

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No. 1610/Mum/2020
(Assessment Year: 2016-17)

Insurance Institute of India C-45, Block G, Bandra Kurla Complex, Bandra (E), Mumbai-400 051	Vs.	ACIT (Exem), Circle-1, Mumbai
PAN/GIR No. AAAT 11174 R		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Ketan Vajani
Revenue by	:	Shri Tejinder Pal Singh Anand
Date of Hearing	:	25.11.2022
Date of Pronouncement	:	20.02.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2016-17.

2. The assessee has challenged this appeal on the grounds of disallowance of exemption u/s. 11 r.w.s. 12A of the Act for the reason that the purpose of accumulation u/s.11(2) specified by the assessee are vague and general and the purposes stated are beyond the Memorandum of Association (MOA for short) of the assessee.

3. The brief facts are that the assessee is an institution registered under the Societies Registration Act, 1860, established in the year 1955 and the assessee was formerly

known as 'Federation of Insurance Institute'. The assessee was engaged in providing educational services related to insurance sector and is also approved by Insurance Regulatory and Development Authority of India (IRDA for short). The assessee is registered as a 'charitable institution' with the charity commissioner u/s.12A of the Act, since A.Y. 2013-14 and the same was upheld by the Hon'ble Jurisdictional High Court vide order dated 26.02.2018. The assessee has also got its approval u/s.10(23C) (vi) of the Act and has been renewing the same from time to time. The assessee filed its return of income dated 27.09.2016, declaring total income as 'nil'. The assessee claimed exemption for surplus accumulation u/s.11(2) of the Act for application of funds for the objects of the trust. The assessee's case was selected for scrutiny and the assessment order dated 14.12.2018 was passed u/s.143(3) of the Act where the AO determined the total income at Rs.59,96,45,763/- on the ground that the assessee trust has contravened the provisions of section 11(2) of the Act, thereby rejecting the exemption u/s. 11(2) of the Act for the impugned year. The assessee challenged the assessment order before the Id. CIT(A) who confirmed the impugned addition made by the AO on the ground that the purpose of the assessee trust specified was beyond the object mentioned in the MOA.

4. The assessee is in appeal before us, challenging the order of the Id. CIT(A).

5. It is observed that the assessee has filed its audit report in Form 10B dated 27.09.2016 while filing the return of income, in which the assessee trust has claimed for accumulation or set apart a sum of Rs.59.96 crores which was surplus of income over expenditure for which the assessee was unable to apply 85% of the income derived from the property held under the 'trust'. The AO has rejected the claim of the assessee on the

ground that the assessee has contravened the provisions of section 11 and 12 of the Act by not specifying the purpose for accumulation for that period for which income is to be accumulated. The AO has also specified that Form No. 10B was filed on 27.09.2016 and Form No. 10 was filed on 18.01.2017 that there was delay in filing the said form and the AO has also specified that Form No. 10 does not have a specific purpose for accumulation and has only the general-purpose as “for the object of the institute”. The assessee submitted that it had filed an application for condonation of delay dated 13.11.2018, explaining the reasons for the delay along with the CBDT Circular No. 7 dated 20.12.2018 which had authorized commissioner to condone such delay where there was a reasonable cause for such delay. The assessee further submitted that by way of resolution passed by the Trustees Administrative Committee Meeting dated 26.05.2016 , the accumulation of surplus funds has been approved along with the specified proposed utilisation of the funds in consonance with the object of the trust as mentioned below:

- i. *To establish college of insurance in every state and union territory in India.*
- ii. *To invest in the development of education in the areas of Risk Management, Health insurance, Pension Management and establishment of a portal for online delivery of insurance education.*
- iii. *To invest in Research in the areas of Risk Management, Health insurance, Pension Management, Life and General insurance.*
- iv. *Maintenance & heavy repairs of society properties.*
- v. *Development of study course material*
- vi. *And matters incidental thereto.*

6. The assessee has also specified that the solitary purpose of the assessee trust was only to impart education on insurance and that the objects mentioned for accumulation are akin to the objectives of the association. The assessee relied on the decision of the coordinate bench in the case of *Sadhana Education Society vs. DDIT(E)* (in ITA No. 2090/Mum/2016 dated 11.04.2018) and the decision of the Hon’ble Delhi High Court in

the case of *Bharat Krishak Samaj vs. DDIT(E)* [2008] 306 ITR 153 (Del), in which it was held that the accumulation should be for the overall objectives of the trust and even if there are many purposes for accumulation, the same is not precluded but is dependable on the main purpose for which accumulation is made. The co-ordinate bench in the case of *Southern Educational Society* (supra) held that if the objects are charitable in nature and if the purposes are mentioned in Form 10, non-furnishing of details as to how the amount is to be proposed to be spent in future does not become a ground for denying the exemption u/s. 11(2) of the Act. The assessee has also relied on the CBDT Circular No. 6/2020 dated 19.02.2020 which had empowered the Commissioner to condone the delay in filing Form 10 where the return of income was also filed belatedly. The assessee stated that in assessee's case only Form No. 10 was filed belatedly and return of income and Form 10 B was filed on time. The submission made by the assessee was not accepted by the Assessing Officer, for the reason that not only was form 10 filed belatedly on 18.01.2017, the assessee trust has failed to specify the purpose of the accumulation of the funds which is mandated u/s.11(2) of the Act. The AO has also not considered the decision of the Hon'ble Apex Court in the case of *CIT vs. Nagpur Hotel Owners Association* [2001] 247 ITR 201 (SC), in which it was held that Form 10 and association of the trust can be filed before the completion of the assessment by the A.O.

7. The ld. CIT(A) has also failed to considered the submission of the assessee and has stated that object of the MOA and the purposes specified in Form No. 10 are different in various aspects. The ld. CIT(A) has also held that as per the minutes of 265th Administrative Committee Meeting, it is evident that the assessee trust was more inclined

to deviating to infrastructure, thereby modifying the objective relating to the assessee. The assessee alleges that the said infrastructure was only an incidental activities and cannot be interpreted as constructing as the prime objective of the assessee which was to impart education related to insurance and was in no way concerned with the real estate activities. The Id. CIT(A) relied on the decision of the *DIT(E) vs. Trustee of Singhania Charitable Trust* [1993] 199 ITR 819 (Cal) and *CIT vs. M. Ct. Muthiah Chettiar Family Trust* [2000] 245 ITR 400 (Mad), which held that the purpose of accumulation should be specified to enable the A.O. to see if the accumulation was for the purpose mentioned in Form No.10. The Id. CIT(A) also relied on various other decisions. The Id. CIT(A) had also differentiated the decisions relied upon by the assessee. The Id. CIT(A) held that the minutes of Administrative Committee meeting, the objects specified in minutes are vague and general and are beyond the objective specified in MOA. The Id. CIT(A) has also specified that Form No. 10 was dated 18.01.2017 and the minutes of Administrative Committee Meeting was dated 26.05.2016, thereby stating that the assessee has failed to prove its claim by sufficient documentary evidence. The Id. CIT(A) upheld the order of the A.O. in rejecting the exemption claimed u/s.11(2) of the Act.

8. The Id. AR for the assessee contended that in Form No. 10 the purpose for accumulation has been specified as 'For the Object of the Institutes' and for which the assessee has relied on the minutes on 265th Administrative Committee Meeting, which consists of the resolution of the trust which is akin to that of the objects specified in MOA. The Id. AR further stated that amongst the purpose of accumulation, the lower authorities has relied on the purpose of infrastructure for developing insurance education

which according to the A.O. and the Id. CIT(A) was not included in the object of the assessee trust. The Id. AR contended that for achieving the purpose of imparting insurance education, it is necessary to have a proper infrastructure for the institute. The Id. AR submitted that the A.O. and the Id. CIT(A) has themselves interpreted this objective to be for the purpose of real estate, rather than for the purpose of running of colleges. The Id. AR stated that creating infrastructure for developing insurance education, is part of the objective of the institute without which the primary objective will not be achieved. The Id. AR relied on the following case laws:

<i>Sr. No.</i>	<i>Name of the case</i>	<i>Citation</i>
1	<i>CIT vs. Hotel & Restaurant Association</i>	<i>261 ITR 190 (Del)</i>
2	<i>Bharat Krishak Samaj vs. DDIT</i>	<i>306 ITR 153 (Del)</i>
3	<i>CIT vs. Gokula Education Foundation</i>	<i>394 ITR 236 (Kar)</i>
4	<i>CIT vs. Bochasanwasi Shri Akshar Purshottam Public Charitable Trust</i>	<i>409 ITR 591 (Guj)</i>
5	<i>CIT vs. Bochasanwasi Shri Akshar Purshottam Public Cable Trust</i>	<i>263 taxman 247 (SC)</i>
6	<i>M/s. national Stock Exchange Investor Protection Fund Trust vs. Asst. DIT(E)</i>	<i>ITA No. 2359/M/2016 order dated 19.12.19</i>

9. The learned Departmental Representative (Id. DR for short) for the Revenue, on the other hand, controverted the same and stated that the assessee has belatedly filed Form 10 and the purposes mentioned in Form 10 is also not related to the purpose of the objective of the assessee trust. The Id. DR relied on the decision of the lower authorities.

10. Having heard the rival submissions and perused the material available on record, it is evident that the primary objective of the assessee is to impart knowledge in insurance related subjects for which the Assessee aims to establish college of insurance in every

state and union territories along with necessary infrastructure which is a mandatory requirement. On perusal of the Memorandum of Association of the Assessee the primary object was to run colleges and other ancillary activities related to teaching on the subjects of insurance. The objects and purposes specified in form no.10, in our opinion are identical to that of the objects in the Memorandum of Association. The comparison made by the CIT(A) pertaining to objects of Memorandum of Association and the purposes mentioned in the minutes of the Administrative Committee has not been rightly done by the Ld.CIT(A), where both the objects are identical and tantamount to a common purpose. This has not been interpreted rightly by the lower authorities. We do not find any vagueness in the minutes of the Administrative Committee meeting as alleged by the Ld.CIT(A) and we also find that it does not go beyond the Memorandum of Association. The Ld.CIT(A) has not harped on the grounds of filing form no. 10 belatedly and has relied on the decision of the Hon'ble Apex Court in the case of CIT vs. Nagpur Hotel Owners Association (2001) 247 ITR 201 (SC) which has held that form no.10 and the Resolution of Trust can be filed any time before the completion of the Assessment. Hence, it is not necessary for us to get into this ground as it is the settled proposition of law. The only issue pertaining to the claim of the Assessee is that the Assessee has failed to mention this specific purpose for accumulation of the funds required as per the provisions of section 11(2) of the Act . For this issue you would like to place our reliance on the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Bochanwasi Shri Akshar Purshottam Public Charitable Trust where in it was held that inaccuracy or insufficient declaration for the purpose of availing benefit u/s 11(2) of the Act, would itself not be the only criteria to reject the claim of the Assessee. This decision was also

upheld by the Hon'ble Apex Court. The relevant extract of the said decision is cited hereunder for ease of reference:

“Section 11(2) of the Act provides that eighty five percent of the income which is not utilized by the Trust for charitable or religious purpose 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. Clause (a) in particular, which is applicable, provides that such person furnishes the statement in the prescribed form and in 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. Undoubtedly, therefore the statement of the purpose for which the income is being accumulated or set apart is one of the requirements which must be satisfied before the assessee can avail the benefit under sub-section (2) of section 11 of the Act. However, that by itself would not mean that any inaccuracy or lack of full declaration in the prescribed format by itself would be fatal to the claimant. The prime requirement of this clause is of stating of the purpose for which the income is being accumulated or set apart. In the present case, we are prepared to accept the Revenue's stand

that the declaration made in form 10 by the assessee was not sufficient to fulfill this requirement. However, as noted, during the course of assessment proceedings, the Assessing Officer called upon the assessee to explain the position in response to which, the assessee in detail pointed out background under which the board of trustee had met, considered the material and eventually passed a formal resolution setting apart the funds for the ongoing hospital projects of Trust and for modernization of the existing hospitals. There was thus a clear statement made by the assessee setting out the purpose for which the income was being set apart. We therefore do not find any error in view of the Tribunal”.

11. From the above said decision it is evident that specifying the purpose of accumulation is one of the requirement which has to be satisfied by the assessee and any defect in the said declaration can be condoned by the concerned authority if all other conditions are fulfilled. In the present case in hand, the lower authorities have contended that the assessee in the minutes of 265th Administration Committee Meeting has emphasized more for the requirement to create Infrastructure for the purpose of the assessee trust whose primary object was to impart education related to insurance sector. The lower authorities have stated that the assessee trust was intending to develop more into real estate than its primary object. This contention was not supported neither by the AO nor by the CIT(A) by giving cogent evidence as to this fact in issue. Having said

that, we of the considered opinion that the assessee has not diverted itself from its primary object and the need for creating a proper infrastructure is ancillary to the main object and is also a mandatory requirement for the purpose of achieving the object of the assessee.

12. From the above observation, we deem it fit to allow the claim of the assessee. Ground no. 1& 2 raised by the Assessee is allowed. Ground No.3 has not been pressed by the Ld. AR and ground no. 4 is general in nature and requires no adjudication.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 20.02.2023

Sd/-

(Amarjit Singh)
Accountant Member

Mumbai; Dated : 20.02.2023
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai