

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No. 6780/Del/2018
(Assessment Year : 2008-09)

ITO(E) New Delhi PAN No. AAATC 5905 A (APPELLANT)	Vs.	Canara Bank Relief and Welfare Society B-27, Qutab Institutional Area, Katwaria Sarai, Delhi-110 016 (RESPONDENT)
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Assessee by	Shri V. K. Bindal, C.A. Ms. Rinky Sharma, ITP
Revenue by	Shri Rajendra Jha, Sr. D.R.

Date of hearing:	09.02.2023
Date of Pronouncement:	23.02.2023

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the Revenue is directed against the order dated 17.08.2018 of the Commissioner of Income Tax (Appeals)-40, Delhi relating to Assessment Year 2008-09.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a charitable society is *inter alia* stated to be engaged in promotion, protection and advancement of women and

girls. It is stated to be registered with Registrar of Society and holds registration u/s 12A of the Act. Assessee had electronically filed its return of income on 30.09.2008 for A.Y. 2008-09 declaring Nil income after claiming exemption u/s 11 & 12 of the Act. The return of income was initially processed u/s 143(1) of the Act. AO has noted that in A.Y. 2007-08, assessee had claimed to have given an advance of Rs.5,85,00,000/- for purchase of property which was claimed as application of income in that assessment year. AO noted that in A.Y. 2008-09, the amount of property advance was received back but the amount that was received back was not included as income in the year under consideration. Accordingly, the reasons were recorded and notice u/s 148 of the Act was issued on 26.08.2014 and served on the assessee. Thereafter, the case of the assessee was taken up for scrutiny and consequently, the assessment was framed u/s 147/143(3) of the Act vide order dated 31.03.2016 and the total income of the assessee was determined at Rs.4,94,76,236/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 17.08.2018 in Appeal No.268/2016-17 granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

- “1. Whether on the facts of the case and in law the CIT(A) has erred in directing to allow the claim u/s 11(2) of the I.T. Act which was only made during proceedings initiated u/s 148 of the I.T. Act.*

2. *Whether the CIT(A) has erred in ignoring the fact that the assessee has failed to file Form Mo. 10 and requisite resolution by the trustees specifying the purposes for which accumulation u/s 11(2) of the I.T. Act, within the time prescribed in the Act and even before completion of original assessment as envisaged by Supreme Court in the case of Nagpur Hotels Association (2001) 247 ITR 201.*
3. *Whether the CIT(A) has erred to ignore that the resolution to accumulate was passed by the trustees only after the assessment was reopened u/s 148 of the I.T. Act on 15-09-2014, which was beyond the statutory period of five years allowed u/s 11(2) of the I.T. Act for utilization of funds for specific purpose for which funds stand accumulated.*
4. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at time of hearing.”*

5. At the outset, Learned DR submitted that though the Revenue has raised various grounds but all the grounds are interconnected. In view of the aforesaid submissions all the grounds are considered together.

6. Before us, Learned DR took us through the findings of AO and submitted that assessee had claimed Rs.5,85,00,000/- as application of income on account of advance given for purchase of property in A.Y. 2007-08 but in A.Y. 2008-09 when the amount of advance was received back as no property was purchased, the amount received back was not considered as income in the original return of income that was filed by assessee. It is the submissions of the Learned DR that assessee had not included Rs.5,85,00,000/- in the original return of income filed u/s 139 of

the Act and only when the case of the assessee was reopened u/s 148 of the Act, the assessee had shown the amount as income which assessee had claimed it as accumulation u/s 11(2) of the Act. He further submitted that assessee had neither passed a resolution before the due date of filing of return nor the details of accumulations of funds was mentioned in the audit report and only when the case of the assessee was reopened, assessee had passed a resolution to accumulate the funds for five years u/s 11(2) of the Act. He submitted that since the proceedings u/s 147 of the Act are for the benefit of revenue and not for the assessee, the assessee cannot be permitted to convert the reassessment proceedings and cannot seek relief in respect of items which are not claimed in the original return of income. He thus supported the order of AO.

7. Learned AR on the other hand reiterated the submissions made before the AO and CIT(A) and placed reliance on the decision of Hon'ble Delhi High Court in the case of Association of Corporation and Apex Societies Handlooms vs. ADIT and the decision of Hon'ble Apex Court in the case of CIT vs. Nagpur Hotels Associations (2001) 247 ITR 201. He took us through the findings of CIT(A) and supported the order of CIT(A).

8. We have heard the rival submissions and perused the material available on record. We find that the issue has been decided by CIT(A) by observing as under:

“4.2.3 I have considered the impugned order and the submissions of the appellant. It is not in dispute that the amount of Rs, 5,85,00,000/-, which was the reason on the basis of which notice under section 148 was issued, was offered as income in the return filed in response to notice under section 148. The provisions of section 148(1), inter alia, provide that a provisions of the Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139. Further, it is to be noted that section 2(5) defines assessment to include re-assessment. In the case under consideration, it is a fact that the amount of Rs. 5,85,00,000/- which was on account of refund on advance received back was included in the income and a claim was made to accumulate the income under section 11(2). Further, Form No. 10 was also furnished during the course of re-assessment proceedings as has been noted by the Assessing Officer. The appellant has relied on the decision of the Hon'ble Delhi High Court in the case of Association of Corporation and Apex Societies Handloom Vs. ADIT (supra) in which the Hon'ble Court have considered the issue of whether form for availing deduction under section 11 can be furnished by the assessee during re-assessment proceedings. The Hon'ble Court, while deciding the issue, have held as under:

"The learned counsel for the appellant took up arguments on the second question first. He submitted that insofar as ITA No.523/2012 is concerned (which pertains to assessment year 2001-02), the Form-10 prescribed under Rule 17 of the Income Tax Rules, 1962 was filed only at the stage of the appeal before the Tribunal. In respect of the other three appeals, which pertain to assessment years 1998-99, 1999-2000, 2000-01 the said Form-10 has been furnished during the course of re-assessment proceedings pursuant to proceedings initiated under Section 147 of the Income Tax Act, 1961 (hereinafter referred to as the said Rules).

2. It is an admitted position, in view of several decisions of the Courts including the decision of the Supreme Court in the case of CIT v. Nagpur Hotel Owners Association [2001] 247 ITR 201/114 Taxman 255, that the said Form-10 could be furnished by the assessee up to the stage of completion of the assessment under Section 143(3) of the said Act. The only point in issue in the

present case is whether the Form-10 could be furnished by the assessee for the purposes of Section 11 of the said Act during the re- assessment proceedings.

3. The learned counsel for the revenue contended that Form-10 could be produced by the assessee only up to the completion of the original assessment proceedings under Section 143(3). He submitted that the re- assessment proceedings are for the benefit of the revenue and the assessee cannot take advantage of the same. Therefore, in the course of re- assessment proceedings the assessee would not be entitled to furnish the said Form-10 to seek the benefit of Section 11 of the said Act.

4. On the other hand, the learned counsel for the assessee/appellant submitted that assessment included re- assessment as was evident from Section 2(8) of the said Act. Therefore, whether the assessment was an original assessment or as a part of a re- assessment, it would not make any difference and that the assessee would be entitled to file the said Form-10 in either of the two proceedings and the revenue would have to take the said form that into account.

5. Having considered the arguments advanced by the counsel for the parties on this aspect of the matter we feel that it would be necessary to set out the reasoning adopted by the Supreme Court in Nagpur Hotel Owners Association (supra). The Supreme Court held as under-

"It is abundantly clear from the wording 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 of the Rules. If during the assessment proceedings, the Assessing Officer does not have the necessary information, question of excluding such income from assessment does not arise at all. As a matter of fact, this benefit of excluding this particular part of the income from the net of taxation arises from section 11 and is subjected to the conditions specified therein. Therefore, it is necessary that the assessing authority must have this

information at the time he 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, in our opinion, 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, in our opinion, 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 this income, the assessing authority cannot entertain the claim of the assessee under section 11 of the Act, therefore, compliance with the requirement of the Act will have to be any time before the assessment proceedings, Further, any claim for giving the benefit of section 11 on the basis of information supplied subsequent to the completion of assessment would mean that the assessment order will have to be reopened. In our opinion, the Act does not contemplate such re- opening of the assessment. In the case in hand it is evident from the records of the case that the respondent did not furnish the required information till after the assessments for the relevant years were completed. In the light of the above, we are of the opinion that the stand of the Revenue that the High Court erred in answering the first question in favour of the assessee is correct, and we reverse that finding and answer the said question in the negative and against the assessee. In view of our answer to the first question, we agree with Mr. Verma that it is not necessary to answer the second question on the facts of this case."

On going through the above extract we find that the Supreme Court observed that it was necessary that the assessing authority must have the information under Form-10 at the time he completes the assessment and in its absence it is not

possible for the assessing authority to give benefit of such exclusion. Furthermore, 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. The Supreme Court held categorically that without the particulars of this income as given in Form-10, the assessing authority cannot entertain the claim of the assessee under section 11 of the Act and therefore, compliance with the requirement of the Act will have to be at any time before the assessment proceedings are completed. The Supreme Court also observed that any claim for giving the benefit of section 11 on the basis of information supplied subsequent to the completion of assessment would mean that the assessment order will have to be reopened. The Supreme Court noticed that the Act did not contemplate such re-opening of the assessment.

6. The learned counsel for the revenue relied on this portion of the finding of the Supreme Court to contend that during re-assessment proceedings, the said Form-10 could not be furnished by an assessee. However, we have to keep in mind the fact that while reopening of an assessment cannot be asked for by the assessee on the ground that he had not furnished the Form-10 during the original assessment proceedings, this does not mean that when the revenue re-opens the assessment by invoking Section 147 of the said Act, the assessee would be remediless and would be barred from furnishing Form-10 during those assessment proceedings. Consequently, insofar as the second question is concerned and with regard to the appeal Nos. 524/2012, 525/2012 and 526/2012, the same has to be answered in favour of the assessee/appellant and against the revenue....."

4.2.4 From the facts of the case as submitted, it is apparent that the income of Rs. 5,85,00,000/- was offered and Form No. 10 was filed during the re-assessment proceedings. There is no finding of the Assessing Officer that the conditions subject to which accumulation is allowed under section 11(2) were not fulfilled. Hence, since the facts of the case are same, respectfully following the decision of the Hon'ble Delhi High Court in the case of

Association of Corporation and Apex Societies Handlooms Vs. ADIT (supra), the Assessing Officer is directed to compute the income of the assessee in accordance with the provision of section 11 after allowing accumulation under section 11(2). Grounds of appeal nos. 2 to 5 are allowed.”

9. We find that CIT(A) while deciding the issue has relied on the decision rendered by Hon’ble Apex Court in the case of Nagpur Hotels Associations (supra) and other decisions. Before us, Revenue has not pointed out as to how the ratio of the aforesaid decision is not applicable to the facts of the present case. We further find that CIT(A) while deciding the issue has given a finding that there is no findings of the AO about that the conditions subject to which the accumulation was allowed u/s 11(2) of the Act was not fulfilled by the assessee. Considering the totality of the facts, we find no reason to interfere with the order of CIT(A) **and thus the ground of Revenue is dismissed.**

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 23.02.2023

Sd/-

**(YOGESH KUMAR US)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 23.02.2023

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI