

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्रीसंदीपगोसाई,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 267/JP/2023
निर्धारणवर्ष/AssessmentYear :2014-15

The DCIT Circle Exemption Jaipur	बनाम Vs.	State Institute of Health & Family Welfare 1, Jhalana Institutional Area, Jhalana Jaipur 302 004
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAATS 3404 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Shri A.S. Nehra, Addl. CIT-DR
निर्धारिती की ओर से / Assessee by : Shri R.S. Poonia, CA
Shri Rajat Choudhary, Advocate

सुनवाई की तारीख / Date of Hearing : 21/06/2023
उदघोषणा की तारीख / Date of Pronouncement: 12/07/2023

आदेश / ORDER

PER SANDEEP GOSAIN, JM

This appeal filed by the Revenue is directed against order of the ld. CIT(A) dated 01-03-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2014-15 wherein the Revenue has raised the following grounds of appeal.

- "Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is justified in allowing the appeal of the assessee and deleting the disallowance of Rs.2,05,11,280/- made by the AO on account of accumulation of fund ignoring

the fact that the procedural requirements are also part of the law (the Act) and are equally important to be fulfilled"

ii. "Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is justified in allowing the appeal of the assessee and deleting the disallowance of Rs. 2,05,11,280/- made by the AO on account of accumulation of fund ignoring the fact that even during the assessment proceedings, in Form 10, complete details were not provided to the AO"

iii. "Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is justified in granting condonation for Audit Reports & for accumulation in form 10&10B, while ld. CIT(A) does not have any right for same"

iv. "Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is justified in allowing accumulation under 11(2), while there was not conscious accumulation by assessee, no earmarking fund in Balance sheet, no separate investments, not indicating specific purposes, no proper resolution"

v. "Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is justified in relying the decision prior to change in Act & Rules, which now make mandatory to file same before one months filing IT. Returns"

2.1 Apropos ground No. (i) to (v) of the Revenue, the facts as emerges from the order of the ld. CIT(A) are as under:-

5.3.1 Issue 1: Delay in filing Form 10/10B:

For the A.Y. 2014-15, the appellant filed its return of income on 28.11.2014 which is within the due date as per section 139(1) i.e. 30.11.2014. However, the audit report as Form 10 was submitted by the appellant on 20.09.2016 i.e. during the assessment proceedings.

As a result, the assessing officer did not accept the Form 10 and disallowed the deduction for the amount accumulated under provisions of section 11.

5.3.2 In this regard, as per the provisions of the Income Tax Act, to claim exemptions u/s 11 and 12, conditions mentioned u/s 12A are to be fulfilled. The relevant part of the section 12A is reproduced hereunder.

12A [(1)] The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely

.....

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year), the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 (before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date] the report of such audit in the prescribed form 57 duly signed and verified by such accountant and setting forth such particulars as may be prescribed.).....”

As per section 12A, the appellant had to file Form 10B to avail the benefits of exemption u/s 11 & 12 before the specified date as per Section 44AB. The specified date to file Form 10B is mentioned in explanation (ii) of section 44AB which is as under:

[ii. "specified date" in relation to the accounts of the assessee of the previous year relevant to an assessment year, means [date one month prior to][the due date for furnishing the return of income under sub-section (1) of section 139]]”

5.3.3 The question of delayed filing of audit report, after the return of income has been filed, has been scrutinized by various courts of law. It has generally been held that if the assessee submits the audit report before the assessing officer during the assessment proceedings, the

assessee should not be denied the benefit of claiming exemption under section 11 and 12. Some of the case laws are detailed below.

(i) In the case of CIT vs. Rai Bahadur Bissesswarlal Motilal Malwasie Trust (1992) 195 ITR 825, the Calcutta High Court has affirmed that the requirement of filing the audit report with the return is merely a procedural requirement, and that exemption cannot be denied so long as the report is available to the assessing officer before the completion of assessment

(ii) In the case of Calcutta Management Association vs. ITO (1992) 42 ITD 62 the Calcutta bench of the Tribunal held that the Audit Report can even be filed at the time of appeal before the Commissioner (Appeals).

(iii) On a similar issue the Hon'ble Supreme Court in the case of CIT vs. Nagpur Hotel Owners Association [2001] 114 Taxman 255 (SC) held

"It is abundantly clear from the wordings 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. If during the assessment proceedings the Assessing Officer does not have the necessary information, the question of excluding such income from assessment does not arise at all. As a matter of fact, the 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 it completes the assessment in the absence of any such information, it will not be possible for the assessing authority to give the assessor the benefit of such exclusion and 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. Therefore, even assuming that there is no valid imitation prescribed under the Act and the Rules, even then 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 the income,

the assessing authority cannot entertain the claim of the assessee under section 11. Therefore, compliance of the requirement of the Act will have to be any time before the assessment proceedings."

5.3.4 In the instant case the appellant/assessee submitted the Form 10 dated 28 11 2014 during the assessment proceedings on 20.09.2016, which is also confirmed by the assessing officer in the assessment order. The audit report was also available before the assessing officer during the assessment proceedings as well as before the CIT(A) during the appellate proceedings. As per the case laws mentioned above, the Hon'ble Courts took the view that the benefit of exemption should not be denied merely on account of delay in furnishing the audit report and it is permissible for the assessee to produce the audit report at a later stage, either before the AO or the appellate authority. This view has been reiterated by the Hon'ble Court in the recent judgement of Hon'ble Gujarat High Court in the case of Sarvodaya Charitable Trust v. Income Tax Officer. (Exemption) [2021] 125 taxmann.com 75 (Gujarat)

5.3.5 In view of the above discussion, I am of the view that the assessing officer erred in not allowing deduction to the appellant/assessee for the amount accumulated under the provisions of section 11 of the Income Tax Act, 1961. It was merely a procedural lapse on part of assessee to not file Form 10 alongwith return of income. The appellant/assessee submitted the audit report at a later stage after filing the return of income. The benefit of exemption under section 11 cannot be denied merely on account of delay in furnishing audit report.

5.3.6 Issue 2: Not indicating specific purpose/purposes for which the fund was accumulated.

The assessing officer in the assessment order made following remarks regarding the above issue:

"The assessee's submission has been considered but not found acceptable in view of provisions of section 11(2)(a) of the LT Act, 1961 wherein it is clearly mentioned that the organization/trust must indicate specific purpose or purposes

for which it wants to accumulate the funds A general decision to accumulate listing all the objects of the organization would not be sufficient. The resolution in respect in respect of accumulation of fund was also passed on 15.12.2015. Thus the Form No. 10 furnished on 04.01.2016 for accumulation of Rs.45.96,956/- u/s 11(2) is denied and calculated taxable income accordingly.

In this regard, it is relevant to re-produce the provisions of section 11(2)(a) as under:-

"Income from property held for charitable or religious purposes:

(2) Where (eighty-five) per cent of the income referred to in clause (a) or clause (b) of sub-section (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:-] (a) such person furnishes a statement in the prescribed form and in the 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...."

5.3.7 The issue of indicating purpose for fund accumulated as per above mentioned section 11(2) has been decided upon by various courts. Further Hon'ble Gujarat High Court, in the case of CIT(Exemptions) v. Bochasanwasi Shri Akshar Purshottam Public Charitable Trust [2019] 102 taxmann.com 122 (Gujarat), held that lack of declaration in Form No. 10 regarding specific purpose for which funds were being accumulated by assessee-trust, would not be fatal to exemption claimed under section 11(2). Similar view was taken by the Hon'ble High Court of Delhi in the case of CIT v. Hotel & Restaurant Association [2003] 132 Taxman 76 (Delhi) wherein it was held as under:-

It is true that specification of certain purpose or purposes is needed for accumulations of trust's income under section

11(2) of the Act. At the same time the purpose or purposes to be specified cannot be beyond the objects of the trust Plurality of the purposes for accumulation is not precluded but it depends on the precise purpose for which the accumulation is intended. In the present case, both the Appellate Authorities below have recorded a concurrent finding that the income was sought to be accumulated by the assessee to achieve the object for which the assessee was incorporated, it is not the case of the Revenue that any of the objects of the assessee-company were not for charitable purpose. The aforementioned finding by the Tribunal is essentially a finding of fact giving rise to no question of law.’’

8 We, accordingly, decline to entertain the appeal. The same is dismissed."

Thus respectfully following the above judgments, the addition made by the assessing officer in the order under section 143(3) of the IT Act 1961 dated 23.11.2016 amounting to Rs.2,05,11,280/- is ordered to be deleted. In view of the above discussion, the ground no. 2 raised by the appellant is allowed.’’

2.2 During the course of hearing, the ld. DR opposed the order of the ld. CIT(A) for which the Bench required the ld. DR to submit case laws countering the ld. CIT(A) case laws as mentioned in his order in the case of the assessee but the ld. DR did not file the case laws. It is also noted that the ld. DR did not advance any written submission controverting the findings of the ld. CIT(A) except relying on the order of the AO.

2.3 On the other hand, the ld.AR of the assessee relied upon the decision of the ld. CIT(A).

2.4 We have heard both the parties and perused the materials available on record. In this case, the Id. CIT(A) has narrated about the two issues i.e. Issue No. 1 which pertains to delay in filing Form 10/10B and Issue No. 2 which pertains to non-indicating specific purpose/ purpose for which the fund was accumulated. As regards the issue of delay in filing Form 10/10B, it is noted that the assessee filed its return of income on 28.11.2014 which is within the due date as per section 139(1) i.e. 30.11.2014. However, the audit report as Form 10 was submitted by the assessee on 20.09.2016 i.e. during the assessment proceedings. As a result, the assessing officer did not accept the Form 10 and disallowed the deduction for the amount accumulated under provisions of section 11 of the Income Tax Act, 1961. In order to claim exemptions u/s 11 and 12 of the Act, the conditions mentioned u/s 12A of the Act are to be fulfilled for which relevant part of the section 12A is reproduced hereunder.

12A [(1)] The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely

.....

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year), the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 (before the specified date referred to in section 44AB and the person in receipt of

the income furnishes by that date] the report of such audit in the prescribed form 57 duly signed and verified by such accountant and setting forth such particulars as may be prescribed.)....”

It is also note worthy to mention that as per section 12A of the Act, the assessee had to file Form 10B to avail the benefits of exemption u/s 11 & 12 before the specified date as per Section 44AB of the Act. The specified date to file Form 10B is mentioned in explanation (ii) of section 44AB which is as under:

[ii. "specified date" in relation to the accounts of the assessee of the previous year relevant to an assessment year, means [date one month prior to][the due date for furnishing the return of income under sub-section (1) of section 139]]”

The question of delayed filing of audit report, after the return of income has been filed, has been scrutinized by various courts of law and it has generally been held that if the assessee submits the audit report before the assessing officer during the assessment proceedings, the assessee should not be denied the benefit of claiming exemption under section 11 and 12 of the Act. Some of the case laws are mentioned as under.

(i) In the case of CIT vs. Rai Bahadur Bissesswarlal Motilal Malwasie Trust (1992) 195 ITR 825, the Calcutta High Court has affirmed that the requirement of filing the audit report with the return is merely a procedural requirement, and that exemption cannot be denied so long as the report is available to the assessing officer before the completion of assessment

(ii) In the case of Calcutta Management Association vs. ITO (1992) 42 ITD 62 the Calcutta bench of the Tribunal held that the Audit Report can even be filed at the time of appeal before the Commissioner (Appeals).

(iii) On a similar issue the Hon'ble Supreme Court in the case of CIT vs. Nagpur Hotel Owners Association [2001] 114 Taxman 255 (SC) held

"It is abundantly clear from the wordings 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. If during the assessment proceedings the Assessing Officer does not have the necessary information, the question of excluding such income from assessment does not arise at all. As a matter of fact, the 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 it completes the assessment in the absence of any such information, it will not be possible for the assessing authority to give the assessor the benefit of such exclusion and 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. Therefore, even assuming that there is no valid imitation prescribed under the Act and the Rules, even then 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 the income, the assessing authority cannot entertain the claim of the assessee under section 11. Therefore, compliance of the requirement of the Act will have to be any time before the assessment proceedings."

It is also noted in the instant case that the assessee submitted the Form 10 dated 28.11.2014 during the assessment proceedings on 20.09.2016 and the same is also confirmed by the assessing officer in the assessment order. The audit report was

also available before the assessing officer during the assessment proceedings as well as before the CIT(A) during the appellate proceedings. As per the case laws mentioned above, the Hon'ble Courts took the view that the benefit of exemption should not be denied merely on account of delay in furnishing the audit report and it is permissible for the assessee to produce the audit report at a later stage, either before the AO or the appellate authority. This view has been reiterated by the Hon'ble Court in the recent judgement of Hon'ble Gujarat High Court in the case of Sarvodaya Charitable Trust v. Income Tax Officer. (Exemption) [2021] 125 taxmann.com 75 (Gujarat). It is further noted that the ld. CIT(A) in view of the above discussions held that the AO erred in not allowing deduction to the /assessee for the amount accumulated under the provisions of section 11 of the Income Tax Act, 1961. The ld. CIT(A) further observed that it was merely a procedural lapse on part of assessee to not file Form 10 alongwith return of income. The ld. CIT(A) thus observed that the assessee submitted the audit report at a later stage after filing the return of income and thus the benefit of exemption under section 11 of the Act cannot be denied merely on account of delay in furnishing audit report. We found that the observation of the ld. CIT(A) does not suffer from any infirmity and we find no reason to interfere in the order of the ld. CIT(A).

As regards the next issue of not indicating specific purpose/purposes for which the fund was accumulated. It is noted from the ld. CIT(A) order wherein the

assessing officer in the assessment order made following remarks regarding the issue in question (supra):

"The assessee's submission has been considered but not found acceptable in view of provisions of section 11(2)(a) of the LT Act, 1961 wherein it is clearly mentioned that the organization/trust must indicate specific purpose or purposes for which it wants to accumulate the funds. A general decision to accumulate listing all the objects of the organization would not be sufficient. The resolution in respect of accumulation of fund was also passed on 15.12.2015. Thus the Form No. 10 furnished on 04.01.2016 for accumulation of Rs.45,96,956/- u/s 11(2) is denied and calculated taxable income accordingly.

In this regard, the relevant provisions of section 11(2)(a) of the Act are reproduced in the ld. CIT(A) order as under:-

"Income from property held for charitable or religious purposes:

(2) Where (eighty-five) per cent of the income referred to in clause (a) or clause (b) of sub-section (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:-] (a) such person furnishes a statement in the prescribed form and in the 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...."

It is noted from the Id. CIT(A) order that the issue of indicating purpose for fund accumulated as per above mentioned section 11(2) has been decided upon by various courts. Further Hon'ble Gujarat High Court, in the case of CIT(Exemptions) v. Bochasanwasi Shri Akshar Purshottam Public Charitable Trust [2019] 102 taxmann.com 122 (Gujarat), held that lack of declaration in Form No. 10 regarding specific purpose for which funds were being accumulated by assessee-trust, would not be fatal to exemption claimed under section 11(2). Similar view was taken by the Hon'ble High Court of Delhi in the case of CIT v. Hotel & Restaurant Association [2003] 132 Taxman 76 (Delhi) wherein it was held as under:-

“...It is true that specification of certain purpose or purposes is needed for accumulations of trust's income under section 11(2) of the Act. At the same time the purpose or purposes to be specified cannot be beyond the objects of the trust. Plurality of the purposes for accumulation is not precluded but it depends on the precise purpose for which the accumulation is intended. In the present case, both the Appellate Authorities below have recorded a concurrent finding that the income was sought to be accumulated by the assessee to achieve the object for which the assessee was incorporated, it is not the case of the Revenue that any of the objects of the assessee-company were not for charitable purpose. The aforementioned finding by the Tribunal is essentially a finding of fact giving rise to no question of law.”

8 We, accordingly, decline to entertain the appeal. The same is dismissed."

Thus the ld. CIT(A) respectfully following the above judgments, deleted the addition of Rs.2,05,11,280/- made by the AO vide his order dated 23-11-2016. In view of the entire gamut of the case, we find no reason to interfere in the order of the ld. CIT(A). Thus the appeal of the Department is dismissed.

3.0 In the result, the appeal of the Department is dismissed.

Order pronounced in the open court on 12 /07/2023.

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 12/07/2023

*Mishra

आदेश की प्रतिलिपिअग्रेशित / Copy of the order forwarded to:

1. The Appellant- The DCIT, Circle-Exemption, Jaipur
2. प्रत्यर्थी / The Respondent- State Institute of Health and Family Welfare Jaipur
3. आयकरआयुक्त / The ld CIT
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 267/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar