

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.237 & 236/Mum/2024
Assessment Year: 2014-15 & 2015-16**

Vishal Mumbai Shikshan Prasarak Mandal		ITO(E) 2(4), Mumbai
Adarsh Vidyalaya Adarsh Vidyalaya Marg, Siddharth Nagar, Goregaon West, Maharashtra-400104.	vs.	
PAN: AAATV 0440 K		
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Piyush Chachedd
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 16.07.2024

Date of Pronouncement : 06.09.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

Both these appeals filed by the assessee are directed against the different order of Id. CIT(A), NFAC, Delhi passed u/s 250 of the Act. Since identical issue on similar facts involved in these two appeals filed by the assessee for A.Y. 2014-15 & 2015-16 therefore for the sake of convenience these appeals are adjudicated together by taking the ITA 237/Mum/2024 as lead case and its finding will be applied mutatis mutandis to the other appeal filed vide ITA No. 236/Mum/2024 wherever it is applicable.

ITA 237/Mum/2024

"i. The learned Commissioner of Income Tax erred in confirming the disallowance of Rs. 34,35,000/- u/s 11(2) of the Income Tax Act for non-filing of Form No. 10 before the due date of return without appreciating

that the accumulation of funds was duly informed during the course of assessment to the ld. AO and therefore the same is allowable.

ii. The learned Commissioner of Income Tax failed to appreciate that even otherwise the above amount of Rs. 34,35,000/- was already allocated for the purposes of the trust which was evident from the audited balance sheet and therefore it was allowable u/s 11(1) itself according to which the application of funds includes apportionment/allocation thereof.”

2. Fact in brief is that return of income declaring total income at Rs. 27,340/- was filed on 31.03.2016. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued to the assessee. The assessee trust is registered with Charity Commissioner, Mumbai and CIT(E) u/s 12A under Registration No. TR/6455 dated 29.06.1973. During the course of assessment, the assessing officer observed that assessee has claimed exemptions u/s 11(1) & 11(2) in respect of income applied for charitable purposes during the year. In response to notice u/s 142(1) of the Act, the assessee has filed various details including copy of audited balance sheet and expenditure etc. However, the assessing officer has disallowed the claim of deduction u/s 11(1) of Rs. 34,35,000/- on account of non-submission of Form No. 10 within the stipulated time period.

3. The assessee filed appeal before the ld. CIT(A). The appeal of the assessee was dismissed as the assessee failed to make compliance before the ld. CIT(A). During the course of appellant proceedings before us, the ld. Counsel submitted that due to dispute amongst the trustees and office bearers, the accounts were seized by the bankers therefore the assessee could not file the Form No. 10 before the due date of filing the return and this fact was also brought in the notice of authorities below. The ld. Counsel submitted that prior to A.Y. 2016-17 there was no time limit for Form No. 10 and after the amendment in Form No. 10 required to be filed before filing of return of income.

4. Heard both the sides and perused the material on record. The assessing officer has disallowed an amount of Rs. 34,35,000/- claimed or exemption u/s 11(1) and 11(2) in respect of income applied for charitable purposes on account of non-submission of Form No. 10. The Id. CIT(A) has dismissed the appeal of the assessee as the assessee has not made any compliance during the course of appellate proceedings. On perusal of the order of the assessing officer, it is noticed that the amount towards claim u/s 11(1) was disallowed because of the following reasons as under:

“5. In the computation of income the assessee has claimed Rs.34,35,000/- u/s 11(1) of the L.T. Act, 1961. During the course of assessment proceedings vide order sheet noting dated 24.11.2016 the assessee was asked to submit the copy of intimation filed before the expiry of the time allowed u/s 139(4A) for furnishing the return of income. However even after affording reasonable opportunities assessee could not file the same. In this case return of income was due on 30.9.2014. As per Explanation to 11(1) income deemed to have applied at the option of the person in receipt of income [(such option to be exercised in writing before the expiry of time under sub-section (1) of section 139)]. Since the assessee has failed to comply with the requirements the claim of deduction u/s 11(1) of Rs.34,35,000 /- is hereby denied and the same is added to the total income. Initiate penalty proceedings u/s 271(1)(c) for filing inaccurate particulars of income and thereby concealing the taxable income.”

5. Before us, the Id. Counsel filed paper book comprising copies of various documents filed before the assessing officer and referred a copy of application for rectification u/s 154 vide letter dated 17.01.2017 stating that Form No. 10 along with copy of resolution passed by the Board of Trustees for the purpose of section 11(2) has been filed and requested the assessing officer to pass the rectification order. However, the assessing officer has not considered the submission along with application for rectification filed by the assessee. Looking to the above facts and circumstances, we consider it appropriate to restore both the

cases of the assessee to file of the assessing officer for deciding afresh after verification and examination of the submission made by the assessee, therefore, the appeal of the assessee is allowed for statistical purpose.

ITA 236/Mum/2024

“1) The learned Commissioner of Income (Appeals) Tax erred in confirming disallowance of Rs.28,40,000/- u/s.11(2) of the Income Tax Act for non-filing of Form No.10 before the due date of Return without appreciating that the accumulation of funds was duly informed during the course of assessment to the Ld. AO and therefore the same is allowable.

2) The learned Commissioner of Income Tax (Appeals) failed to appreciate that even otherwise the above amount of Rs.28,40,000/- was already allocated and utilized for the purposes of the Trust which was evident from the Audited Balance Sheet and therefore it was allowable u/s.11 (1) itself according to which the application of funds includes apportionment/allocation thereof.

3) The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.57,372/- being the difference between interest as per Audited accounts and as per 26AS without appreciating that there was a practical difficulty in reconciling the difference due to non-availability of the details from the Banks.

4) The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.13,28,370/- as anonymous donations and taxing at maximum marginal rate of tax in spite of the appellant having filed the names, addresses of these donors along with their PAN.

5) The learned Commissioner of Income Tax (Appeals) erred in not considering the gross receipts and expenditure of 5 schools being run by the appellant trust on same PAN number, after considering all the activities together the appellant trust has utilized more than 85% of the gross receipts for the object of the trust and hence no disallowance is warranted u/s 11(2) of the Income Tax Act, 1961.

6) The appellant trust craves the leave to add, amend, alter and/or delete any of the above grounds of appeal at the time of hearing.”

6. On similar issue and identical fact, we have restored the appeal of the assessee to the file of the assessing officer vide ITA No. 237/Mum/2024 as supra in this order, therefore apply the finding of the same this appeal of the assessee for the same reason restored to the file of the assessing officer for deciding afresh after providing an opportunity to the assessee.

7. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 06.09.2024.

Sd/-
(PAWAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 06.09.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai