

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “D”, MUMBAI
BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 3559/MUM/2024 (A.Y: 2012-13)**

ITO,
618, MTNL Cumballa Hill Telephone
Exchange Building, Peddar Road,
Maharashtra – 400 026

(Appellant)

**Vs. Muniwar Abad Charitable
Trust,**
405A, 407, Jolly Bhavan No. 1,
10, New Marine Lines,
Churchgate, Mumbai-400 020
PAN: AAATM0140K

(Respondent)

Assessee Represented by	:	Shri Amit Khatiwala, Ld. DR
Department Represented by	:	Smt. Mahita Nair, Ld. AR
Date of conclusion of Hearing	:	29.08.2024
Date of Pronouncement	:	28.11.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the revenue against the order of Learned Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the “CIT(A)”], passed



under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] dated 21.05.2024 for the A.Y. 2012-13.

2. The brief facts of the case are that the assessee is a Charitable Trust registered with the Directorate of Income Tax (Exemption), Mumbai u/s 12A of the Act. Assessee has filed its return of income on 28.09.2012 for the year under consideration alongwith the income & expenditure account, balance sheet and audit report in Form N. 10B declaring total income of Rs. NIL. The case was selected for scrutiny and notice u/s 143(2) was issued which was duly served upon the assessee and subsequently a notice u/s 142(1) of the Act was issued to the assessee on 28.11.2014. In response to the notice, the assessee submitted that the funds were accumulated for the purpose of purchase suitable plots of lands/housing sites at any place in India for constructing residential units for homeless and also for carry out major repairs and renovation of the houses / building and to construct multipurpose hall at the housing complex and also to purchase office premises for the Trust alongwith setting up primary /secondary school education and also to set up health centers, clinics, dispensaries, etc. The AO observed that the above purpose mentioned in Form 10 are general in nature and cannot be construed by any stretch of imagination to be definite and concrete



purpose and thus, the assessee has failed to substantiate its above purpose of accumulation for fulfillment of requirements for accumulation u/s 11(2) of the Act and such accumulation is not permissible and allowable under law. After considering the above submissions and discussions, the AO made the addition of Rs. 8,55,94,810/- and initiated the penalty proceedings u/s 271(1)(c) r.w.s. 274 of the Act separately.

3. The said assessment was confirmed by the First Appellate Authority, however the 'G' Bench of ITAT in ITA No. 2176 & 7235/Mum/2016 for AY 2011-12 and 2012-13 dated 11.10.2018 has set aside the quantum order made by the AO. Para 19-20 of the order of Coordinate Bench of ITAT are relevant and the same is extracted below:-

19. Since the facts prevailing in the instant year are identical with the facts of AY 2009-10, following the order passed by the co-ordinate bench, we hold that the assessee is entitled for accumulation u/s 11(2) of the Act. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow deduction for accumulation made u/s 11(2) of the Act. 20. We shall now take up the appeal filed by the assessee for AY 2012-13. The issues contested in this year also relate to rejection of claim for exemption u/s 11 of the Act and also rejection of



accumulation of income u/s 11(2) of the Act. The decision rendered by us in the preceding paragraphs in AY 2011-12 shall apply to this year also, as the facts are identical in nature. Accordingly we set aside the order passed by Ld CIT(A) in AY 2012-13 and direct the AO to allow exemption u/s 11 of the Act as well as accumulation of income u/s 11(2) of the Act.

4. However, the AO on the basis of additions made, has imposed the penalty of Rs. 2,62,96,356/- (100% sought to be evaded) u/s 271(1)(c) of the Act para no. 9, 10 & 10.1 of his order are relevant and the same are reproduced below:-

9. Therefore, I am satisfied that the assessee has furnished inaccurate particulars of income which has resulted in concealment of income and it is a fit case for levy of penalty u/s. 271(1)(c) of the Income Tax Act. The assessee has willfully committed default by claiming the deduction for which it was not entitled to. Reliance for this proposition is placed on Union of India Vs. Dharmendra Textile Processors [2007] 295 ITR 244 where in it is held that the penalty under this provision is a civil liability. Willful concealment is not an essential ingredient for attracting civil liability as in this case in the matter of prosecution u/s.276C of the Income-tax Act." Further, the Ld. CIT(A) has confirmed the addition made by the A.O. vide order dated 28.10.2016.



10. In the case of assessee it is not mere difference in the interpretation of law but the material facts born out of the records shows that the assessee is not entitled for exemption u/s. 11 of the Act. Hence, it is a fit case for levy of penalty u/s. 271(1) (c) of the Act. The minimum penalty comes to Rs. 2,62,96,356 / being 100% of the amount of tax sought to be evaded and maximum penalty comes to Rs.7,88,89,068/- being 300% of the tax sought to be evaded.

10.1 Considering the facts of the case a minimum penalty of Rs. 2,62,96,356/- (100% of the tax sought to be evaded) u/s. 271(1)(c) of the Income Tax Act is levied.

5. Aggrieved with this order of AO, assessee filed an appeal before Ld. CIT (A) and Ld. CIT(A) vide impugned order dated 21.05.2024 has set aside the order of AO and deleted the penalty vide para 6 (6.1 to 6.1.2) and the same are reproduced below:-

“6. Decision

After considering facts of the case and submissions of the appellant, grounds of appeal are decided as hereunder.

6.1 Ground no. 1 & 3: These grounds of appeal relate to the claim that the AO erred in levying penalty of Rs. 2,62,96,356/- u/s 271(1)(c) of the Act.



6.1.1 During these appeal proceedings, the appellant has stated that the Hon'ble ITA in its order dated 11/10/2018 has allowed the appellant's appeal in common order for A.Y.2011-12 (ITA No.2176/Mum/2016) and for A.Y.2012-13 (ITA 7235/Mum/2016). The appellant stated that in para 2, 20 & 16 of this order Hon'ble ITAT had held as below:

"2. We shall first take up the appeal filed for A.Y.2011-12, wherein following issues are contested:-

(a) Whether the AO was justified in rejecting the claim for exemption u/s. 11 of the Act.

(b) Whether the AO was justified in rejecting the claim for accumulation of income u/s. 11 (2) of the Act."

"20. We shall now take up the appeal filed by the assessee for A.Y. 2012-13. The issues contested in this year also relate to rejection of claim for exemption u/s. 11 of the Act and also rejection of accumulation of income u/s. 11(2) of the Act. The decision rendered by us in the preceding paragraphs in A.Y.2011-12 shall apply to this year also, as the facts are identical in nature. Accordingly, we set aside the order passed by Ld CIT(A) in A.Y. 2012-13 and direct the AO to allow exemption u/s. 11 of the Act as well as accumulation of income u/s. 11 (2) of the Act."

"16. In view of the above foregoing discussions, we are of the view that the activities earned on by the assessee in the nature



of selling flats to the poor and needy at subsidies rates would fall under the category of "relief to poor within the meaning of sec. 2(15) of the Act In that case, the provisos to sec. 2(15) of the Act would not be applicable to the assessee. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow benefits u/s. 11 of the Act to the assessee."

The appellant submitted that the Hon'ble ITAT had, vide the aforesaid order, allowed the appeal of the appellant in the quantum proceedings and upheld the appellant's claim for exemption u/s 11 and for accumulation of income u/s 11(2) of the Act and had deleted the entire addition made by the AO. The appellant also stated that in view of the same, the question of levying penalty u/s does not arise.

6.1.2 A perusal of the aforementioned order of Hon'ble Tribunal show that the Hon'ble Tribunal has upheld claim of the appellant regarding exemption u/s 11 of the Act and has deleted the additions made by the AO in quantum proceedings for AY 2011-12 & 2012-13. Since the quantum appeals have been decided by the Hon'ble Tribunal in favour of the appellant, the impugned penalty has no legs of its own to stand. Hence, the penalty of Rs. 2,62,96,356/- levied by the AO is hereby deleted. Ground no. 1 & 3 of appeal are allowed."

6. Aggrieved with the order of Ld. CIT(A), revenue is in appeal before us raising the following grounds:-



1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to allow the benefit of exemption u/s 11 of the Income- tax Act on the point of accumulation made in absence of evidence which was rightly made and penalty was rightly levied?*

2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to allow the benefit of exemption u/s 11 of the Income- tax Act on the basis of the order of the Hon'ble ITAT in the own case of the assessee for AY 2011-12 & AY 2012-13 without appreciating the fact that the Department has not accepted the said decision on merits and has filed an appeal u/s 260A to the Hon'ble High Court ITXA No. 2035/2019 for AY 2011-12 and vide ITXA No. 2114/2019 for AY 2012-13., which is pending adjudication before the Hon'ble High Court."*

7. From the perusal of the grounds taken in the appeal, it is evident that the same are ambiguous. However the controversy /dispute before us is whether there is any illegalities with respect to deletion of penalty by Ld. CIT (A) on the ground that quantum appeal has already been decided in favour of the assessee and for that reason the penalty imposed by AO is not legally tenable?

8. At the outset, Ld. DR on behalf of the revenue submitted that quantum order passed by the Coordinate Bench of ITAT for AY 2012-13 in



assessee's own case has not been accepted by the department and for that reason, the order of Ld. CIT(A) is not justified. On the other hand, Ld. AR opposed the argument of Ld. DR and submitted that once the quantum appeal has been decided in favour of the assessee and in view of the judgment of Hon'ble Supreme Court in the case of ***K. C. Builder & another vrs. ACIT 265 ITR 562***, the Ld. CIT (A) has rightly deleted the penalty and decided the appeal in favour of the assessee. Ld. AR has drawn our attention to the order of Hon'ble ITAT in quantum appeal bearing ITA No. 2176 & 7235/Mum/2016 for AY 2011-12 & 2012-13 dated 11.10.2018 in assessee's own case, wherein the additions confirmed by Ld. CIT(A) were deleted and appeals of the assessee were allowed by Hon'ble ITAT.

9. We have heard the rival submission and perused the orders of the Coordinate Bench of the Tribunal in assessee's own case in the quantum proceedings. We find that the quantum additions which were the basis of imposition of penalty in the present case has been deleted by the Tribunal and the revenue has not placed on record any material to show that in the appeal against the said order of the Tribunal, the order of ITAT has been stayed or set aside. Thus while following the judgment of Hon'ble Supreme Court in the case of ***K. C. Builder &***



another vrs. ACIT 265 ITR 562, we find that the penalty has no legs to stand. It was held by Hon'ble Supreme Court that *'where the additions made in the assessment order, on the basis of which, penalty for concealment was levied, are deleted or set aside, there remains no basis at all for levying the penalty for concealment, therefore in such case, no penalty can survive and the same is liable to be cancelled.*

10. Regarding the contention of revenue that the ITAT order in quantum proceedings has been challenged in Hon'ble High Court, we are of the considered opinion, unless the order of ITAT is either stayed or set aside, the revenue is bound to follow the same.
11. Our view is also fortified by the decision of the Hon'ble Allahabad High Court, ***K. N. Agarwal Vs. Commissioner of Income Tax, order dated 11.01.1991, [1991] 189 ITR 769B (ALL)*** which says, *"Indeed, the orders of the Tribunal and the High Court are binding upon the Assessing Officer and since he acts in a quasi-judicial capacity, the discipline of such functioning demands that he should follow the decision of the Tribunal or the High Court, as the case may be. He cannot ignore it merely on the ground that the Tribunal's order is the subject-matter of revision in the High Court or that the High Court's decision is under*



appeal before the Supreme Court. Permitting him to take such a view would introduce judicial indiscipline, which is not called for even in such cases.”

12. From the above discussion, it becomes crystal clear that the order of the ITAT in quantum proceedings is binding upon the revenue unless and until the Hon'ble High Court either set aside or stayed the same, which is not the case herein.
13. Therefore, while taking into consideration the principles laid down by the Apex Court in the case of ***K. C. Builder & another vrs. ACIT 265 ITR 562*** and the decision of Hon'ble Allahabad High Court and in ***K. N. Agarwal's case (supra)***, we find no reasons to interfere into the order passed by Ld. CIT(A). Thus we uphold the same and dismiss the grounds raised by the revenue.
14. In the result, appeal filed by the revenue is **dismissed**.

Order pronounced in the open court on 28.11.2024

Sd/-

**(B R BASKARAN)
(ACCOUNTANT MEMBER)**

Mumbai / Dated 28.11.2024
Dhananjay, Sr.PS

Sd/-

**(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)**

Copy of the Order forwarded to:



ITA No. 3559/Mum/2024
Muniwar Abad Charitable Trust

1. The Appellant
 2. The Respondent.
 3. CIT
 4. DR, ITAT, Mumbai
 5. Guard file.
- //True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai