IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "B", MUMBAI

BEFORE SHRI. OM PRAKASH KANT, ACCOUNTANT MEMBER

AND

SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA NO. 113/MUM/2024 (A.Y: 2014-15)

Nandlal Tolani Charitable Trust 10-A, Bakhtawar, Nariman Point, Mumbai – 400 021. **PAN: AAATN0043Q**	*Vs.*	ITO EXEM Ward 2(1) 618, 6th Floor, MTNL TE Building, Dr. Gopalrao Deshmukh Marg, Cumballa Hill Road, Mumbai 400 026.
(Appellant)		**(Respondent)**

Assessee Represented by	**:**	**Shri. Satyaprakash Singh**
Department Represented by	**:**	**Shri. Sunil Shinde – Sr. AR**
Date of conclusion of Hearing	**:**	**13.05.2024**
Date of Pronouncement	**:**	**23.07.2024**

AND

ITA NO. 650/MUM/2024 (A.Y: 2015-16)

Nandlal Tolani Charitable Trust 10-A, Bakhtawar, Nariman Point, Mumbai – 400 021. **PAN: AAATN0043Q**	*Vs.*	ITO EXEM Ward 2(1) 618, 6th Floor, MTNL TE Building, Dr. Gopalrao Deshmukh Marg, Cumballa Hill Road, Mumbai 400 026.
(Appellant)		**(Respondent)**

Assessee Represented by	**:**	**Shri. Satyaprakash Singh**
Department Represented by	**:**	**Shri. Ashok Kumar Ambastha – Sr. AR**
Date of conclusion of Hearing	**:**	**27.05.2024**

Date of Pronouncement : 23.07.2024

O R D E R

PER RAJ KUMAR CHAUHAN (J.M.):

1. Both these appeals of the appellant/assessee pertain to the A.Y. 2014-15 and 2015-16 and raises similar grounds and between the same parties therefore, taken up together for disposals. The ITA No. 113/Mum/2024 for A.Y. 2014-15 is taken as lead case. The finding returned herein shall mutatis mutandis apply to the grounds of appeal in ITA No. 650/Mum/2024 for A.Y. 2015-16 wherever applicable as per this order.

2. In both the appeals the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the "*CIT(A)*"], dated 08.01.2024 passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as "*the Act*"] has been challenged on the following grounds:

    1. *"The Learned CIT(A) erred in not allowing deduction of 30% allowable as Standard Deduction amounting to Rs.76,50,731 claimed as deduction u/s 24(a) of the Income- tax Act, 1961 overlooking that there is no provision in the Income-tax Act, not to allow standard deduction u/s.24(a) if the income is computed in the case of a Charitable Trust granting exemption u/s 11 of the Act on the income utilized for objects of the Trust.*

    2. *The Learned CIT(A) erred in overlooking that Income-tax is charged on the Trust as well on other Assessee under Income-tax Act on TOTAL INCOME derived under different heads under Section 14 of the Act and for TRUST if there is Taxable Income, the deduction is*

allowed under Section 11(a) if the income is applied for charitable purposes and therefore if there is no Taxable Income computed under Section 14 then no deduction is allowed under Section 11(a) of the Act, therefore the Section 11(a) is not a charging Section but the same is a beneficial Section and if Trust is having Taxable Income which is applied for the objects of the Trust, then deduction is allowed under Section 11(a) and if Trust is not applying income for objects of the Trust, no deduction is allowed under Section 11(a) and therefore income has to be computed under Section 14 under different heads of income from House Property after giving statutory deduction under Section 24(a) at 30%.

3. *The Learned CIT(A) erred in overlooking that there is no provisions in the Income-tax Act to charge tax in the case of Trust and in the case of other Assessees as if income is not applied for objects of the Trust, the Trust will be charged on higher income by disallowing the deduction under Section 24(a) as compared to other Assessees as deduction under Section 24(a) is allowable to all the Assessees and therefore there is no provision in the Act to disallow statutory deduction under Section 24(a) of the Act.*

4. *The Learned CIT(A) erred in not following the principles settled by Hon'ble Bombay High Court in the case of Vodafone India Services Pvt. Ltd. 368 ITR 531 (Bom) (Page 544) wherein it is held that income chargeable to tax has to be computed u/s. 14 of the Act and therefore income from property has to be computed allowing deduction u/s.24(a) of the Act in the case of all Assessees including charitable trusts.*

5. *The Learned CIT(A) erred in not following judgement of Hon'ble Bombay High Court in the case of Director of Income-tax (Exemption) vs. Jasubhai Foundation (2015) 374 ITR 315 wherein it is held that income which is not to be included in Total Income as per the provisions of Act cannot be included in Taxable Income of the Trust entitled to exemption of certain income u/s. 10 and u/s 11 of the Act and therefore 30% of income excluded from Income from Property u/s.24(a) of the Act cannot be charged to tax in the case of charitable trust-for-computing taxable income of CHARITABLE TRUST*

6. *The Learned CIT(A) and Learned A.O. have erred in not allowing deduction for actual repairs amounting to Rs.18,65,693 as reflected in Income and Expenditure Account without considering that when the deduction for Statutory deduction u/s. 24(a) claimed in the Return of Income is disallowed, the Appellant is entitled to deduction*

for actual repairs and maintenance expenses which was not claimed in Return of Income.

7. *The Learned CIT(A) erred in allowing deduction of only Rs.2,99,25,330 accumulation under Section 11(2) overlooking that when Form No. 10 was filed, the amount of Rs.2,99,25,330 was arrived at on the basis of income shown in Return of Income and when due to certain disallowances in Assessment Order under Section 143(3) the Taxable Income has been increased, the accumulation under Section 11(2) should also be allowed as per tax Taxable Income as per the Assessment Order and not the amount shown in Form No. 10 filed.*

8. *The Learned CIT(A) erred in not considering ground no 8 of the grounds of appeal wherein the Appellant claimed the Learned A.O. erred in charging interest of Rs.7,71,561 under Section 234C of the Income-tax Act.*

9. *The Appellant craves to add and or alter the above grounds of appeal."*

3. The facts in brief are that the appellant is a charitable trust registered u/s. 12A of *"the Act"* and is allowed certificate u/s. 80G by the Commissioner of Income Tax. The appellant trust is earmarking and spending funds for maintenance of college at Andheri, Mumbai as well as facilities at the Maritime Engineering College at Induri, Pune. The Appellant Trust has invested funds in construction of buildings for colleges at Andheri, Mumbai as well as in construction of various facilities at the college at Induri, near Pune.

4. The assessee has filed return of income for the A.Y. 2014-15 on 23.09.2014 and for the A.Y. 2015-16 on 28.09.2015. The total income for both the A.Y. is Nil. The case for both the A.Y. was selected for

scrutiny during the course of scrutiny proceedings, the Ld. AO noticed that the assessee has computed income received from property held under trust, under the normal provisions of the Act, instead of commercial principles in respect of "Income from house property". The assessee was asked to explain why standard deduction claimed u/s. 24(a) of *"the Act"* at 30% of Rs. 81,59,680/- in respect of the rental income derived from the property shall not be disallowed. The assessee filed the reply on 23.09.2016 and the Ld. AO after considering the submissions of the assessee and also following the decision of ITAT in ITA No. 6970/Mum/2011, ITA No. 199/Mum/2011 and ITA No. 1111/Mum/2011 has declined the claim of standard deduction of the assessee u/s. 24(a) of *"the Act"* and recomputed income available for the application u/s. 11 of *"the Act"*. Finally, the Ld. AO determined the total income of the assessee is Rs. 55,44,740/-, after considering the gross total income of Rs. 3,46,98,262/-.

5. Similarly, for the A.Y. 2015-16, the assessee was asked to explain why standard deduction claimed u/s. 24(a) of *"the Act"* at 30% of Rs. 75,50,731/- in respect of the rental income derived from the property shall not be disallowed. The assessee filed the reply on 23.09.2016 and the Ld. AO after considering the submissions of the assessee and also following the decision of ITAT in ITA No. 6970/Mum/2011, ITA No.

199/Mum/2011 and ITA No. 1111/Mum/2011 has declined the claim of standard deduction of the assessee u/s. 24(a) of *"the Act"* and recomputed the income available for the application u/s. 11 of *"the Act"*. Finally, the Ld. AO determined the total income of the assessee is Rs. 5,43,66,170/-, after considering the gross total income of Rs. 54,73,733/-.

6. Aggrieved by the assessment orders, the assessee approached the Ld. CIT(A) by preferring an appeal whereas the assessee has contested the disallowance of deduction u/s. 24(a) of *"the Act"* on the ground that the income of a trust claiming exemptions u/s. 11 shall be computed in accordance with provisions of *"the Act",* as applicable to other assessees. It was contended that there was no error in computation of income arrived at by the assessee in respect of rental income after claiming standard deduction u/s 24(a) of *"the Act"*. The assessee further contended that the Ld. AO has included sum of Rs. 13,373/- (A.Y. 2014-15) on account of interest on income tax refunds under Income from Other Sources for A.Y. 2008-09 as shown in the Computation of Income and thus the same interest allowed u/s. 244A of *"the Act"* and u/s. 143(1) of *"the Act"* accepting the return of income but the same allowance of the interest has been withdrawn in the subsequent order u/s. 143(3), therefore, the said interest taxed earlier

cannot be taxed for the second time when the subsequent order was passed.

7. It is further contended before the Ld. CIT(A) that the Ld. AO has restricted the deduction u/s. 11(2) to Rs. 42,00,000/- only as accumulation overlooking that when form no. 10 was filed, the amount of Rs. 42,00,000/- was arrived at on the basis of income shown in Return of Income and when due to certain disallowance in assessment order u/s. 143(3) the taxable income has been increased, the accumulation u/s. 11(2) should also be allowed as per taxable income as per assessment order and not the amount shown in form no. 10 filed. It is further contended that the Ld. AO has erred in charging interest of Rs. 1,78,994 u/s. 234B and Rs. 21,362/- u/s. 234C of *"the Act"*.

8. In ITA No. 650/Mum/2024 for A.Y. 2015-16, it was further contended before the Ld. CIT(A) that the Ld. AO restricted the deduction under section 11(2) to Rs.2,99,25,330 only as accumulation of income overlooking that the income was filed the amount of Rs.2,99,25,330 was arrived at on the basis of income shown in Return of Income and when due to certain disallowances in Assessment Order under section 143(3) the Taxable Income has been increased, the accumulation under section 11(2) should also be allowed as per tax Taxable Income as per

the Assessment Order and not the amount shown in Form No. 10 filed. It is further contended that the Ld. AO erred in not allowing deduction for actual repairs amounting to Rs. 18,65,693/- as shown in Income and Expenditure Account and also the Ld. AO erred in not allowing credit for TDS amounting to Rs.26,97,544. In the ITNS 150A the Ld. AO has erred in charging interest of Rs. 3,77,775/- u/s. 234B and Rs. 8,70,882/- u/s. 234C of *"the Act"*.

9. The Ld. CIT(A) after considering the rival submissions of the assessee and also following the decision of the ITA No. 106/Mum/2016 dated 29.03.2019 for A.Y. 2012-13 and that deduction u/s. 24A of *"the Act"* against the rental income is not in accordance with the scheme taxation provided for computation of income in respect of trust/institution claiming exemption u/s. 11 of *"the Act"*. Accordingly, he rejected the ground taken by the assessee and affirmed the findings of AO. Regarding the sum of Rs. 13,373/- on account of interest and including of the sum in income alleging second time taxing of the said amount the Ld. CIT(A) concluded that the assessee trust has not submitted in documentary evidence in support of the above grounds of appeal and as thus confirmed the finding of the Ld. AO with respect to the said disallowance made u/s. 143(3) of *"the Act"*.

10. Regarding the contentions that the Ld. CIT(A) erred in not considering the facts that the appellant has made an application u/s. 2 of *"the Act"* for accumulation of income claiming full deduction on account of u/s. 11(2), the Ld. CIT(A) while relying the judgment of Supreme Court in *Nagpur Hotel Owners Association [2001] 247 ITR 201 Dec 2000* held that it is mandatory for the person claiming the benefit of Section 11 to intimate to the assessing authority the particulars required, under rule 17A in the form 10 of the Rule. During the assessment proceedings, the Ld. AO does not have the necessary information, therefore, question of excluding such income from assessment does not arise at all.

11. It was therefore held that in the case of the assessee it is evident from the record of the case that the assessee did not furnish the required information till after the assessment for relevant years were completed, therefore, the exemption u/s 11(2) has to be disallowed. The finding of the Ld. AO was upheld and confirmed in that regard. The Ld. CIT(A) has dismissed the appeal filed by the assessee. Aggrieved by the Ld. CIT(A)'s order, the assessee is in appeal before us.

12. We have heard the Ld. AR for the appellant and DR for the revenue. At the very outset, the Ld. AR submitted that the appellant does not press

ground no. 6 and 8 in the ITA No. 113/Mum/2024 (A.Y. 2014-15) and ITA No. 650/Mum/2024 (A.Y. 2015-16).

13. However, in respect of the ground no. 1 to 5 which relates to the deductibility of the standard deduction amounting to Rs. 81,59,494/- in ITA No. 113/Mum/2024 (A.Y. 2014-15) and Rs. 76,50,731/- in ITA No. 650/Mum/2024 (A.Y. 2015-16) claimed u/s. 24(a) of *"the Act"*, the Ld. AR fairly admitted the facts that the issue has been decided against the assessee by the Tribunal for earlier years i.e., 2012-13 but argued that principles settled by Hon'ble Bombay High Court in the case of Vodafone India Services Ltd vs CIT 368 ITR 531 (Bom) are binding on department as law of the land wherein it is held that income chargeable to tax has to be computed under the provisions of the Act, and therefore, income from property has to be computed allowing deduction u/s. 24(a) of the Act, in the case of all assessee's including charitable trust. The Ld.AR further submitted that the Hon'ble Bombay High Court in the case of DIT (Exemption) vs Jasabai Foundation 374 ITR 315 (Bom) held that income which is not included in total income as per the provisions of the Act, cannot be included in taxable income of the trust entitled to exemption of certain income u/s 10 and section 11 of the Act and, therefore, 30% of income excluded from income from

property u/s. 24(a) of the Act, cannot be charged to tax in the case of charitable trust for computing taxable income.

14. The Ld. DR on the other hand submitted that the issue is covered against the assessee by decision of ITAT for the A.Y. 2012-13, where the Tribunal after considering the relevant facts held that standard deduction of rental income @30% u/s. 24A of *"the Act"* cannot be allowed while computing income of interest claim u/s. 11 of *"the Act"*. The Ld. AR and the Ld. DR has submitted the copy of the Coordinate Bench judgment in ITA No. 106/Mum/2016 (A.Y. 2012-13) 'B' Bench, Mumbai dated 29.03.2019.

15. We have considered the submissions, perused the order of the lower authorities and the judgment of the Ld. Co-ordinate Bench referred (supra). The findings of Coordinate Bench in para 6 is relevant and reproduced as under:

> *"6. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. We find that the issue involved in the present appeal, i.e. deductibility of deduction u/s 24(a) against rental income in case of a trust / institution claiming benefit of exemption u/s 11 is a recurring issue in assessee's case for earlier period. The co-ordinate bench of ITAT, Mumbai Bench "B" in assessee's own case for AY 2005-06 in ITA No.200/Mum/2011 had considered similar issue in the light of provisions of section 24(a) and also section 11 of the Income-tax Act, 1961, and held that income of a trust /*

institution shall be computed under normal commercial principles without resorting to computation mechanism as provided under respective head of income while determining income available for application u/s 11 of the Act. The relevant observations of the Tribunal are as under:

"8. We have heard the rival parties and gone through the material available on record. On a perusal of the Tribunal order dated 30.09.2013 in ITA Nos. 6970 & 199/Mum/2011 & ITA No. IIII/Mum/2011 for assessment year 2004-05, we find that on identical issue has been decided against the assessee by observing as under: 3.2 The first issue arising in the instant appeals is the validity in law of the assessee's claim toward repairs and maintenance u/s. 24 of the Act in computing the income from house property let out assesse, and toward which it has (subsequently) a single precise ground. The claim is, by all counts, without merit. This is for the simple reason that the income of a charitable trust or institution, subject to its application for charitable purposes, for which it has been in fact formed (per its Constituting charter) is exempt from tax under Chapter III (ss. 10 to 138) of the Act The said income does not form part of the total income of the entity to which it arises or accrues or is received by. It is only the income forming part of the total income u/s. 2(45) of the Act. which is to be classified under the various heads of the income u/s. 14 and, accordingly, subject to the computation provisions of Chapter IV (ss. 14 to 59) of the Act. The expenditure incurred in earning the same is, likewise, and only understandably, not to be taken into account in computing the total income under the Act, which represents trite law, and toward which a separate section (sec. 14 A) has since been inserted by Finance Act, 2001 with retrospective effect from 01.04. 1962. This aspect stands abundantly clarified by the hon'ble apex court in the case of CIT vs. Harprasad & Co. (P.) Ltd. [1975] 99 ITR 118 (SC) explaining that an income to come within its purview must satisfy the definition of total income u/s. 2(15) (of the Income-tax Act, 1922, which is para material with section 2(45) of the Act),

prescribing two conditions. Firstly, it must comprise the total amount of income, profits and gains referred to in section4(1) and, two, must be computed in the manner laid down under the Act. The capital gain being not chargeable u/s.128 of the 1922 Act during the relevant period, the same would not enter the computation mechanism of the total income. This is as the capital gain or loss (which is only negative income) did not form part of the total income of the assessee which could be brought to charge, so that it was not required to be computed. Reference in this context may also be made to the following observation by the tribunal in the case of Pravin Shah Trust Vs. Dy. CIT(in ITA No. 4782/Mum/2010 dated 05. 07. 2013):

> *3.3.... That is, an income exempt u/c. Ht of the Act, not long of the total income, would not enter the computation process determine the quantum of income under the relevant head of each of which has its own computation provisions.*
>
> *To the same effect and purport are its observationsin the case of LKP Securities Ltd. (in ITA Nos. 638 & W93/Mum/2012 daleri 17.05.2013):*
>
> *'14 The income (and loss, which is only negative income) failing under chapter in of the Ad diu, uius, exempt from the levy of the tax, would not form part of the computation of the income under Chapter IV of the Act. That in fact is a fundamental premise; the basis of sec. HA of the Act. The Revenue's case in this regard is unexceptional, and we confirm the same. In both the decisions, the tribunal relied on the decision in the case of Harprasad & Co. (P.) Ltd. (supra). The reliance by the id. CIT(A) on the Circular issued by the Board (No. 5P(LXX6) dated 19.06.1968), explaining the position In the matter, is also apposite. It stands explained that only the income as reflected in the accounts of the trust/institution that is to be applied or deemed to have been*

applied for charitable purposes, and which, therefore, has to be computed in the commercial sense. The said Circular has been found by the hon'ble courts of law as representing the correct interpretation of the relevant provisions and the requirement of the law, as in the case of CIT vs. Programme for Community Organisation [1997] 228 ITR 620 (Ker), since approved by the apex court (reported at [2001] 248 ITR 1 (SC), to which (latter) decision reference stands also made by the Id. CIT(A). This aspect of the matter, i. e., the manner of computation of income of a charitable or religious trust/institution which has to be applied for the said purposes, has been a subject matter of a number of decisions, as by the hon'ble jurisdictional High Court in the case of CIT vs. Institute of Banking Personnel Selection (IBPS) [2003] 264 ITR 110 (Bom). This is even otherwise patent inasmuch as a trust could only apply the income as available with it, i.e., as arrived at following the accepted principles of commercial accounting. The computation provisions of the Act do not come into play, so that the said computation of the would be de hors the same. This would of course be subject to the specific provisions of the Act, so that where specifically provide for, the income would be computed in the manner as provided; for example ss. 11(4) and 11(4A) specifically provide for the computation of income of a business t/i(/forming part of the property held under trust by charitable trust/institution in accordance with the provisions of the Act, even as pointed out by the hon'ble court in Rao Bahadur Calavala Cunnan Chetty Charities (supra). The Special Bench of the tribunal in Scientific Atlanta India Technology (P.) Ltd. vs. ACIT (2010) 2 ITR 66 (Trib) (Chennai) (SB) held that the profits of a unit eligible for deduction u's. 10A of the Act, i.e., to the extent not covered by the deduction there under, would stand to be taxed directly and not enter the computation mechanism inasmuch as the same

do not form part of the gross total income, as section 10A falls under Chapter Hi of the Act, so that the provisions of Chapter VI-A and, consequently, s. 80AD would not be applicable thereto.

Before parting with the matter, we may also add that the assessee has been allowed ad the expenditure on repairs and maintenance as debited in its accounts, i.e., on actual basis (Rs. 11.97 lacs/PB 1 pg. 39), even as directed by the Id. CIT(A), and which fact was also clarified by us during hearing. ***Accordingly, the assessee's ground/s for the claim of the standard deduction u/s.24 fail. We decide accordingly.***

Finally, the reliance by the assessee on the decision in the case of IAC, Mumbai vs. Saurashtra Trust [2007] 1061TO 1 (Mum) (SB) is, under the circumstances, misplaced. The said decision is, firstly, sansany reference to any precedents; nay. even without a discussion of the law in the matter. This aspect would in fact become clear in view of the questions referred to and answered by tribunal. As a reading of its order would show (refer para 1), are not directly connected with the issue before us. decision, thus, would be of no assistance to the assessee, w/jffi fve having even otherwise decided the matter following the precedents in the matter, so that the decision in the case of Baroda v. H.C Shrivastava [2002] 256 TTR 385 (Bom), advocating judicial discipline with reference to the decision by the apex court in CCE v. Dunlop India Ltd. AIR 1985 SC 330, only supports the same. The decision in the case of Ameen Education Society V. DIT (Exemption) (in IT A No. 575/Bang./2011 dated 28/9/2012, also at [2012] 26 taxmann.com 250 (Bang.)) is again only in respect of the specific provision of sec. 11(1 A) of the Act, i.e., qua capital gain, and, thus, not applicable. We have already

clarified that our decision is based on and represents the general position of law, so that it would be subject to the specific provisions of the Act, giving example of ss. 11(4) and 11(4A). It may be relevant to state that the decision by the apex court in Harprasad & Co. (P.) Ltd. (supra), referred to earlier, is also in respect of capital gains.

9. No contrary decision was brought to our notice by the learned AR. In view of this fact, we confirm the order of the CIT(A) disallowing the claim of the assessee u/s. 24(a) of the Act. Thus, the ground taken by the assess fails."

11. Thus, the finding of the Ld. Coordinate Bench noted above mutatis mutandis applies to the ground no. 1 to 5 of both the appeal because the said finding has been recorded in the case of the appellant itself for the A.Y. 2012-13 in ITA No. 106/Mum/2016 (supra). For these reasons, the grounds no. 1 to 5 are accordingly decided against the appellant.

12. The ground no. 6 of ITA No. 650/Mum/2024 for A.Y. 2015-16 reads as under:

"6. The Learned CIT(A) and Learned A.O. have erred in not allowing deduction for actual repairs amounting to Rs.18,65,693 as reflected in Income and Expenditure Account without considering that when the deduction for Statutory deduction u/s.24(a) claimed in the Return of Income is disallowed, the Appellant is entitled to deduction for actual repairs and maintenance expenses which was not claimed in Return of Income."

13. In view of the above findings, the ground no. 6 of ITA No. 650/Mum/2024 for A.Y. 2015-16 is decided against the appellant.

14. We have heard the Ld. AR and Ld. DR and it has been argued on behalf of the appellant by the Ld. AR that the decision of the Hon'ble Coordinate Bench for the A.Y. 2012-13 has covered the said ground and the finding recorded in para no. 8 of the Ld. Coordinate Bench order is applicable to this ground and in the light of the said finding the ground needs to be allowed in favour of the assessee. The Ld. DR further has relied upon the order of the lower authorities in that regard. We have considered the submissions and also gone through the order of the Ld. Coordinate Bench wherein the same issue was considered and allowed by the Ld. Coordinate Bench and the finding recorded by para no. 8 is relevant and applicable and reproduced as under:

> *"8. Coming to the issue of actual repairs and maintenance claimed by the assessee in the P&L account. The assessee has incurred actual repairs and maintenance expenses of Rs.13,00,635, as per its financial statements. However, while arriving at income available for application u/s 11, it has claimed standard deduction @30% of gross rental income u/s 24(a) of Income-tax Act, 1961. The AO has disallowed standard deduction claimed u/s 24(a) of the Act. However, expenditure incurred as per the books of account of the assessee has not been allowed while determining income available for application. It is the settled position of law that once income of a trust / institution is computed under the provisions of section 11 of the Act, whatever income derived from the property held under trust is to be taken into account and against which actual expenditure incurred for the objects of the trust has to be considered as application of income. Therefore, while arriving at income u/s 11, the AO needs to allow deduction towards actual repairs and maintenance expenses incurred for Rs.13,00,635. Therefore, we direct the AO to allow deduction towards actual repairs and maintenance expenditure incurred for Rs.13,00,635 before arriving at income available for accumulation u/s 11(2) / taxable income of the trust / institution."*

15. In view of the above findings, we direct the AO to allow deduction of actual repairs amounting to Rs. 18,65,693/- before arriving at income available for accumulation u/s. 11(2), taxable income of the trust/institution.

16. The ground no. 7 in both the appeals is same which pertains to deduction of amount of accumulation u/s. 11(2) of the Act. The Ld. AR has fairly submitted that the ground no. 7 in both the appeals may be considered and disposed off as per finding recorded in para no. 12 of the order of the Ld. Coordinate Bench in ITA No. 106/Mum/2016, A.Y. 2012-13 of the assessee appeal. It was further submitted by the Ld. AR on behalf of the appellant that the appellant has preferred appeal against the order in ITA No. 106/Mum/2016 referred (supra) and therefore will pursue the remedy for the relevant assessment year in this appeal also in the Hon'ble Court. Accordingly, we have considered the finding recorded in para 12 by the Ld. Coordinate Bench which reads as under: -

> *"12. We have heard both the sides, perused the material available on record and gone through the orders of authorities below. It is an admitted fact that the assessee has filed form No.10 alongwith return of income filed for the year and accumulated a sum of Rs.210 lakhs for the objects of the Trust to be utilised in next five financial years. It is also an admitted fact that the AO has allowed accumulation of income u/s 11(2) as per the details filed by the assessee alongwith form*

10. Now, the assessee has revised its claim and filed a revised form 10 alongwith copy of board resolution vide its from 10 dated 07-09-2018. We find that the assessee has passed a resolution to accumulate additional income of Rs.63,81,840 for acquisition of land, building, structure for educational activities in additional to earlier accumulated income of Rs.210 lakhs vide its resolution dated 20-09-2012. The reason for filing revised form, alongwith board resolution is to overcome taxable income computed by the AO on account of disallowance of standard deduction claimed u/s 24(a) of the Income-tax Act, 1961 in respect of rental income from house property. No doubt, the assessee can accumulate excess income for subsequent period to be used for the objects of the trust by filing necessary form 10 alongwith return of income. Such accumulation of income is further followed by other formalities including investment of accumulated funds in the forms and modes specified u/s 11(5) of the Act. In this case, initially the assessee has accumulated a sum of Rs.210 lakhs and such accumulation has been allowed by the AO. The subsequent accumulation of the remaining income has been made after a gap of six years, that too, after exhausting all options open to the assessee to challenge disallowance of standard deduction made by the AO u/s 24(a) of the Income-tax Act, 1961. Although, there is no bar under the Act to file a revised form 10 for accumulation of income to subsequent period u/s 11(2), but such accumulation cannot be stretch to a period of six years, that too, to overcome taxable income computed by the AO by disallowing standard deduction claimed u/s 24(a) of the Act. The benefit of accumulation of income u/s 11(2) has been provided to trusts / institutions claiming exemption considering the fact that where it is not possible to utilise the amount of income within the financial year due to various reasons including non receipt of income for that year, although income is computed under mercantile principles and for paucity of time, after fulfilling certain conditions. Therefore, such benefit cannot be used to overturn taxable income computed by the AO, more particularly, after availing all possible options to the assessee before the appellate authorities. While providing the benefit of accumulation, the legislature would not have intended to give the benefit of accumulation to trust where the AO has computed taxable income of the trust in

accordance with the provisions of the Act. Therefore, if we analyse the legislative intend behind enactment of provisions of section 11(2), it is very clear that the trust / institutions are allowed to accumulate income for specified purposes which needs to be specified in the resolution passed by the trust. Unless, the trust specifies the purpose for which the income is accumulated, then the benefit cannot be allowed. In this case, the assessee has tried to use the benefit of accumulation after exhausting all possible options available to it to contest the issue of deduction u/s 24(a). Further, no doubt, the Hon'ble Gujarat High Court has considered revised form 10 filed by the assessee accumulating additional income after a gap of six years, but on perusal of the ratio rendered by the Hon'ble Gujarat High Court, we find that in that case, there was no dispute with regard to availability of funds for accumulation u/s 11(2) and investment of such funds in the investments specified u/s 11(5) of the Income-tax Act, because, the disputed issue in that case is taxability of corpus donation received by the assessee under the provisions of section 11 of the Act. In this case, the facts with regard to the availability of funds for making investments are under dispute. The assessee failed to file any details with regard to the availability of funds for making investments in the modes specified u/s 11(5) of the Income-tax Act, 1961. Therefore, we are of the considered view that there is no merit in the argument of the assessee that it has accumulated income u/s 11(2) of the Act, for the purpose of object of the trust in compliance with provisions of section 11(5) of the Income-tax Act, 1961. Therefore, we reject the ground taken by the assessee."

17. The finding recorded by Ld. Coordinate Bench applies mutatis mutandis to the ground no. 7 in both the appeals for the A.Y. 2014-15 and 2015-16. The ground no. 7 in both the appeals are accordingly decided against the appellant.

18. The ground no. 8 of ITA No. 650/Mum/2024 for A.Y. 2015-16 reads as under:

> *"8. The Learned CIT(A) erred in not considering ground no.8 of the grounds of appeal wherein the Appellant claimed the Learned A.O. erred in charging interest of Rs.7,71,561 under Section 234C of the Income-tax Act."*

19. The Ld. CIT(A) has disposed off the said ground stating that the same is a consequential ground and no decision is required on the said ground. We find no legal infirmity in the decision of the Ld. CIT(A) on the said ground that the finding of the Ld. CIT(A) with respect to the ground no. 8 is accordingly confirmed.

20. In view of the above findings, the ground no. 1 to 5 in both the appeal are decided against the appellant.

21. The ground no. 6 and 8 in ITA No. 113/Mum/2024 for A.Y. 2014-15 are disposed off as not pressed. The ground no. 7 in both the appeals are also decided against the appellant.

22. The ground no. 6 in ITA No. 650/Mum/2024 for A.Y. 2015-16 is disposed off with appropriate directions to the AO as delineated in this order. Ground no. 8 in ITA No. 650/Mum/2024 for A.Y. 2015-16 is disposed off while confirming the finding of the Ld. CIT(A). The appeal is accordingly disposed off and dismissed in above terms.

23. In the result, appeal filed is dismissed in the above terms.

24. Copy of this order be placed in ITA No. 650/Mum/2024 for A.Y. 2015-16.

Order pronounced in the open court on 23.07.2024

Sd/-	**Sd/-**
(OM PRAKASH KANT)	**(RAJ KUMAR CHAUHAN)**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

Mumbai / Dated 23.07.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai