

आयकर अपीलीय अधिकरण, ए, न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' (SMC) BENCH, CHENNAI**

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
माननीय श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
HON'BLE SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1617/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2018-2019.

South Zone Cultural Centre,
Medical College Road,
Thanjavur 613 004.

The Assistant Commissioner of
Income Tax ,
Exemption,
Coimbatore.

PAN: AAEAS 6898R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. Mahadevan, C.A.,

प्रत्यर्थी की ओर से/Respondent by

: Dr. Samuel Pitta, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 25.09.2024

घोषणा की तारीख/Date of Pronouncement

: 30.09.2024

आदेश /O R D E R

PER MANU KUMAR GIRI (Judicial Member)

The appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax(Appeals)(NFAC) Delhi [CIT(A)] dated 31.01.2024 for Assessment Years 2018-19.

2. The assessee has assailed the impugned order on 1-6 grounds. However, we find that the solitary issue raised by the assessee is that Id.CIT(A) erred in upholding

the addition made by the AO for Rs.48,88,871/- under provisions of section 11(3)(c) of the Act.

3. Brief facts are as under:

The assessee is a society registered under section 12AA of the Income Tax Act, 1961. The assessee has filed its return of income on 08.10.2018 declaring total income at Rs.NIL. The return of income filed by the assessee society has been selected for scrutiny under CASS to examine the issues, 'Accumulation of Income by Trust'. On perusal of ITR for AY 2018-19, AO noted that under Schedule-I the assessee society has applied an amount of Rs.48,88,871/- during the year which was accumulated during the FY 2011-12. The AO further noted that since in the instant case amount of Rs.48,88,871/- which was accumulated during FY 2011-12, therefore period of five years as required in section 11(2)(a) has been violated. Therefore, amount of Rs.48,88,871/- applied during the year has been disallowed. In conclusion, AO held as under:

“Since in the instance case the assessee society has not utilised Rs.48,88,871/- that has been accumulated during the FY 2011-12 before the expiry of five years i.e. till FY 2016-17, therefore the same has been treated as income of the assessee during the FY 2017-18 as per the provision of Section 11(3) of the IT Act, 1961”.

4. On further appeal to CIT(A), the Id.CIT(A) vide order dated 31.03.2024 upheld the order of the Id.AO. Now assessee is in further appeal before us.

5. The Id.AR of the assessee referred section 11(3) and the order of the Ahmedabad Tribunal in the case of The ACIT (Exemptions) Vs State Examination

Board (ITA No. 3271/Ahd/2016) dated 31.05.2018 and contended that addition made by the AO be deleted. Per contra, the Id.DR-JCIT relied upon the orders of the lower authorities.

6. We have also gone through the findings of the Id.CIT(A) and AO, perused the record of the appeal, section 11(3) of the Act and case law cited at bar.

7. The Ahmedabad Bench of Tribunal in identical case of "*The ACIT (Exemptions) Vs State Examination Board (ITA No. 3271/Ahd/2016) dated 31.05.2018*" after considering section 11(3) of the Act held as under:

"6. We have heard rival contentions and perused the material available on record. In the instance case, the assessee has accumulated a sum of Rs.45,00,000/- in the A.Y. 2003-04, which was to be utilized within the period of 5 years i.e. 31-03-2008 for the specified purposes. But the assessee failed to utilize the same within the period of 5 years therefore, the same was treated as deemed income by the AO on account of two reasons as discussed below:

i. Transfer of Rs.45,00,000/- from capital fund account to income and expenditure account represents the deemed income of the assessee therefore, same cannot be eligible for deduction u/s 11 of the Act.

ii. The assessee failed to utilize the fund accumulated within the specified time.

At in this juncture, we find important to reproduce the relevant extract of the section 11 of the Act, which reads as under:

Income from property held for charitable or religious purposes. 411. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income-
xxxxxxxxxxxxxxxxxxxxxx

61(2) (Where [eighty-five] per cent of the income referred to in clause

(a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year 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 the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:-]

(a) such person specifies, by notice in writing given to the [Assessing] Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

[(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5)]:]"

The provisions of Section 11(2) of the Act clearly authorize the assessee to accumulate the fund for the specific purpose for the specified period. In case on hand there is no allegation of the AO that the fund accumulated has been utilized other than the purpose for which it was accumulated. Therefore, it can be inferred that the fund accumulated has been utilized for the specified purposes. Therefore, there is no question of treating the deemed income of the assessee and therefore, we hold that the AO erred in treating the income transfer from capital fund account to the income and expenditure account as deemed income of the assessee.

Similarly, we also note that indeed assessee was to utilize the fund within the period of 5 years, which ended on 31-03-2008 but the assessee failed to do so and utilized the same for specified purpose in the immediate succeeding financial year. In this regard, we note that the provisions of Section 11(3) of the Act clearly permits to utilize the funds either within the specified period or in the next year immediately following the expiry of the period as discussed above. The relevant extract of the section reads as under:

[(3) Any income referred to in sub-section (2) which-

(a) xxxxxxxxxxxxxxxxxxxxxxxxx

(b) xxxxxxxxxxxxxxxxxxxxxxxxx

(c) is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof"

It is undisputed fact that the fund was utilized by the assessee for the specified purpose in the previous year immediately following the expiry of the year upto which the fund was accumulated. Therefore, there remains no doubt that the assessee was entitled for claiming the deduction u/s 11 of the Act. Thus, we do not find any reason to interfere in the order of Ld. CIT(A) and hence ground of appeal of the Revenue is dismissed.

7. In the result, appeal of the revenue is dismissed".

8. Therefore, we find that facts of the assessee case is identical to the facts of the 'State Examination Board'(supra). Hence, we respectfully following the order of the Ahemdabad Tribunal in the case of The ACIT (Exemptions) Vs State Examination Board (ITA No. 3271/Ahd/2016) dated 31.05.2018 delete the addition of Rs.48,88,871/- made by the AO and upheld by the Id.CIT(A).

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 30th day of September, 2024 at Chennai.

Sd/-

एस.आर. रघुनाथा

(S.R. RAGHUNATHA)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 30th September, 2024

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.