

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

I.T.A. No. 3205/Mum/2024
Assessment Year: 2017-18

The Bombay Catholic Sabha, Mumbai St. Michaels Church Compound Mahim West Mumbai - 400016 [PAN: AAATT3348L]	Vs	Income Tax Officer, (Exemption)- 2(4), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Mandir Vaidya, A/R
Revenue by :	Shri R.R. Makwana, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 29/08/2024
घोषणा की तारीख/**Date of Pronouncement** : 29/08/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM :

This appeal by the assessee is preferred against the order dated 18/04/2024 by NFAC Delhi [in short 'ld. CIT(A)] pertaining to AY 2017-18.

2. The grievance of the assessee reads as under:-

- “1. The Ld. CIT(A) erred in not appreciating that the Appellant had specified the purposes for accumulation, in compliance with sub-section (2) of sec. 11 and hence there is no justification for declining the accumulation to the Appellant.
2. The Ld. CIT(A) failed to appreciate that none of the objects specified in the resolution, were of non-charitable nature.
3. The Ld. CIT(A) fell in error in not appreciating that plurality of objects was not precluded in the purposes contemplated u/s. 11(2) of the Act.
4. The Ld. CIT(A) failed to note that even if specific objects are not specified, the accumulation would still be valid since charity cannot go beyond the overall objectives which are charitable in nature, as observed in CIT v. Hotel & Restaurant Association [2003] 261 ITR 190 (Del).

5. *It is submitted that the issue is covered in favour of the assessee, by the order of this Hon'ble Tribunal in the assessee's own case for A. Y. 2016-17.*
6. *The appellant craves leave to add, alter, amend, modify any grounds of appeal."*

3. Briefly stated, the facts of the case are that the assessee is a Trust registered as a charitable organization with the Charity Commissioner and with Id. CIT(A), Mumbai u/s 12A of the Act. The main object of the Trust is to cater to the needs of the general public in the areas of civic, social, economic and national conscientiousness among Catholics to help them to play a useful and foster unity and welfare and to do charity and to undertake work, projects and schemes for the needy whosoever need them, irrespective of caste, community, creed or religion..

3.1. The assessee filed its return of income on 31/10/2017 along with the income and expenditure account, balance sheet and auditor's report in Form No. 10B.

3.1.1. While scrutinizing the return of income, the AO noticed that the accumulation mentioned in Form 10 are not specific. Therefore, the assessee was asked to explain as to why the accumulation should not be disallowed since the purpose of accumulation is not specific but vague. The assessee filed a detailed reply which did not find any favour with the AO who was of the opinion that the assessee has violated the provisions of Section 11 of the Act and drawing support from several judicial decisions, the AO disallowed the accumulation claimed u/s 11(2) of the Act and computed the income as under:-

******This space is left blank intentionally, P.T.O.******

	Gross Total Income		54,86,568
Less:	Corpus donation u/s.11(1)(d)		<u>20,000</u>
			54,66,568
Less	Accumulation u/s.11(1)(a)		<u>8,19,985</u>
			4646,583
Less	Amount spend on the objects	39,70,229	
	Less: Spent out of accumulation out of 11(2) for A.Y.2016-17	<u>38,38,781</u>	<u>1,31,448</u>
			45,15,135
	Option exercised u/s.11(2) denied as discussed in the body of the order.		0

4. The assessee agitated the matter before the Id. CIT(A) but without any success.

5. Before us, the Id. Counsel for the assessee drew our attention to the accumulation mentioned in Form No. 10B and pointed out that the same cannot be termed as vague. It is the say of the Id. Counsel, that on identical set of facts, the exemption was denied in AY 2016-17 and the Tribunal in ITA No. 3793/Mum/2023, has allowed the exemption.

The Id. D/R strongly supported the findings of the AO but could not bring any distinguishing decision in favour of the revenue.

6. We have given a thoughtful consideration to the orders of the authorities below. The purpose for which the amount is being accumulated, is mentioned as under:-

S. No.	Purpose for which amount is being accumulated or set apart	Amount
1	Acquiring, constructing, repairing building premises of sabha, purchase of furniture, fixture, equipment, computer system, educational and medical relief of poor and needy people, other charitable objects.	45,15,135

7. A bare perusal of the above shows that the purpose is neither vague nor non-specific. Further we find that in AY 2016-17, identically worded purpose was given for accumulation of income in Form No. 10 and the exemption was denied. The quarrel travelled up to the Tribunal and the Tribunal in ITA No. 3793/Mum/2023, vide order 20/03/2024, held as under:-

“

12. Having heard both the parties and after perusal of the records, we note that the assessee is a public charitable trust registered u/s 12A of the Act with the main objective to do philanthropic acts and to take care/education of street- children/under-privileged children. The objective for the Trust, which is discernable from perusal of the page no. 6 of PB, were to do philanthropic acts and to take care of street-children/under- privileged children and especially their (i) Health Care (ii) Nutrition (iii) Literacy and basic education (iv) Self-esteem (v) Group skill, support services and associated support services (vi) Income generating schemes and (vii) Advancement of any other, social welfare objective. In this case, the assessee filed its return of income declaring income at Rs.11,83,030/- which was e-filed on 17.10.2016. The assessee had shown gross receipts of Rs.69,49,289/- and had applied towards the object of the trust a sum of Rs.18,83,357/- [Excluding depreciation as per section 11(6) of the Act]. Thus, it was found that only a sum of Rs.15,99,351/- was applied for education activities out of Rs.18,83,357/-. According to AO, the assessee had not applied 85% of the income but has accumulated income of Rs.30 Lakhs u/s 11(2) of the Act for the purpose of "Basic Education, Health Care and Nutrition to Underprivileged children" which reason for accumulation, according to him, was not for a specific purpose, and instead was only a reiteration of the broad objectives of the trust. According to AO, this general purpose cannot satisfy the requirement of section 11(2) of the Act read with Rule 17 of the Rules. According to AO, accumulation of A.Y. 2016-17 The Bombay Catholic Sabha income u/s 11(2) of the Act must be for heavy outlay of expenses and therefore he disallowed the same. On appeal, the Ld. CIT(A) confirmed the action of AO after citing the decision of the Hon'ble Calcutta High Court in the case of Director of Income Tax v Trustees of Singhania Charitable Trust (1993) 199 ITR 819 (Cal) and the decision of the Hon'ble Punjab & Harayana High Court in the case of Maharaja Ranjit Singh War Museum v CIT order dated 20.03.2020 (ITA. No.259 of 2019).

13. We do not countenance the action of the Ld. CIT(A). We note that assessee Trust while making a claim for accumulating income to the tune of Rs.30 Lakhs as per sub-section (2) of section 11 of the Act, has fulfilled the conditions prescribed therein by filing the Form 10 wherein the assessee has spelled out the purpose for accumulation as "Basic Education, Health Care and Nutrition to Underprivileged children" which we find is in consonance

with the purpose/object of the trust itself. Therefore, according to us, the claim for accumulation u/s 11(2) of the Act cannot be denied to assessee. The Hon'ble Delhi High Court in the case of Hotel and Restaurant Association (supra), held that even though it is true that specification of certain purpose or purposes is needed for accumulation of trust's income u/s 11(2) of the Act, but at the same time, the purpose or purposes to be specified cannot be beyond the objects of the Trust. Their Lordships observed "Plurality of the purposes for accumulation is not precluded, but it depends on the precise purpose for which the accumulation is intended". Thus, we find that in the present case that income sought to be accumulated by the assessee was to achieve the object for which the assessee was incorporated. We find that it is not the case of AO/Ld. CIT(A) that any of the objects of the assessee trust were not for A.Y. 2016-17 The Bombay Catholic Sabha the purpose beyond the object of the trust or not charitable purpose. Further, we note from the statement of financials of the trust that assessee has applied its income for the education, feeding and clothing of the street children of Mumbai. We note that the income sought to be accumulated by assessee was to achieve the three objects for which the assessee was formed. Before us, the Ld. DR could not point out that purpose shown in Form 10 for accumulating Rs.30 Lakhs was not for object of the trust. In such a scenario, since assessee has satisfied the conditions laid down in section 11(2) of the Act for accumulation of the income, the same has to be allowed. It is also noted that from chart (supra) (statement of income, expenses and accumulation) it shows that the assessee in AY. 2022-23 & AY. 2023-24 has offered excess amount which had been applied for achieving the objects of the trust. In the light of the judicial precedents as laid down by Hon'ble Delhi High Court as noted (supra), we are inclined to allow the prayer of the assessee to allow accumulation of income u/s 11(2) of the Act of Rs.30 Lakhs by following the ratio of the Hon'ble Supreme Court decision in the case of M/s. Vegetables Products Ltd. (supra) since other view is also possible. Therefore, the appeal of the assessee is allowed."

5. Respectfully following decision of the Co-ordinate Bench of this Tribunal in the case of Bal Jeevan Trust (supra) and further taking note of the contemporaneous relevant evidence that the assessee had already applied the accumulated amount of relevant AY. 2016-17 for the objects for which it was formed which is evident from the computation of income for AY. 2017-18 (which fact was brought to the notice of the AO) and also from perusal of the financials of AY. 2017-18 which is placed at page no. 39 to 57 of PB as well as and perusal of page no. 49, which would reveal that assessee had applied accumulated amount u/s 11(2) of the Act to the tune of Rs.38,38,781/- for AY. 2017-18. We also find that it is not the case of AO/Ld. CIT(A) that income sought to be accumulated by the assessee, was for any non-charitable activities, which are not for achieving the objects of the assessee. In other words, the purpose of accumulations were beyond the object of the trust or for not charitable purpose. Thus, we find that in the present case that income sought to be accumulated by the assessee was to achieve the object for which the assessee was formed. Before us, the Ld. DR could not point out that purpose shown in Form 10 for accumulating Rs.38,38,781/- was not for objects of the

assessee. In such a scenario, since assessee has satisfied the conditions laid down in [section 11\(2\)](#) of the Act for accumulation of the income, the same has to be allowed. In the light of the aforesaid facts and in the light of the judicial precedents as laid down by the Hon'ble Delhi High Court in the case of [CIT Vs. Hotel and Restaurant Association](#) (261 ITR 190) and decision of the Hon'ble Delhi High Court in the case of [DIT\(E\) v Daulat Ram Education Society](#) (2005) 278 ITR 260 (Del) and the decision of the Hon'ble Delhi High Court in the case of [DIT\(E\) v Nbie Welfare Society](#) (2015) 370 ITR 490 (Del), we are inclined to allow the prayer of the assessee to allow accumulation of income [u/s 11\(2\)](#) of the Act of Rs.38,38,781/- by taking note of the facts and the ratio of the Hon'ble High Court decisions (*supra*) which were noted by the Co-ordinate Bench decision in the case of [Bal Jeevan Trust](#) (*supra*); and since AO's view is also possible, in the facts and circumstances discussed (*supra*) we relying on the decision of the Hon'ble Supreme Court in the case of [Vegetable Products Ltd.](#) (88 ITR 192) (SC), allow the claim of assessee. Therefore, the appeal of the assessee is allowed.

6. In the result, the appeal of the assessee is allowed.”

8. On finding parity of facts, respectfully following the decision of the Co-ordinate Bench (*supra*), we direct the AO to allow the benefit of accumulation as claimed by the assessee.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 29th August, 2024 at Mumbai.

Sd/-

(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 29/08/2024

SC S/P

7

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai