

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'E': NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT**

**AND**

**SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.2721/Del/2024  
[Assessment Year: 2016-17]**

National Culture Fund, Puratatva Bhawan, 5 <sup>th</sup> Floor, D Block, GPO Complex, INA, Delhi	Vs	ITO, Exemption, Ward-2(4), New Delhi
<b>PAN-AAATN4595M</b>		
Assessee		Revenue

**ITA No.2722/Del/2024  
[Assessment Year: 2017-18]**

National Culture Fund, Puratatva Bhawan, 5 <sup>th</sup> Floor, D Block, GPO Complex, INA, Delhi	Vs	ITO, Exemption, Ward-2(4), New Delhi
<b>PAN-AAATN4595M</b>		
Assessee		Assessee

Assessee by	Sh. Gurjeet Singh, CA
Revenue by	Sh. Krishna K. Ramawat, Sr. DR

<b>Date of Hearing</b>	<b>21.11.2024</b>
<b>Date of Pronouncement</b>	<b>21.11.2024</b>

**ORDER**

**PER BRAJESH KUMAR SINGH, AM,**

These two appeals by the assessee is against the separate orders of National Faceless Appeal Centre (NFAC)/Ld. CIT(A), New Delhi, dated 13.11.2023 and 20.11.2023 pertaining to Assessment Years 2016-17 and 2017-18 respectively.

**ITA No.2721/Del/2024, AY 2016-17**

2. The grounds of appeal raised by the assessee in ITA No.2721/Del/2024 are as under:-

*"1. That the learned C.I.T(A) has erred both laws and facts for passing an ex parte order and confirming the addition made by Ld.AO without looking to full facts and circumstances of the cases.*

*2. That the learned C.I.T(A) has erred both laws and facts for confirming the addition made by Ld.AO as Income of Rs - 2,85,12,371.00 u/s 11(2) without looking to facts that the FDR interest Income which is of exempted nature.*

*3. That the learned C.I.T(A) has erred both laws and facts for confirming the addition made by Ld.AO as Income of Rs.1,86,01,345.00 u/s 11(2) without looking to facts that the FDR interest Income which is of exempted nature.*

*4. That the learned C.I.T(A) has erred both laws and facts for confirming the addition made by Ld.AO as Income of Rs.84,28,458.00 /s 11(3) without looking to facts that the FDR interest Income which is of exempted nature.*

*5. That the learned C.I.T(A) has erred both laws and facts for confirming the addition made by Ld.AO as Income of of Rs- 2,85,12,371 u/s 11(2) without giving an opportunity for Condonation of Delay within the circular of CBDT No 7/2017 dated 20.12.2018 issued after the date of the assessment Order 17.12.2018.*

3. Brief facts of the case:- The assessee is a national fund created, by a notification of Ministry of Human Resources Development (Department of Culture) on 28/11/1996 and registered under section 12A vide order dated 06/01/1997. The return of income was filed on 28.03.2018 declaring total income of Rs.84,24,460/-. The Assessing Officer mentioned the objects of the assessee are as under:-

*"1. To administer and apply the moneys of the Fund for conservation, maintenance, promotion, protection, preservation and upgradation of monuments protected or otherwise.*

*2. To conduct studies related to the artistic, scientific and technical problems involved in the conservation, maintenance, promotion, protection, preservation and rehabilitation of cultural and natural heritage.*

*3. To impart training to staff and specialists at all levels in the fields of identification, protection, conservation, preservation and rehabilitation of culture heritage tangible and intangible as well as the natural heritage.*

*4. Protection and promotion of artistic endeavor in all its forms, particularly innovative experiments in arts."*

3.1. During the assessment proceedings the AO informed the assessee that from the data available from system, it was seen that the assessee had filed form 10 after due date and had set apart a large amount u/s 11(2) of the Act. The assessee was asked to explain why the set apart amount should be allowed as the condition regarding filing of Form-10 as per Rule-17(2) was not fulfilled.

3.2. The assessee submitted that the amount of Rs.84,24,458/- was the balance amount of the amount accumulated in AY 2010-11 amounting to Rs.1,78,29,249/- minus amount utilized during AY 2016-17- Rs.94,04,791/-. It was further submitted that the nature of income as earned during AY 2010-11 consist of fixed deposit interest of Rs.2,05,90,582/- and Rs.3,85,005/- being savings bank interest totaling Rs.2,09,75,587/-. The assessee relying upon the decision of the jurisdictional Delhi High Court in the case of CIT vs Divine Light Mission (2005) 278 ITR 659(Del.) submitted that the fixed deposit income is on account of provision of the Income Tax Act, which states that the funds are to be accumulated in the particular form as prescribed within the Income Tax Act. According to the assessee, these are mandatory

provisions which the assessee has to follow in respect of the funds of the assessee and not within the discretion of the assessee. Accordingly, it was submitted that the Hon'ble Delhi High Court in this case has considered such fixed deposit interest income as not part of income, which is liable for income tax.

3.3. Relying upon the above decision, the assessee recomputed its income for AY 2016-17 as under:-

Based upon the above decision the Income for the A.Y. 2015-16 is hereby re-computed for the assessee as under

i)	Interest from Deposits as specified u/s 11(5) of the Income Tax Act	Rs 3,35,31,966
ii)	Other Receipts	12,000
	<b>Total Receipts</b>	<b>3,35,43,966</b>
	Utilisations- Revenue	99,02,626
	Capital	8,400
	<b>Total Utilizations</b>	<b>99,11,026</b>

Therefore, there is NIL Income during the A.Y. 16-17 under the Income Tax Act.

3.4. The assessee further submitted that as per section 11(2) of the Act, three conditions are laid down out of which conditions as laid under section 11(2)(a) and 11(2)(b) are complied with because section 11(2), nowhere states that all the three conditions are to be complied with. It was further submitted that when the assessee had followed some of the conditions as specified u/s 11(2) of the Act, the assessee was still eligible for exemption, which is accumulated and does not form part of total income of the assessee. It finally submitted that the charging section as referred to in section 11(3) of the Act, nowhere states that it is to be treated as income, if the conditions u/s 11(2)(c) is not complied with and

therefore in absence of any clause under the charging section, the income cannot be charged for income tax purpose.

3.5. The AO did not agree with the above submissions of the assessee mainly on the ground that the amount of Rs.84,24,458/- remained unutilized which was accumulated in AY 2010-11 and as per provisions of section 11(3)(c) of the Act, any income accumulated u/s 11(2) of the Act and which is not utilized for the purpose for which it was so accumulated or set apart during the period refer to in clause(a) of that sub-section or in the year immediately following the expiry thereof shall be deemed to be the income of such person of the previous year immediately following the expiry of the aforesaid period. The AO took note of the fact that the audit report in Form-10B filed by the auditor had itself reported that the amount of Rs.84,24,458/- was deemed to be income within the meaning sub-section-3 of section 11 of the Act. Regarding the decision in the case of CIT vs Divine Light Mission (supra), the AO commented that the context in which the said decision was rendered was not clear. According to the AO, fixed deposit is property of the trust and any income derived from the property of the trust is taken as receipt as per section 11 of the Act. Finally, the AO held that the assessee in its return of income filed for AY 2016-17 had itself shown the amount of Rs.84,28,458/- as chargeable to tax and paid taxed thereon. Accordingly, the AO treated the amount of Rs.84,28,458/- as income of the assessee u/s 11(3) of the Act.

3.6. Regarding the claim of accumulation of income in column no.1(c) of the ITR in Form No.10B filed on 28.03.2018, the same was not allowed by the AO on the ground that the return of income was filed beyond the

provision of section 13(9) of the Act. The AO did not accept the explanation of the assessee in this regard that in absence of any clause under the charging section as referred in section 11(3) of the Act in view of the clear provisions of section 13(9) of the Act.

3.7. In view of the above facts, the AO recomputed the income of the assessee as under: -

(i)	Total income u/s 11 and 12 derived during the previous year:-	Rs.3,35,43,966/-
(ii)	Less:-Amount applied for charitable purpose as per return of income	Rs.99,11,026/-
(iii)	15% of the Income accumulated u/s 11(1):-	Rs.50,31,595/-
	Surplus computed is:-	Rs.1,86,01,345/-
(iv)	Add:-Income u/s 11(3) of the Act:-	Rs.84,28,458/-
(v)	Total Taxable income:-	Rs.2,70,29,803/-

4. Against the above order, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) agreed with the findings of the AO and dismissed the appeal of the assessee vide an order dated 13.11.2023. The Ld. CIT(A) in para-4 of his order stated that the assessee complied with only to the notice dated 03.03.2020 and did not comply with the notices of hearing issued on 08.01.2021, 12.07.2023, 27.10.2023 and 03.11.2023.

4.1. Regarding the issue on why accumulation u/s 11(2) of the Act cannot be allowed when Form 10B as well as ITR was filed belatedly, the ld. CIT(A) noted the finding of the AO that during the assessment proceedings, the assessee did not file any cogent reply. The ld. CIT(A)

further held that all the three conditions mentioned in clause(a) (b) & (c) of section 11(2) of the Act has to be satisfied for the accumulated income to be excluded from the income of the year and held that the contention of the assessee that there is no mention of all the conditions to be met is not factually correct as the words 'following conditions are complied with' and makes no exception to any condition. The Ld. CIT(A), therefore, in view of the fact that the Form 10B as well as ITR was filed belatedly in terms of section 139(1) of the Act did not allow the exemption as claimed by the assessee.

4.2. The Ld. CIT(A) further held that without prejudice and in addition on the issue of non-compliance by the assessee at the appellate stage relying upon the case laws cited in his order and in absence of any new submission, dismissed the appeal of the assessee.

5. Against the above order, the assessee is in appeal before us.

6. At the time of hearing, the ld. AR referred to its written submission filed along with the appeal and submitted that the reason for filing late returns was on account of non-appointment of auditors by the assessee as it needed special approval for the appointment of the auditor, which was done on 12.03.2018 and upon approval of the competent authority, the IT-return was filed on 28.03.2018. It was further submitted that circular of CBDT No 7/2017 dated 20.12.2018 issued after the date of the assessment Order 17.12.2018 provided for filing of condonation petition before the CIT(E) in filing Form No.10. He further stated that a condonation of delay in filing of Form No.10 is filed with CIT(E) on

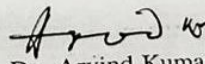
03.01.2019, which is still pending and till the same is decided, the decision of the Ld. CIT(A) in rejecting the same, was not legally tenable.

The written submission of the assessee is reproduced as below:-

NATIONAL CULTURE FUND  
5<sup>th</sup> FLOOR D-BLOCK,  
PURATATVA BHAWAN,  
GPO COMPLEX I.N.A.,  
NEW DELHI 110023.

Fact -2016-17

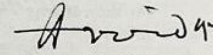
1. That NATIONAL CULTURE FUND is created by Government of India under Ministry of Culture in terms of a Notification published in the Gazette of India dated Nov 28th 1996 and is controlled by the Ministry of Culture.
2. That the returns was filed dated 28.3.2018 along with Form No 10 which was filed on the same date.
3. The reason for filing late returns was on account of non-appointment of Auditors by NCF as it needs special approval for the appointment of Auditor in NCF.
4. The Auditor was appointed dated on 12.3.2018 upon the approval of the Competent Authority and immediately income tax returns was filed on 28.3.2018.
5. The returns were late because of conditions beyond the control of NCF leading to delay in filing of the returns as well as Form No 10 as it is predominately controlled by the Government for within the Ministry of Culture.
6. That this order has been passed dated on 17.12.2018 whereas the CBDT has issued circular No 7/2017 dated 20.12.2018 for applying for Condonation of Delay in filing of Form No 10 for the Asstt year 2016-17 for the reason there are overriding provision for section to 11(2) by addition of sec139(9) of income tax act 1961.
7. An application for Condonation of delay in filing of Form No 10 is filed with CIT(Exemptions) dated 3.1.2019.
8. That the learned AO has accepted the compliance of section 11(2) of the Income Tax Act in respect of accumulations of Income which was claimed in the returns but by overriding provisions of section 13(9) has disallowed the claim for non compliance of the conditions laid down u/s 13(9) of the Income Tax Act.
9. There is one condition u/s 13(9) of the Income Tax Act which is with reference to delay in filing of Form No 10 for accumulation of Income for which an application for Condonation of delay has been filed dated on 03.01.2019 is still pending and that to within the circular of CBDT No 7/2017 dated 20.12.2018 issued after the date of the Assessment Order 17.12.2018.

  
Dr. Arvind Kumar  
Member Secretary  
National Culture Fund  
Ministry of Culture  
Govt. of India  
New Delhi-110023

10. That the assesses Income is Interest Income from Banks which is not disputed by the learned AO and does not part of income as held by Jurisdictional High Court decision for treatment of Interest Income earned on Investment in bank deposit as held in the case of Commissioner Of Income Tax vs Divine Light Mission on 21 April, 2004, Delhi High Court has not been given.

11. That the learned AO has never asked for application of section 13(9) if the Income Tax Act during asstt proceeding as referred in the assessment Order for disallowance of the accumulations u/s 11(2) by applying provision of section 139(9) of income tax act 1961.

For NATIONAL CULTURE FUND



**Dr. Arvind Kumar**  
(Member secretary)

Dr. Arvind Kumar  
Member Secretary  
National Culture Fund  
Ministry of Culture  
Govt. of India  
New Delhi-110023

7. The Ld. AR further relied upon the order of the Tribunal in its own case in ITA No.6349/Del/2018, AY 2013-14, dated 25.07.2024 and submitted that facts being similar for this year also, this case may also be remanded to the file of the AO for fresh adjudication. The Ld. AR submitted that the key factor in deciding the issue on the taxability of Rs.84,24,460/- and the non-allowance of accumulation u/s 11(2) of the Act amounting to Rs.2,85,12,371/- was whether 'interest from deposits as specified u/s 11(5) of the Act' amounting to Rs.3,35,31,966/- was part of the Corpus Fund as per Gazette notification establishing National Culture Fund published by Authority Department of Culture vide Notification dt. 28.11.1996, contributing Rs. 17.5 crore to the asset of Fund (Corpus Fund) out of plan budget of the Department of Culture, Government of India, and that Auditor of National Culture Fund overlooking the said document treated interest on FDR made out of said Fund as income exempt u/s 11 while as per said notification, the said interest of

Rs.3,35,31,966/- from FDRs is part of Corpus Fund and is exempt u/s 11(1)(d) of the Act, which is a vital fact and germane to the settling of the controversy out of the facts and evidences.

8. We have heard both the parties and perused the material available on record. There are two issues in this appeal i.e. the taxability of Rs.84,24,460/- and the non-allowance of accumulation u/s 11(2) of the Act amounting to Rs.2,85,12,371/-. For this, it has to be decided as to whether 'interest from deposits as specified u/s 11(5) of the Act' amounting to Rs.3,35,31,966/- was part of the Corpus Fund and therefore non-taxable u/s 11(i)(d) of the Act. It appears that the said plea was not taken by the assessee either before the AO or before the Ld. CIT(A). Further, no finding has been given by the ld. CIT(A) with respect to the condonation application filed by the assessee before the CIT(E) vide letter dated 03.01.2019. Therefore, considering the facts in totality, the order of the Ld. CIT(A) is set-aside and the matter is restored back to the file of the AO for considering the above legal submission of the assessee regarding the non-taxability of interest amounting to Rs.3,35,31,966/- u/s 11(5) of the Act and the decision of the Ld. CIT(E) in respect of the condonation application in filing Form 10B belatedly i.e. on 28.03.2018. After considering these aspects, the AO will frame the assessment *de-novo* as per law after giving due opportunity of being heard to the assessee.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

**ITA No.2722/Del/2024, AY 2017-18**

10. The grounds of appeal raised by the assessee in ITA No.2722/Del/2024 are as under:-

*“1. That the learned C.I.T(A) has erred both laws and facts for passing an ex parte order and confirming the addition made by Ld.AO without looking to full facts and circumstances of the cases.*

*2. That the learned C.I.T(A) has erred both laws and facts for confirming the addition made by Ld.AO as Income of Rs -5,52,48,666 u/s 11(2) without looking to facts that the FDR interest Income which is of exempted nature.*

*3. That the learned C.I.T(A) has erred both laws and facts for confirming the addition made by Ld.AO as Income of Rs 2,09,14,812 u/s 11(2) without looking to facts that the FDR interest Income which is of exempted nature.*

*4. That the learned C.I.T(A) has erred both laws and facts for confirming the addition made by Ld.AO as Income of Rs 81,27,560 u/s 11(3) without looking to facts that the FDR interest Income which is of exempted nature.”*

11. Ground Nos.1 to 4 are identical to the grounds of appeal of ITA No.2721/Del/2024 except for the difference in the amount. Therefore, the order in ITA No.2721/Del/2024 shall apply *mutatis mutandis* to this appeal also.

12. In the result, this appeal of the assessee is also allowed for statistical purposes.

13. Finally, both appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 21<sup>st</sup> November, 2024.

**Sd/-**  
**[MAHAVIR SINGH]**  
**VICE PRESIDENT**

**Dated** 21.11.2024.

*Shekhar*

**Sd/-**  
**[BRAJESH KUMAR SINGH]**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi,