

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI**

श्री धुव्वुरु आर.एल रेड्डी,, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष  
**BEFORE SHRI DUVVURU RL REDDY, HON'BLE VICE PRESIDENT  
AND SHRI S.R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपीलसं./ITA No.: 3153/Chny/2024  
निर्धारण वर्ष / Assessment Year: 2018-19

**M/s. Dadha & Co Golden Jubilee  
Trust,**  
250, Lloyds Road,  
Chennai – 600 014.

**The Income Tax Officer,**  
V. Exemptions Ward-1,  
Chennai.

**[PAN:AAATD 2527M]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri D.Anand, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Ms.Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing : 26.03.2025  
घोषणा की तारीख/Date of Pronouncement : 28.03.2025

**आदेश / O R D E R**

**PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:**

This appeal by the assessee is filed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi dated 17.10.2024 for the assessment year 2018-19.

2. The assessee has raised the following grounds:-

*1) The order of the learned CIT(A) National Faceless Appeal Centre (NFAC), Delhi is arbitrary, against the provisions of law and contrary to the facts of the case and is therefore unsustainable.*

2) *The learned CIT(A) erred in passing the appeal order without giving reasonable opportunity to the Appellant.*

3) *The learned CIT(A) erred in not considering that the Appellant had filed Form 10 in time and had only revised it.*

4) *The learned CIT(A) erred in confirming the disallowance of Rs.1,20,00,000 accumulated U/s 11(2) of the I.T. Act.*

*For the grounds stated above and for the grounds which may be permitted to be adduced at the time of hearing of the appeal it is prayed that the disallowance of Rs.1,20,00,000 made in the Assessment Order may be deleted and justice rendered.*

3. Brief facts are that the assessee is a trust having registered u/s.12A of the Income Tax Act, 1961 (hereinafter the 'Act') and claimed exemption u/s.10(23C)(v) and filed the return of income for the assessment year 2018-19 on 25.09.2018 declaring 'nil' income. During the year, the assessee has made donation of Rs.1.2 crores to Vardhaman Jain Shikshan Sansthan, Jodhpur and filed Form 10 for accumulation of short fall in application of funds during the year to the tune of Rs.2 crores u/s.11(2) of the Act for construction of new school. During the assessment proceedings, the assessee wanted to file a revised Form 10 with a revised accumulation amount of Rs.3.2 crores and sought for time to file the same. However, the AO has passed an order u/s.143(3) of the Act dated 16.04.2021 by denying the donation paid of Rs.1.2 crores as admissible application of fund towards the object of the trust and brought to tax. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld.CIT(A).

3.1 Before the Ld.CIT(A), the assessee reiterated the facts and stated that the AO had issued show-cause notice on 12.04.2021 proposing to deny exemption of corpus donation of Rs.1.2 crores and passed the order on 16.04.2021. The assessee had filed revised Form 10 for accumulation of Rs.3.2 crores along with the resolution of the trustees. However, the Ld.CIT(A) on perusal of the submissions made by the assessee but not convinced with the explanation offered by the assessee and dismissed the appeal of the assessee by confirming the order of the AO. Aggrieved, assessee is in appeal before us.

4. Before us, the Ld.AR for the assessee stated that there is no time limit fixed in the Act for filing of Form 10 for accumulation of funds. Further, the Ld.AR stated that the AO has given only 3 days time in the show-cause notice and passed the order abruptly without giving proper opportunity to the assessee to respond to the show-cause notice. Further, the Ld.AR in support of his arguments brought to our notice, the decision of Hon'ble Madras High Court in the case of Shri Chandraprabhuji Maharaj Jain vs. DCIT, Tax Case Appeal No.517 of 2019, wherein the lordships have held as under:-

*7. Admittedly, the statute does not prescribe any time limit for filing statutory Form No.10. This aspect of the matter was considered by the Honourable Supreme Court in CIT-Vs- Nagpur Hotel Owners Association*

(247 ITR 201). In the said decision, it was pointed out that it is necessary that the Assessing Officer must have information as required under Rule 17 by furnishing Form No.10 and this information should be available with the Assessing Officer at the time when he completes the assessment and in the absence of any such information, it will not be possible for the Assessing Officer to give the assessee, the benefit of such exclusion and once the assessment is complete, it would be futile to find fault with the Assessing Officer. Further, it was pointed out that even assuming that there is no valid limitation prescribed under the Act and Rules, yet it is reasonable to presume that the intimation required under Section 11 has to be furnished before the Assessing Officer completes the concerned assessment, because such requirement is mandatory and without the particulars of the assessee's income, the Assessing Officer cannot entertain the claim of the assessee under Section 11 and therefore, compliance of the requirement of the Act will have to be any time before the assessment proceedings are completed. The ultimate decision went in favour of the Revenue. Yet, we take note of the findings rendered in the decision, stating that before completion of the assessment, the information should be made available to the Assessing Officer.

8. As noted by us earlier, the assessee filed the return of income for the assessment year under consideration on 02.04.2009, which was processed and intimation under Section 143(1) of the Act was issued on 21.01.2011. Thus, there was no assessment under Section 143(3) of the Act. The assessee, while filing the petition under Section 154 of the Act, on 22.03.2011, pointed out that the assessee filed the Form No.10 along with the Board Resolution along with the covering letter dated 01.04.2019. However, the mistake done by the assessee was to file hard copies before the Assessing Officer, and not filing the same along with the return of income, which they filed on 02.04.2019. Thus, on the date when the return was taken up for assessment, there was record to show that the assessee had intimated the department about the resolution passed by the Board of the assessee Trust and the statutory Form No.10. Admittedly, the assessment was not completed under Section 143(3) of the Act and therefore, there would have been no error had the assessing officer taken up the copy of the Board Resolution and Form No.10. Thus, on the date when the return was filed, the assessee had separately filed Form No.10 along with the Board Resolution along with a covering letter dated 01.04.2009. Thus, in our considered opinion, when the assessee was entitled to a statutory benefit, it would be incumbent upon the concerned

*authority to examine the admissibility of the benefit than to foreclose the assessee on technicalities.*

*9. In CIT -Vs- Sakal Relief Fund (295 CTR 561) Bom, it was held that even if the Form No.10 is filed during the re-assessment proceedings, the benefit of accumulation under Section 11(2) of the Act is available. So also, the time allowed in Rule 17 of the Rules for furnishing the form before the expiry of time to file the return of income under Section 139(1) of the Act get extended to include the time within which a return of income could be filed under Section 139(4) of the Act. It was held that filling of Form No.10 during re-assessment proceedings is filing of the same within the time allowed for furnishing the return of income under Section 139(4) of the Act.*

*10. In CIT -Vs- AKS Alloys Pvt Ltd (18 Taxmann.com 25 Mad), it was held that for claiming deduction under Section 80-IB, audit report in Form 10CCB can be filed before the assessment is completed, if the same has not been filed along with the return of income. In arriving at such a decision, the Court referred to the decisions cited below.*

*CIT -Vs- Ace Multitaxes Systems (P) Ltd., (2009) 317 ITR 2017 (Kar.)*

*CIT -Vs-Contimeters Electricals (P) Ltd., (2009) 317 ITR 249 (Del.)*

*CIT -Vs-A.N.Arunachalam (1994) 208 ITR 481 (Mad.)*

*CIT -Vs- Jayant Patel (2001) 248 ITR 199 (Mad.)*

*CIT -Vs- Shivanand Electronics (1994) 209 ITR 63 (Bom.)*

*Zenith Processing Mills -Vs- CIT (1996) 219 ITR 721 (Guj.)*

*CIT -Vs- Mahalaxmi Rice Factory (2007) 294 ITR 631 (Punj.&Har.)*

*CIT -Vs- Berger Paints (India) Ltd., (2002) 254 ITR 503 (Cal.)*

*11. The decision in CIT -Vs- AKS Alloys Pvt Ltd (18 Taxmann.com 25 Mad) was affirmed by the Honourable Supreme Court in CIT -Vs- G.M.Knitting Industries Pvt Ltd., 376 ITR 456. Though the case arose out of non-filing of audit report in Form 10CCB to claim deduction under Section 80-IB of the Act, the ratio laid down in the decision squarely applies to the case on hand. Further, we note that the Central Board of Direct Taxes in Circular No.7/2018 [F.No.197/55/2018-ITA-I] dated 20.12.2018, had directed the Commissioner of Income Tax to condone the delay in filing Form No.10. However, in the said relief was granted only for the assessment year 2016-17. In a recent circular issued by the Central Board of Direct Taxes in Circular No.10[F.No.197/55/2108-ITA-I] dated 22.05.2019, the Board has directed the Commissioners to condone the*

*delay in Form 10B for Charitable and Religious Trusts, for years prior to Assessment Year 2018-19.*

*12. After taking note of the above decisions, we are of the considered view that under the facts and circumstances of the case, more particularly when there was no assessment under Section 143(3) of the Act and the fact that the assessee has separately filed Form No.10 along with the Board Resolution, along with the covering letter dated 01.04.2009, it is a fit case where the assessing officer should be directed to take note of Form No.10 accompanied by the Board Resolution and take a decision on merits. As we have taken a decision on the assessee's entitlement to file Form No.10, the substantial questions of law, which have been framed by the assessee are not required to be answered and are left open.*

*13. For the above reasons, the appeal is allowed and the order passed by the Tribunal as well as the CIT (A) are set aside and the order passed by the Deputy Director of Income Tax (Exemptions)-II dated 28.03.2011 is also set aside. The authority is directed to take note of the Form No.10 and the Board Resolution and take a decision on merits and in accordance with law. No costs.*

In view of the above, the Ld.AR prayed for remitting the issue back to the AO for fresh assessment.

5. Per contra, the Ld.DR stated that the assessee has filed Form 10 after the completion of assessment i.e., 21.04.2021 which is against the order dated 16.04.2021. Therefore, there is no mistake in the order of the AO and that of the CIT(A) and hence, prayed for confirming the same.

6. We have heard rival submissions and perused the material on record. Admittedly, the assessee is a trust having registered

u/s.12A of Act, and claimed exemption u/s.10(23C)(v) and filed the return of income for the assessment year 2018-19 along with the Form 10 supported by the resolution passed by the trustees to accumulate the excess amount for construction of new school of the trust. The assessee after coming to know that the corpus donation of Rs.1.20 crores paid during the impugned A.Y. to Vardhaman Jain Shikshan Sansthan, Jodhpur is not eligible for application of funds of the trust, wanted to revise the form 10 and file the same before the AO during the assessment proceedings. We note that the AO has passed an order within 3 days from the date of issuing show cause notice to the assessee and passed an order u/s.143(3) of the Act dated 16.04.2021 by denying the donation paid of Rs.1.2 crores as admissible application of fund towards the object of the trust and brought to tax. The Ld.CIT(A) also confirmed the same without considering the submissions made by assessee.

6.1 We note that the assessee filed the revised form 10 on 21.04.2021 and the Id.AR prayed for remanding the issue back to the files of the AO by providing one more opportunity to the assessee to substantiate the case. We agree with the assessee's reliance on the judgement of the Hon'ble High Court in the case of Shri Chandraprabhuji Maharaj Jain (*supra*), wherein their lordships

have observed that the 'statute does not prescribe any time limit for filing statutory Form No.10 and directed the AO to consider the Form 10 filed subsequently to conclude the assessment'. In the present case on hand, since the assessee has filed the revised Form 10 on 21.04.2021, relying on the Hon'ble Jurisdictional High Court decision, we are setting aside the order of the Ld.CIT(A) and in the interest of natural justice, remit back the file to AO with a direction to take note of Form No.10 accompanied by the Board Resolution and take a decision on merits in accordance with law.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28<sup>th</sup> March, 2025 at Chennai.

Sd/-

(श्री धुव्वुरुआर.एल रेड्डी,)

**(DUVVURU RL REDDY)**

उपाध्यक्ष /**VICE PRESIDENT**

चेन्नई/Chennai,

दिनांक/Dated, the 28<sup>th</sup> March, 2025

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

(एस. आर.रघुनाथा)

**(S. R. RAGHUNATHA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**