

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

**MS. PADMAVATHY S., ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2346/MUM/2024  
(Assessment Year: 2016-17)**

**Deputy Commissioner of Income Tax  
Exemption – 2(1) Mumbai,**  
6<sup>th</sup> Floor, MTNL Building,  
Cumbala Hill, Dr. G.D.Deshmukh Marg,  
Mumbai - 400026

..... **Appellant**

**Maneckji Cooper Education Trust**  
Juhu Tara Road,  
Mumbai – 400 049.  
[PAN: AAATM0173G]

Vs

..... **Respondent**

**Appearance**

For the Appellant/Department : Shri Joginder Singh  
For the Respondent/Assessee : Shri Jay Bhansali

**Date**

Conclusion of hearing : 18.07.2024  
Pronouncement of order : 09 .10.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Revenue has challenged the order, dated 08/03/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'], whereby the Ld. CIT(A) had decided the appeal of the Assessee against the Assessment Order, dated 30/03/2022, passed under Section 143(3) read with Section 263 of the Income Tax Act, 1961 (hereinafter referred to as '**the Act**').

2. The Revenue has raised following grounds of appeal :

"1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the appeal of the*

*assessee without appreciating the fact that As per Income Tax Rule 17(3) of the option the Form No.9A referred to in sub Rule (1) and the statement in Form No.10 referred to in sub Rule (2) shall be mandatorily furnished electronically either under digital signature or electronic verification code and in the case of the assessee, the Form No.10 is not furnished electronically?*

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the appeal of the assessee on the basis of the decision in the case of Shree Dadar Jain Vs. ITO [2019] 111 taxmann.com 272 (Mumbai tribunal) wherein the Hon'ble ITAT on identical ground has allowed the appeal of the assessee on the basis of the decision of the Hon'ble Supreme Court in the case CIT Vs. Nagpur Owners Association [2001] 114 Taxman 255/248 ITR 201 (SC) without appreciating the fact that the case law referred by the Hon'ble ITAT is very old and facts of that case is different from the facts of the case under consideration, and w.e.f. 01.04.2016, it is mandatory for the assessee trust to file Form No.10 electronically to avail the benefit of section 11(2) of the Income Tax Act?*
3. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing relief when the assessee is aware that the fund are not utilised as per the provisions of section 11(1)(a) [being 85%] and in order to accumulate the same with the particular purpose earmarked for that object only was required by law w.e.f. 01.04.2016 to file the Form 10 as necessary in order to claim benefits of section 11(2) of the Act."*
3. The solitary issue raised in the present appeal pertains to denial of exemption of INR 7.34 Crores claimed by the Appellant-Trust under Section 11(2) of the Act in respect of amount accumulated for carrying out the purposes of the Appellant-Trust.
4. The relevant facts in brief are that the Assessee is a charitable trust running school in Mumbai for more than 60 years. For the Assessment Year 2016-2017, the Assessee filed return of income on 22/09/2016 declaring income of INR 1.68 Crores after claiming exemption of INR 7.34 Crores under Section 11(2) of the Act in respect of funds accumulated for construction of school building, purchase of school furniture, upgrading school building,

and purchase of electrical equipments. It is admitted position that the Assessee filed Form 10, dated 15/09/2016, physically along with the board resolution passed by the Assessee-Trust. Thus, the return of income and Form 10 were filed before 30/09/2016 which was the due date for filing return of income as per Section 139(1) of the Act. The case of the Assessee was selected for regular scrutiny. During the Assessment proceedings the Assessee filed Form No.10 electronically on 24/11/2018. However, vide a Assessment Order, dated 29/11/2018, the Assessing Officer disallowed the aforesaid exemption of INR 7.34 Crores claimed by the Assessee under Section 11(2) of the Act on the ground that the Assessee had failed to file Form 10 electronically before the due date of filing of return of income as mandated by Rule 17 of the Income Tax Rules 1962 [for short 'IT Rules']. Subsequently, order was passed by the Commissioner of Income Tax (Exemptions), Mumbai [for short 'CIT(E)'] on 12/03/2021 under Section 263 of the Act setting aside the Assessment Order, dated 29/11/2018, as being erroneous in so far as prejudicial to the interest of Revenue. The CIT(E) directed the Assessing Officer to frame fresh assessment on the Assessee. By virtue of Assessment Order, dated 30/03/2022, passed under Section 143(3) read with Section 263 and 144B of the Act the Assessing Officer framed fresh assessment on the Assessee, again, denying the exemption of INR 7.34 Crores claimed by the Assessee under Section 11(2) of the Act in respect of income accumulated for application for the purposes of the object of the Trust in the subsequent years. The Assessing Officer concluded that since the Assessee had failed to file Form 10B electronically as provided in Rule 17B of the IT Rules. The Assessing Officer also observed that the Assessee was exercising option to accumulate funds in a routine manner without making serious

efforts to utilize the accumulated funds.

5. Being aggrieved, the Assessee carried the issue before CIT(A). It was contended before CIT(A) that the finding returned by the Assessing Officer that the Assessee funds in routine manner is factually incorrect. The Assessee was running a school with the large campus. The intention of the Assessee was to build a new school building funds aggregating to INR 15 Crores have been utilized by the Assessee in subsequent years towards redevelopment of the school. The amount of INR 7.34 Crores accumulated in Assessment Year 2016-17 were entirely utilized in Financial Year 2021-22. In support, the Assessee furnished year-wise utilization of accumulated funds which was reconciled with the books of accounts of the Assessee. Further, as regards Form 10, it was submitted that Form 10 was filed physically within due date of return of income, and subsequently, Form 10 was also filed electronically on 24/11/2018 during the course of original assessment proceedings. The Assessing Officer had not disputed the position that physical copy of Form 10 was filed physically on 22/09/2016. Further, for last several years, the return of income was filed manually along with the return of income. This was the first year in which the law was amended making the online filing mandatory. Reliance was placed on Mumbai ITAT decision of Shree Dadar Jain v ITO [2019] 111 taxmann.com 272 (Mumbai - Trib.) to contend back the exemption claimed by the Assessee under Section 11(2) of the Act could not be denied. The aforesaid submissions found favour with the CIT(A) who allowed the appeal vide a order dated 08/03/2024, accepting Assessee's claim for exemption of INR 7.34 Crores under Section 11(2) of the Act.
6. Being aggrieved the Revenue has preferred the present Appeal

before the Tribunal on the grounds reproduced at paragraph 2 above. All the Grounds raised by the Revenue are connected, and are, therefore, taken up together hereinafter.

7. We have heard the rival submissions and have taken into consideration the factual matrix and the applicable legal position.

7.1. It is admitted position that the Assessee had filed Form 10, dated 15/09/2016, physically on 22/09/2016 within the prescribed time (i.e. before 30/09/2016), Thereafter, physical form was filed on 24/11/2018 before the completion of the original assessment vide order, dated 29/11/2018. The aforesaid assessment order was set aside by the CIT(E) vide order dated 12/03/2021, passed under Section 263 of the Act. Thereafter, when the fresh assessment was framed on the Assessee, vide order dated 30/03/2022, Form 10 was available with the Assessing Officer in, both, physically as well as electronically. It is not the case of the Revenue that there was difference between Form 10 filed by the Appellant physically and electronically. The Revenue has placed nothing on record to controvert the finding returned by the CIT(A) that the funds were not accumulated casually by the Assessee and were utilize for the purpose of the Assessee-Trust. We note that Assessment Year 2016-2017 was also the first year of applicability of amended Rule 17 of IT Rules requiring electronic filing of Form 10 since the said Rule came into effect from 01/04/2016 relevant to the Assessment Year 2016-17. The Assessee has also placed on record Form 10B for the Assessment Year 2016-17 filed electronically on 21/09/2016 wherein it has been clearly stated that INR 7.34 Crores has been accumulated in terms of Section 11(2) of the Act. In the aforesaid facts and circumstances, we hold that the benefit of exemption claimed by the Appellant under Section 11(2) of the Act in respect of amount

of INR 7.34 Crores cannot be denied to the Appellant. Therefore, we are not inclined to interfere with the order passed by the CIT(A) by placing reliance on the judgment of the Mumbai Bench of the Tribunal in the case of Shree Dadar Jain (supra).

- 7.2. Our view draws strength from the decision of Mumbai Bench of the Tribunal in the case of In Parle Hindu Devalaya Mandal Vs. Dy. CIT [IT Appeal No. 766 (Mum.) of 2019, dated 4-3-2020] and the decision of Bangalore Bench of the Tribunal in the case of Navodaya Education Trust Vs. Deputy Commission of Income Tax, Central Circle, Bellary: [2021] 130 taxmann.com 256. In both the aforesaid cases the Tribunal has taken a view that in case where the Form 10 has been filed physically before the due date the benefit of Section 11(2) of the Act cannot be denied merely for non-filing of Form 10 electronically.
- 7.3. In view of the above, all the Grounds raised by the Revenue are dismissed.
8. In result, the appeal preferred by the Revenue is dismissed.

Order pronounced on 09.10.2024.

**Sd-**  
**(Ms. Padmavathy S.)**  
**Accountant Member**

**Sd-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 09.10.2024  
Milan, LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai