

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.6349/Del/2018
[Assessment Year: 2013-14]**

National Culture Fund, Puratatva Bhawan, 5 th Floor, D Block, GPO Complex, INA, Delhi	Vs	ITO, Exemption, Ward-2(4), New Delhi
PAN-AAATN4595M		
Revenue		Assessee

Assessee by	Sh. Gurjeet Singh, CA
Revenue by	Sh. Anshul, Sr. DR

Date of Hearing	11.07.2024
Date of Pronouncement	25.07.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is against the order of the Ld. CIT(A)-40, New Delhi, dated 24.07.2018 pertaining to Assessment Year 2013-14.

2. The grounds of appeal raised by the assessee are as under:-

“1. Because the action for declining the claim amounting Rs.87,43,520/-, u/s 11(5)(iii), 11(3) r.w.s. 11(3A) is an unreasonable order being challenged on facts & law.

2. Because the action of CIT(A) in upholding the assessment order & dismissing the appeal on mis-interpretation of the Jurisdictional Delhi High Court Judgment

of CIT vs Divine Light Mission (2005) 278 ITR 659 (Delhi) is unwarranted & misapplication of jurisdiction."

3. Brief facts of the case:- The assessee is a national fund created, by a notification of Ministry of Human Resources Development (Department of Culture) on 28/11/1996 and registered under section 12A vide order dated 06/01/1997. The return of income was filed on 30.03.2015 declaring Nil income. The case was selected for scrutiny and notice under section 143(2) was issued on 18.09.2015. The Assessing Officer mentioned the objects of the assessee are as under:-

"1. To administer and apply the moneys of the Fund for conservation, maintenance, promotion, protection, preservation and upgradation of monuments protected or otherwise.

2. To conduct studies related to the artistic, scientific and technical problems involved in the conservation, maintenance, promotion, protection, preservation and rehabilitation of cultural and natural heritage.

3. To impart training to staff and specialists at all levels in the fields of identification, protection, conservation, preservation and rehabilitation of culture heritage tangible and intangible as well as the natural heritage.

4. Protection and promotion of artistic endeavor in all its forms, particularly innovative experiments in arts."

3.1. During the assessment proceedings the assessee informed that an amount of Rs.87,43,520/ - which was accumulated in the year 2006-07 under section 11(2) could not be utilized up to the year under assessment because of the reasons beyond the control of the assessee. The reasons given were administrative in nature. The assessee was asked to explain why the amount not utilized be not brought to tax. In response a reply cum application under section 11(3) was submitted on 30/03/2016. The Assessing Officer also noted that detail of surplus accumulation for the

last 10 years till date was not submitted. The application under section 11 (3) A stated as under:

"1) The amount of Rs.87,43,519.65 accumulated surplus of the assessee for the F.Y. 2006-07 has not been spent towards a charitable purpose till the previous year ended 31-03-3-2013 and is continued to be invested in FDR to schedule bank.

2) The reasons for not spending the same were lack of technical expertise, total dependence of CA firm, changes in CA firms over the years, no regular CEO attached to the assessee, frequent change in the contractual staff, no staff with financial background.

3) The assessee propose to utilize the unspent fund for the specified activities during the financial year 2016-17.

4) The assessee finally requested that in view of their complying with the conditions laid down in section 11(3) of the Income Tax Act 1961, the benefit of the section may be given in the assessment exempting the income in respect of the incomes accumulated or set apart as mentioned above."

3.2. The reasons given were not accepted and keeping in view the facts and circumstances of the case it was held that the income accumulated in terms of the provisions of section 11(2) had not been utilized for the purpose for which it was so accumulated within the stipulated time which was a violation of the provisions of section 11(3)(c). Hence, the amount of Rs.87,43,520/- was treated as income of the assessee for the year under consideration. Income was assessed at Rs.87,43,520/-.

4. Aggrieved with the order of the Assessing Officer, the assessee appealed before the Id. CIT(A). The Ld. CIT(A) agreed with the findings of the AO and dismissed the appeal of the assessee.

5. Against the order of the Ld. CIT(A), the assessee is in appeal before us.

6. During the course of hearing, the ld. AR referred to the additional evidences under Rule 29 of the ITAT Rules, 1963 filed on 27.06.2024 and prayed for its admission as under:-

1. *The order u/s 143(3) of the Income Tax Act (1961) (hereinafter called the Act) dt. 31.03.2016 was challenged before CIT(A) on the legality and the merits of the dispute assessing the income at an amount of Rs. 87,43,520/-.*

2. *The enclosed additional evidence Pg. 8-12 is Gazette notification establishing National Culture Fund dt. 28.11.1996 which is being prayed to be taken on record.*

3. *The reasons for filing Additional Evidence are hereunder:-*

a) That Gazette notification establishing National Culture Fund which is published by Authority Department of Culture vide Notification dt.28.11.1996, contributed Rs. 17.5 crore to the asset of Fund (Corpus Fund) out of plan budget of the Department of Culture, Government of India, That Auditor of National Culture Fund overlooking the said document treated interest on FDR made out of said Fund as income exempt u/s 11 while as per said notification, the said interest of Rs.1,12,77,278 is part of Corpus Fund and is exempt u/s 11(1)(d). The said notification could not be submitted before AO as well as CIT(A) as the assessee has represented the case as per advice of Auditor/ counsel. Now, when assessee has provided the said notification to counsel, then only assessee know about the mistake in showing the interest on FDR. The said document is necessary to substantiate the claim of the assessee.

b) The revenue respondent has sufficient opportunity to appreciate the material on record which is emerging from the impugned orders and is germane to the settling of the controversy out of the facts and evidences.

C) The revenue does not go to loose the right to contest the merits on the admission of the additional evidence.

In pursuance to the above stated facts and circumstances and the pleadings advanced the prayer is to admit the additional evidences in the interest of substantial justice before arriving a conclusion in accordance with law.”

7. On the other hand, the ld. DR relied upon the orders of the authorities below and did not have any serious objection in the admission of the additional evidences as above.

8. We have heard both the parties and perused the material available on record. In this case, the assessee submitted before the Ld. CIT(A), the details of the balance accumulated amount of Rs.87,43,520/- as under:-

Bank Interest and grants/ donation received		13541929.00
Less exemption-15%		2031989.00
Balance		11510640.00
Less revenue expenditure	2614024.00	
Less Capital Expenditure	153096.00	27671720.00
Balance accumulation		8743520.00

9. Further, as per the submission before the ld. CIT(A), the break-up of the amount of Rs.1,35,41,929/- is as under:-

1.	Interest from Deposits as specified u/s 11(5) of the Income Tax Act (Rs. 1,12,77,278 +13,55,604/-)	1,26,32,882/-
2.	Other Receipts (Rs.875000+ Rs.34047)	9,09,047
	Total Receipts	1,35,41,929/-

10. In view of the above facts, the assessee by the way of above additional evidences has claimed that the Gazette notification establishing National Culture Fund published by Authority Department of Culture vide Notification dt. 28.11.1996, contributed Rs. 17.5 crore to the asset of Fund (Corpus Fund) out of plan budget of the Department of Culture, Government of India, and that Auditor of National Culture Fund overlooking the said document treated interest on FDR made out of said

Fund as income exempt u/s 11 while as per said notification, the said interest of Rs.1,12,77,278/- from FDRs is part of Corpus Fund and is exempt u/s 11(1)(d) of the Act, which is a vital fact and germane to the settling of the controversy out of the facts and evidences. Further, it is submitted that when the assessee provided the said notification to counsel, then only assessee know about the mistake in showing the interest on FDR and the said document is necessary to substantiate the claim of the assessee.

11. Considering the facts in totality, it is seen that in this case, the additional evidences submitted by the assessee by which it is claimed that the interest of Rs.1,12,77,278/- from FDRs is part of Corpus Fund and is exempt u/s 11(1)(d) of the Act is a key factor in deciding the issue of taxability of the interest amount from the FDRs amounting to Rs.87,43,520/- as assessed by the AO and confirmed by the Id. CIT(A). Therefore, the same is admitted under Rule 29 of the ITAT Rules, 1963 and the assessment is set-aside to the file of the AO for considering the additional evidences filed and frame the assessment *de novo* after giving due opportunity of being heard to the assessee.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 25th July, 2024.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

Dated 25.07.2024.

SJK

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,