

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

BEFORE SHRI OM PRAKSH KANT, ACCOUNTANT MEMBER
& SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 1032/Mum/2024
Assessment Year : 2018-19

Deputy CIT (Exemption)- 2(1), Mumbai	Vs.	Vile Parle Mahila Sangh, Mangalayatan, Paranjpe B Scheme, Road No.1, Vile Parle (East), Mumbai 400 057
(Appellant)		PAN AAATV2407Q (Respondent)

Appellant By : Ms Usha Gaikwad (Sr. AR)
Respondent By : Shri Mandar Vaidya

Date of Hearing : 20.06.2024

Date of Pronouncement : 10.09.2024

ORDER

Per Sandeep Singh Karhail, Judicial Member:

The present appeal has been filed by the Revenue challenging the impugned order dated 10/01/2024 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2018-19.

2. In this appeal, the Revenue has raised the following grounds: –

"Whether, on the facts and in the circumstances of the case and in law, the NFAC is right in granting relief on the addition of Rs. 2,05,47,846/- u/s 143(1) of the Act ignoring the fact that the amount was accumulated in AY 2012-13 which remained unutilised till AY 2017-18 violating the

provisions of section 11(3)(c) of the Income Tax Act, 1961 and the same has not been contested by the assessee during the assessment proceedings and neither taken up as a ground during appeal?

2 Whether, on the facts and in the circumstances of the case and in law, the NFAC is right in allowing the relief for accumulation of Rs. 4,00,00,000/- for the purpose of 'building fund' ignoring the fact the corrected Form 10 submitted by the assessee was filed belatedly and the power to condone the belated Form 10 lies only with jurisdictional PCIT/ CIT?

3 Whether, on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is right in disallowing the addition of Rs. 10,9,601%- ignoring the fact that the assessee did not spent it before 31.03.2018 as per the Form 10 submitted by the assessee was filed belatedly and the power to condone the belated Form 10 lies only with jurisdictional PCIT/ CIT?

4. Whether, on the facts and in the circumstances of the case and in law the NFAC is right in disallowing the addition of Rs. 3,53,90,000/- ignoring the fact that the assessee did not spent it before 31.03.2017 as per the Form 10 submitted by the assessee, which was filed belatedly and the power to condone the belated Form 10 lies only with jurisdictional PCIT/ CIT?"

2. In the present appeal, the grievance of the Revenue is against the allowance of the benefit of accumulation of funds to the assessee under section 11(2) of the Act.

3. The brief facts of the case are that the assessee is a charitable trust registered under section 12A of the Act and was formed in the year 1952 to promote education. For the year under consideration, the assessee filed its return of income on 12/03/2019 declaring a total income of Rs. NIL. The return filed by the assessee was selected for scrutiny through CASS. Accordingly, statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, from the perusal of Form No.10 filed by the assessee for the

assessment year 2018-19, it was noticed that the assessee has accumulated an amount of Rs. 4 crore during the year for the purpose of building funds. However, it was noticed that the assessee did not have the surplus money to set apart or accumulate under section 11(2) of the Act. Accordingly, the assessee was asked to explain the difference between the aggregate amount and application, and the consequential shortfall. In response thereto, the assessee furnished the "corrected" Form No.10, showing accumulation for a period of 5 years ending on 31/03/2023. Since the "corrected" Form No.10 was dated 08/03/2021, it was noticed that as per Circular No.3 of 2020, the Commissioner of Income Tax is authorised under section 119(2) of the Act to admit belated applications for condonation of delay and decision on merits. However, it was noticed that the assessee has not furnished any evidence in support of the claim. Since the assessee also did not have sufficient surplus left in the year in order to accumulate under section 11(2) of the Act, and the assessee has not offered any reasonable explanation, the Assessing Officer ("AO") vide order dated 16/03/2021 passed under section 143(3) read with section 143(3A) and 143(3B) of the Act rejected the Form No.10 filed by the assessee for the assessment year 2018-19 and held that the assessee did not have the income which it intends to accumulate or set aside under section 11(2) of the Act. Further the AO held that the amount of Rs.10,19,601 which is not applied by the assessee for charitable purpose during the year is income of the assessee under section 11(1) of the Act. Upon perusal of the details of amounts set apart under section 11(2) of the Act in earlier years and the application made out of such accumulated funds in subsequent years, it was

noted that during the financial year 2012-13, the assessee has accumulated Rs. 2,71,51,000 till the end of the financial year 2017 and out of the same, Rs. 2,05,47,846 remaining unutilised by the assessee. It was further noticed that the income accumulated under section 11(2) of the Act has to satisfy the conditions laid out under section 11(3) of the Act, failing which the amount accumulated shall be deemed to be the income of the assessee. Since the aforesaid conditions as laid out under section 11(3) of the Act were not satisfied, the AO held that the amount of Rs. 2,05,47,846 is the income of the assessee for the assessment year 2018-19 chargeable under section 11(3)(c) of the Act. Since the said amount was already added vide intimation issued under section 143(1) of the Act, the AO did not make any separate addition vide scrutiny assessment order. Apart from the above, it was observed from Form No.10 filed by the assessee for the assessment year 2017-18 that the assessee has accumulated an amount of Rs.3,53,90,000 under section 11(2) of the Act till 31/03/2017. Since the said amount was compulsorily required to be applied for the purpose of accumulated till the end of the financial year 2017-18 (as per Form no.10 filed by the assessee), the assessee was asked to show cause why the same should not be deemed to be the income of the assessee for the assessment year 2018-19 chargeable under section 11(3)(c) of the Act. In response thereto, the assessee furnished the "corrected" Form no.10 for the financial year 2017-18, showing accumulation for the period of 5 years ending on 31/03/2022. Since the "corrected" Form No.10 was dated 08/03/2021, the AO held that only the Commissioner of Income Tax is authorised under section 119(2) of the Act to admit such belated application

for condonation of delay and decide on merits. Since such evidence was not furnished by the assessee in support of the claim, the AO made an addition of Rs.3,53,90,000 to the total income of the assessee. Accordingly, the AO assessed the total income of the assessee at Rs.5,69,57,447.

4. The learned CIT(A), vide impugned order, after taking into consideration the fact that the assessee's claim was under section 11(2) and not under section 11(1)(a) of the Act, and the mode of investment of funds complied with section 11(5) of the Act held that the assessee has given a plausible explanation to not utilise the amount of Rs.2,05,47,846 accumulated under section 11(2) in the assessment year 2012-13. Accordingly, the learned CIT(A) also deleted the addition of Rs.10,19,601 and Rs.3,53,90,000. The learned CIT(A) also directed the AO to consider the application of the assessee under section 11(3A) of the Act for allowing extension/modification for the purpose of accumulation.

5. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the assessee trust was formed in the year 1952 and the school building was more than 5 decades old and due for reconstruction. It was further submitted that the demand for space with the increasing no. of students and courses offered, the requirement of modern classrooms and latest facilities has also prompted the decision for a new building within the available infrastructure. It was submitted that the trust operates at Vile Parle (East), Mumbai which is located very close to the Mumbai Airport and therefore for extension and redevelopment work NOC from the Airport

Authority of India is required, which is getting delayed. It was submitted that as a result, the funds accumulated could not be utilised within a period of accumulation. We find that vide submission dated 11/03/2021 filed before the AO, the assessee submitted that the construction activity has now commenced and a sum of Rs.8,29,67,322 has already been utilised out of the accumulation made in the earlier year. The learned AR further submitted that the assessee furnished Form No. 10 originally before the due date, however, there was an error in stating the date up to which the accumulation was made, therefore, a corrected Form No. 10 was filed, which was treated as belated by the AO.

6. We have considered the submissions of both sides and perused the material available on record. As per the provisions of section 11(1)(a) of the Act, income derived from property held under trust wholly for charitable or religious purposes is not included in total income to the extent to which such income is applied for charitable or religious purposes in India, and where such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of 15% of the income from such property. Sub-section (2) to section 11 of the Act further provides that where 85% of the income is not applied to charitable or religious purposes 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 total income of the previous year in receipt of income, provided the assessee furnishes a statement in prescribed form, i.e. Form no.10, stating the purpose for which the income is being

accumulated and the period for which the income is to be accumulated, which shall in no case exceed 5 years. The sub-section (2) further provides that the money so accumulated is to be invested in the forms or modes specified in sub-section (5). For the present case, it is also pertinent to note the provisions of sub-section (3A), which provides that notwithstanding anything contained in sub-section (3), where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited cannot be applied for the purpose for which it was accumulated or set apart, the AO may on an application made to him allow such person to apply such income for such other charitable or religious purposes in India as specified in the application and as in conformity with the object of the trust.

7. As noted above, in the present case, as per the assessee since it operates very close to the Mumbai Airport, therefore for any extension/redevelopment work it has to take NOC from the Airport Authority of India and because of the said reason the redevelopment work of its school building was delayed and, in this regard, the assessee had filed an application dated 20/03/2020 under section 11(3A) of the Act, which forms part of the paper book from pages 84-85. Accordingly, the assessee submitted that the funds amounting to Rs. 2,05,47,846 accumulated in the financial year 2012-13 for the redevelopment work could not be utilised in the year under consideration. As is evident from the record, the AO considered the amount of Rs.2,05,47,846 as income of the assessee for the assessment year 2018-19 as per the provisions of section 11(3)(c) of the Act on the basis that the

income was not utilised for the purpose for which it was accumulated or set aside. In this regard, it is pertinent to note that there is no dispute regarding the fact that the assessee's application filed under section 11(3A) of the Act is pending consideration before the AO. Therefore, we find no infirmity in the findings of the learned CIT(A) in deleting the addition of Rs. 2,05,47,846 made by the AO, as section 11(3)(c) does not apply to the present case in view of the pendency of the aforesaid application under section 11(3A) of the Act. Further, in view of the aforesaid facts, the direction to the AO to consider the application of the assessee under section 11(3A) of the Act is also affirmed. As a result, Ground No. 1 raised in Revenue's appeal is dismissed.

8. From the perusal of the return of income filed by the assessee for the year under consideration, we find that the assessee claimed to have accumulated Rs. 4 crore under section 11(2) of the Act. The aforesaid fact is further evident from Schedule-1 of the return, on pages 14-15 of the paper book, wherein the details of the amount accumulated/set apart within the meaning of section 11(2) of the Act have been mentioned. Further, we find from Form No. 10 filed by the assessee on 26/09/2018 that the period of accumulation was stated to be ending on 31/03/2018. From the perusal of the aforesaid Form No. 10, forming part of the paper book from pages 42A-43, we find that the aforesaid amount of Rs. 4 crore was decided to be accumulated for carrying out the purposes of the trust vide resolution dated 29/03/2018. Therefore, we find merits in the submissions of the assessee that any accumulation of funds cannot be only for 2 days. Accordingly, we agree

with the submission of the assessee that in order to rectify the aforesaid mistake revised Form No. 10 was filed by the assessee on 06/04/2021 stating the period of accumulation till 31/03/2023. Similarly, as regards the accumulation for the assessment year 2017-18, we find that in the return of income, the assessee stated the accumulation of Rs. 3,53,90,000 under section 11(2) of the Act in Part B-T1 of the return of income. Even in Form No. 10B, the assessee's auditor stated the same amount of Rs. 3,53,90,000 for the purpose of accumulation under section 11(2) of the Act. However, we find that vide Form No. 10 filed by the assessee on 26/09/2018 the period of accumulation was stated to be ending on 31/03/2017. Similar to the contention in the year 2018-19, even in the assessment year 2017-18 we find that the resolution for accumulation was passed just 2 days prior, i.e. on 29/03/2017. Accordingly, for similar reasons stated above, we find merits in filing the revised Form No.10 on 08/03/2021 by the assessee stating the period of accumulation till 31/03/2022. Therefore, we are of the view that the revised Form No. 10 should be considered for determining the accumulated funds available with the assessee under section 11(2) of the Act. Thus, from the aforesaid facts and circumstances, it is discernible that the assessee's claim was under section 11(2) and not under section 11(1)(a) of the Act. Further, the mode of investment was also as per section 11(5) of the Act as the amount was deposited in scheduled banks or co-operative societies as per section 11(5)(iii) of the Act. Accordingly, the deletion of the addition of Rs. 10,19,601 and Rs. 3,53,90,000 by the learned CIT(A) is upheld. As a result, Grounds No. 3 and 4 raised in Revenue's appeal are dismissed.

9. From the record it is evident that Form No. 10 for the assessment year 2018-19 was also rejected on the basis that the assessee did not have sufficient surplus left during the year in order to accumulate under section 11(2) of the Act. Since we have found the accumulation of Rs.3,53,90,000 made during the assessment year 2017-18 to be available till 31/03/2022 and also in view of the fact that the assessee's application under section 11(3A) of the Act is still pending consideration, therefore the option of utilising the accumulated funds of Rs.2,05,47,846 of the assessment year 2012-13 is available to the assessee in the year under consideration. Therefore, we find no merits in the aforesaid basis for rejecting the revised Form No. 10 filed by the assessee for the assessment year 2018-19. As a result, Ground No. 2 raised in Revenue's appeal is dismissed.

10. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open court on 10th September, 2024

Sd/-

(Om Prakash Kant)
ACCOUNTANT MEMBER

Sd/-

(Sandeep Singh Karhail)
JUDICIAL MEMBER

Mumbai, Dated: 10th September, 2024.

SA

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The PCIT concerned
- 4) The CIT concerned
- 5) The D.R, "F" Bench, Mumbai

By Order

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai