date of Hearing | : | 15-09-2022 |
| Date of Pronouncement | : | 29-09-2022 |

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals are filed by the assessee against order dated 04/02/2022 and 20/05/2022 for A.Y. 2016-17 on following grounds of appeal.

ITA No. 584/Bang/2022:

“1. The learned Commissioner of Income Tax (Appeals). NFAC, Delhi has erred in confirming the order passed by the Assessing Officer disposing of the application filed u/s 154 of the Act. The orders passed being erroneous both on facts and law are liable to be quashed.

2.1 Without prejudice, the learned CIT(A) has erred in holding that since no order granting approval is passed in favour of the Appellant u/s 10(23)(C)(vi) of the Act, the request of the Appellant seeking exemption u/s 10(23C)(vi) of the Act is rejected. The conclusion drawn being wholly contrary to facts and law applicable is to be disregarded.

2.2 The authorities below have erred in not appreciating the fact that the application filed for approval u/s 10(23c)(vi) of the Act having not been disposed off within the prescribed due date amounts to deemed approval u/s 10(23C)(vi) of the Act.

2.3 In any case, the learned AO had erred in holding that the Appellant is not entitled to make a fresh claim of deduction otherwise than by way of filing a revised return of income. On proper appreciation of facts and law applicable, fresh claim of deduction could be considered by the Appellate authorities during appellate proceedings.

2.4 In any case, the Appellant is eligible for deduction u/s 10(23C)(vi) of the Act and the same is to be granted to the appellant.

3. The learned AO had erred in holding that the application filed by the appellant u/s 154 of the Act stands disposed as the proceedings are subjudice in view of interim stay granted by the Honourable High Court of Karnataka with respect to notice u/s 143(2) of the Act. The conclusion of AO being erroneous both on facts and law applicable, is to be disregarded.

4. In view of the above and on the grounds to be adduced at the time of hearing, it is requested that the order passed by Assessing officer be quashed or at least the Appellant be held to be approved u/s 10(23C)(vi) of the Act.”

ITA No. 563/Bang/2022:

“1. The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in partially confirming the order passed u/s 154 of the Act. The order passed to the extent confirmed by the CIT(A) is bad in law and is liable to be quashed.

2.1 The DCIT (CPC) has erred in not allowing the accumulation made u/s 11(2) of the Act and the learned CIT(A), NFAC has erred in confirming the same on the ground that the Appellant had not complied with the provisions of section 11(5) of the Act. The conclusion drawn being wholly erroneous, both on facts and law applicable, is to be deleted.

2.2 In any case, the Authorities below have erred in not appreciating the fact that the Appellant having complied with the provisions of section 11(5) of the Act by investing the accumulation made u/s 11(2) of the Act in the specified

investments has rightly claimed the accumulation u/s 11(2) of the Act and same is to be allowed to the Appellant.

3. The denial of credit for TDS being erroneous, both on facts and law applicable, is to be allowed.

4. The learned DCIT (CPC) has erred in levying interest u/s 234B and 234C of the Act. The action of the DCIT(CPC) being erroneous, both on facts and law. is to be negated and the interest levied be deleted.

5. In view of the above and on the grounds to be adduced at the time of hearing, it is requested that the claim of accumulation made by the Appellant u/s 11(2) of the Act be allowed and interest levied be deleted.”

2. Brief facts of the case are as under:

2.1 Assessee is set-up by Act of Karnataka legislature being Rajiv Gandhi University of Health Science Act 1994, with the objective of providing for instruction and training in such branches of medicine and allied sciences as may be considered suitable to and to make provision for research for the advancement and dissemination of knowledge in the health sciences striving to maintain at all times the highest possible standards of academic excellence. The assessee is also registered u/s. 12A and the return of income for the year under consideration was filed on 17/10/2016 declaring Nil income along with Form 10 and claimed refund of Rs.4,71,96,140/-. The assessee subsequently revised its return on 31/03/2017 with Nil income along with Form 10 claiming the refund of Rs.4,71,96,140/-.

2.2 The CPC, Bangalore issued intimation dated 21/02/2018 u/s. 143(1) according to which the gross total income of the assessee was determined at Rs.172,29,61,589/- by disallowing the sum of Rs.74,91,09,587/- that was claimed as accumulation u/s. 11(1)(a) and disallowing sum of Rs.70,83,56,256/- u/s. 11(2) being the amount accumulated and set apart for specific

purposes. TDS credit of Rs.4,71,96,140/- claimed by the assessee was also not denied. The said intimation was challenged by the assessee by filing rectification application on 21/03/2018, and on 09/07/2018, order u/s. 154 was passed by the CPC enhancing the taxable income from Rs.172,29,61,598/- to Rs.176,99,71,700/- by withdrawing the deduction of Rs.4,70,10,101/- that was originally allowed in the intimation passed on 21/02/2018.

2.3 Against the order passed by the Ld.AO dated 09/07/2018, the assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) observed as under:

“4. Discussion before the CIT(Appeal)

The grounds raised by the taxpayer are that no revenue expenditure was allowed towards application of funds, no capital expenditure was allowed towards application of funds, accumulation of funds not allowed u/s 11(1)(a) and 11(2) in the rectification order passed on 9/7/2018 which is the order under appeal.

Accumulation upto 15% of income under sec 11(1). Such accumulations are not subject to application within a maximum permissible period of five years. In other words, 15% of income can be retained by a charitable organisation without applying it for charitable purposes in the year in which the income was accrued. This 15% accumulation is an indefinite accumulation and the organisation does not have to apply it for charitable purposes in subsequent years. it can be retained as a part of its corpus of capital.

Accumulation beyond 15% of income under sec 11(2). Such accumulations are subject to application within a maximum permissible period of 5 years. In other words income in excess of 15% cannot be retained by a charitable or religious organisation. If the income is not spent in the current year then the assessee is permitted to spend it within the next five years.

In short where a trust or institution is unable to apply 85% of its income from property held under them, the income is still exempt if the following conditions are met.

- 1. The income is deemed to have been applied for charitable purposes in specified scenarios (section 11(1)).*
- 2. 85% of income is neither applied nor deemed to have been applied, e trust is allowed to accumulate such unapplied portion of income under specified conditions to claim the exemption (11(2)).*

Deemed application under sec 11(1):

Where whole or any part of the income has not been received during the year the assessee has an option to apply such income for such purposes during the previous year in which it is received or during the previous year immediately following the said previous year (section 11(1)(a)).

Where the assessee fails to apply whole or any part of the income received during the year, the assessee has an option to apply such income for such purposes during the previous year immediately following the previous year in which the income was derived (section 11(1)(b)).

Above such option is to be exercised in form 9A to be furnished electronically to the assessing officer with or without digital signature by the trust on or before due date of filing the return.

Where 85% of income not applied (section 11(2)).

Where 85% of the income is not applied for charitable purposes, the organisation is required to accumulate or set apart such income for future application. The income so accumulated will not be included in the total income of the organisation if the following conditions are applied.

- 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 R/I.*
- Mention the purpose for which income is being accumulated or set aside.*
- 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 sec 11(5).*

Above such option is to be exercised in Form 10 to be furnished electronically to the assessing officer with or without digital signature by the trust on or before due date of filing the return.

Filing of Form 10 under rule 17

The organisation desiring to accumulate funds under sec 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 IT Rules, 1962. This notice has to be made before the expiry of the due date of filing return under sec 139(1).

5. Decision of the CIT(A)

Income utilised for purchase of capital asset, revenue expenditure shall be treated as applied for charitable purpose. Here the assessing officer has not allowed expenses on the revenue account as well as under capital expenses. The reason given by the assessing officer for disallowance of these expenses in the 143(1) intimation is —

"...Further, assessee has claimed exemption exemption u/s 11 of the IT Act, but has not furnished details of audit in the Schedule Audit Information and Form 10B in Audit Report is not E-filed along with the return or before filing the return."

The taxpayer has not furnished the details of audit during the appeal proceedings also. The assessing officer has stated that Form 10B in audit report is not E -filed. In the absence of E-filing of audit report and Form 10B being done, it is difficult to verify the veracity of the figures given here. E-filing of audit report and Form 10B is mandatory. The assessing officer is directed to collect the Audit Report and Form 10B if available and give credit to the amounts of capital and revenue expense. Any amount which is taxable (not falling under the exempt category) shall be taxed. The revenue expenditure claimed by the taxpayer is Rs 74,91,09,587 and the capital expenditure claimed is Rs.4,70,10,101.

As far as accumulation is concerned the taxpayer has not furnished Form 10 without which accumulation of funds under sec 11(1) and 11(2) can be allowed. As discussed in earlier paragraphs accumulation upto 15%

of the income under sec 11(1) is permissible, i.e 15% can be retained by a charitable organisation without applying it for charitable purposes in the year in which the income was accrued. in the result 15% of income of Rs 26,54,95,755 is allowable for the purpose of accumulation. The assessing officer is directed to allow Rs 26,54,95,755 towards accumulation of funds under sec 11(1).

Rs 70,83,56,256 is claimed towards accumulation u/s 11(2). This cannot be allowed for the following reasons —

- 1. Amount accumulated or finally set apart for specified purposes if all the conditions in section 11(2) and 11(5) are fulfilled.*

Sec 11(2)

[Where [eighty-five] per cent of the income_ referred to in clause (a) or clause (b) of subsection (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:—]

- 1. such person specifies, by notice in writing given to the [Assessing] Officer in the prescribed manner, 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 ten years;*
- 2. the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5):*

Provi.....

[Provided further that in respect of any income accumulated or set apart on or after the 1st day of April, .2001, the provisions of this sub-section shall have effect as if for the words "ten years" at both the places where they occur, the words "five years" had been substituted.]

[Explanation.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set

apart, to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.]

The conditions specified are that the taxpayer applies to the assessing officer the purpose for accumulation of income as well as the period of accumulation and that the money so accumulated or set apart is invested in the deposits specified in sec 11(5). The specified deposits as per sec 11(5) are reproduced here.

Provisions of sec 11(5).

(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely :—

(i) investment in savings certificates as defined in clause (c) of section 293 of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;

(ii) deposit in any account with the Post Office Savings Bank;

(iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).

Explanation.—in this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

(iv) investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);

(v) investment in any security for money created and issued by the Central Government or a State Government;

(vi) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;

Unless the taxpayer makes deposits it these instruments specified in sec 11(5) the conditions for accumulation of income will not be satisfied and hence accumulation of income @ Rs 70,83,56,256 stands disallowed, since the taxpayer fails both the conditions for accumulation of income or setting apart for specified purposes u/s 11(20 and 11(5).”

2.4 The assessee then received a communication from CPC on 04/12/2018 intimating the assessee that, the return filed by the assessee, dated 31/03/2017 was rectified by the Ld.AO. The assessee again filed rectification application vide letter dated 25/01/2019 submitting as under:

“The University e filed NIL return of income on 17.10.2016 ACK No.51196799017106) (Anne-A) followed by revised return of income on 31.03.2017 (Ack No.747507270310317) (Ann-B) claiming exemption u/s 11 along with Audit report in Form 10B and Form No.10 for accumulation, declaring therein gross receipts, application and accumulation u/s 11(1)(a) and 11(2) as under:

| Details | Amount in Rs. |
|-------------------------------------------------------------------|---------------|
| Gross receipts/income (GR/GI) | 176,99,71,699 |
| Income accumulated u/s 11(1)(a) not exceeding 15 percent of GR/GI | 26,54,95,755 |
| Application of income | |
| Revenue Expenditure | 74,91,09,587 |
| Capital Expenditure | 4,70,10,101 |
| Total application | 75,61,19,688 |

| | |
|-------------------------------|--------------|
| Accumulation sought u/s 11(21 | 70,83,56,256 |
|-------------------------------|--------------|

Further in para 6. it is stated that for the online rectification filed for the rectification order, it was directed that the rectification application is to be filed with the Assessing officer, since assessment rights had been transferred by the CPC to the AO. Further in para 7 it is stated that in view of the above position, we are submitting this application Ws 154 for rectification to the CPC rectification order dated 09.07.2018 (Ann-D) by considering the application of income and accumulation uis 11(1)(a) and (21, as detailed at Para 3 and making the taxable income and demand as 0 and refund of the TDS".

2.5 Assessee again filed another rectification application dated 25/01/2019, wherein it raised the plea that, it was entitled for exemption u/s. 10(23C)(vi) as per the deemed approval. The assessee also submitted to consider the claim raised u/s. 10(23C)(vi). The Ld.AO passed order dated 04/02/2019 disposing of the rectification application by observing as under:

"Since the Hon'ble High Court of Karnataka has granted interim stay in respect of the notice u/s 143(2) and the proceeding are subjudice, Rectification proceedings cannot be initiated u/s 154. Accordingly the application of the assessee stands disposed".

"As per the provisions of the Act in order for an institution to claim exemption u/s 10(23C)(vi) the institution must be approved by the concerned authorities. Since there is no order granting approval for the purposes of section 10(23C)(vi), the claim of the assessee cannot be considered. Furthermore the assessee is not entitled to make a fresh claim of deduction other-wise than by way of filing revised return of income. Accordingly the application of the assessee stands disposed"

2.6 Against this order, the assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) vide order dated 04/02/2022 dismissed the appeal of the assessee by observing that as there is no order granting approval u/s. 10(23c)(vi) i.e. produced by the assessee from the competent authority, the appeal filed by assessee against the CPC intimation dated 04/02/2019 was rejected.

2.7 Against these orders of Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

ITA No. 563/Bang/2022:

3. The primary contention of the Ld.AR in this appeal is that disallowance has been made by the CPC in an intimation issued u/s. 143(1) dated 09/07/2018 denying the exemption claimed u/s. 11. She submitted that no disallowance could be made u/s. 11 by the CPC in an intimation issued u/s. 143(1) of the Act. She submitted that such disallowance cannot be made without granting opportunity of being heard to the assessee. She submitted that the Ld.CIT(A) in the impugned order upheld the disallowance by observing that no details were filed in the audit report in order to substantiate the exemption claimed in Form 10. She submitted that no opportunity was granted by the CPC/AO before making such disallowance.

3.1 On the contrary, the Ld.DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in light of records placed before us.

4. During the relevant assessment year, the assessee had claimed deduction under section 11(1) and 11(2) the act that was disallowed by the CPC in intimation issued under section 143(1) of the Act. Even the rectification filed by the assessee was not entertained. It is the contention of the assessee that no disallowance can be made on a debatable issue under in an intimation issued under section 143(1) of the Act. Whereas, the revenue contends that all kinds of adjustments can be made in an intimation under section 143(1) of the Act.

4.1 Section 143(1) as it was applicable for the relevant period reads as under:

143. (1) *Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:-*

(a) *the total income or loss shall be computed after making the following adjustments, namely:-*

(i) *any arithmetical error in the return;[or]*

(ii) *an incorrect claim, if such incorrect claim is apparent from any information in the return.*

(b) *the tax and interest, if any, shall be computed on the basis of the total income computed under clause (a);*

(c) *the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest;*

(d) *an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and*

(e) *the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:*

Provided *that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax or interest is payable by, or no refund is due to, him:*

Provided further *that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.*

Explanation.:-For the purposes of this sub-section,-

(a) *"an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,-*

(i) *of an item, which is inconsistent with another entry of the same or some other item in such return;*

(ii) *in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or*

(iii) *in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;*

(b) the acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).

4.2 In the mechanism of application of Section 143(1) for the relevant assessment year, we find that, the first proviso to Section 143 (1) mandates that “no adjustments” except for arithmetical mistakes and/or an incorrect claim that is apparent from any information in the return. The scope of permissible adjustments under section 143(1)(a) for the relevant year is much narrower.

4.3 *Hon’ble Bombay High Court* in case of *Khatau Junkar Ltd. v. K.S. Pathania* reported in [\(1992\) 196 ITR 157](#), has observed that, where a claim has been made which requires further inquiry, it cannot be disallowed without hearing the parties and/or giving the party an opportunity to submit proof in support of its claim. In the absence of section 143(1)(a) being read in the above manner *i.e.* debatable issues cannot be adjusted by way of intimation under section 143(1)(a), would lead to arbitrary and unreasonable intimations being issued, leading to chaos. Similar view has been taken by *Hon’ble Bombay High Court* in case of *Bajaj Auto Finance Ltd. Vs. CIT* reported in *(2018) 93 taxmann.com 63*.

4.4 Further in the instant case we also note that no opportunity was granted to the assessee to put forth its stand before disallowing the deduction claimed. The issue in the present appeal is debatable and therefore the revenue was not right on their part to unilaterally proceed by disallowing the claim.

4.5 In the interest of justice, we remand this issue back to Ld.AO to grant opportunity of being heard to assessee in a physical hearing and to consider the claim in accordance with law.

Accordingly, the appeal in ITA No. 563/Bang/2022 stands allowed for statistical purposes.

5. In respect of **ITA No. 584/Bang/2022**, the Ld.AR submitted that there is a delay of 111 days in filing the present appeal that arises out of order passed by the Ld.CIT(A) dated 04/02/2022. In any event, the Ld.AR submitted that the present appeal is against the Ld.CIT(A) rejecting the ground raised by assessee u/s. 10(23c)(vi) of the Act in a 154 proceedings.

In view of the fact that the appeal in ITA No. 563/Bang/2022 has been allowed for statistical purposes, the present appeal becomes infructuous.

In the result, the appeal filed by the assessee in ITA No. 563/Bang/2022 stands allowed and the appeal in ITA No. 584/Bang/2022 stands dismissed as infructuous.

Order pronounced in open court on 29th September, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 29th September, 2022.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore