

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2965/Chny/2024
निर्धारण वर्ष/Assessment Year: 2022-23

Joy of Sharing Foundation- Charitable Trust, 6/5A, 2 nd Middle Street, Officers Colony, Adambakkam, Chennai-600 088.	v.	The ITO, Exemptions Ward-4, Chennai.
[PAN: AABTJ 3667 K]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.K.M. Mohan Dass, CA
प्रत्यर्थी की ओर से /Respondent by	:	Dr. I. Roopa, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	27.02.2025
घोषणाकीतारीख /Date of Pronouncement	:	23.04.2025

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee Trust against the order of the Learned Commissioner of Income Tax (Appeals)/Addl./JCIT (A)-1, (hereinafter referred to as "the Ld.CIT(A)"), Jaipur, dated 27.09.2024 for the Assessment Year (hereinafter referred to as "AY") 2022-23.

2. The main grievance of the assessee is against the action of the Ld.CIT(A) disallowing the accumulation of income u/s.11(2) of the Income



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Tax Act, 1961 (hereinafter referred to as 'the Act') on the ground that Form 10B was not filed within the due date u/s.139(1) of the Act.

3. The brief facts are that the assessee is a public Charitable Trust formed on 21.10.2010 u/s.12AB of the Act has been regularly filing his return of income (RoI) along with the Audit Report in Form 10B. For AY 2022-23, the assessee had filed the RoI on 07.09.2022 along with Audit Report (Form 10B) admitting 'Nil' income. According to the assessee, while filing RoI & Audit Report, the assessee Trust uploaded Form 10 [accumulation of income] and was of the bona fide belief that it has uploaded the Form 10 in the Income Tax Portal, but to its dismay when the return was processed by the CPC, and intimation dated 31.03.2023 was passed, it came as a shock to the assessee that accumulation of income to the tune of Rs.54 lakhs has been denied, for not uploading the Form 10. Realizing that, may be due to technical glitches, Form 10 couldn't have been uploaded electronically when RoI was filed on 07.09.2022 u/s.139(1), the assessee again refilled the Form 10 on 02.06.2023 and pointed out that the omission in filing Form No.10 [i.e. accumulation of income u/s.11(2) of the Act to the tune of Rs.54 lakhs] was purely on account of complexity while uploading the said Form while uploading the RoI & Audit Report in Form 10B.



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4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A)/JCIT(A) against the action of the CPC denying the claim of the assessee Trust, which was dismissed on the ground that for claiming exemption u/s.11 of the Act, it is mandatory to file Form No.10B i.e. Audit Report within the specified time.

5. Aggrieved, the assessee is in appeal before this Tribunal.

6. We have heard both the parties and perused the material available on record. It is noted that the assessee is a public Charitable Trust formed in the year 2010 and was enjoying registration u/s.12AB of the Act and carrying on charitable activities. The assessee Trust is noted to have filed its RoI for AY 2022-23 on 07.09.2022 u/s.139(1) of the Act admitting 'Nil' income along with mandatory Form 10B i.e. Audit Report. In the RoI filed on 07.09.2022, the assessee Trust is noted to have duly disclosed under Schedule-I, the details of amount accumulated as per sec.11(2) of the Act as well as the same was duly disclosed in Form No.10B (Audit Report) at Column Nos.5 & 6 [refer Annexure-B] wherein we note that the sum of Rs.54 lakhs has been clearly mentioned therein as amount accumulated as per sec.11(2) of the Act. It is further noted that the assessee Trust while filing the ITR on 07.09.2022 has uploaded the Audit Report in Form No.10B [which was well before the due date u/s.139(1) of the Act] but the CPC in its intimation u/s.143(1) of the Act on 31.03.2023 has



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disallowed the accumulation of income of Rs.54 lakhs, only on the reason that assessee Trust didn't file Form No.10 [*accumulation of income*].

7. According to the assessee, while uploading RoI & Audit Report [Form 10B], the assessee also uploaded Form 10 [*accumulation of income*] and was of the bona fide belief that it has uploaded the Form 10 in the Income Tax Portal, but to its dismay when the return was processed by the CPC, and intimation dated 31.03.2023 was passed, it came to know that accumulation of income of Rs.54 lakhs has been denied, for not uploading the Form 10. The assessee Trust is noted to have re-filed/uploaded Form No.10 on 02.06.2023; and during the appellate proceedings before the Ld.CIT(A), has brought to his notice that the assessee Trust had filed/uploaded return as well as Audit Report in Form No.10B before the due date u/s.139(1) of the Act i.e. on 07.09.2022 as well as Form No.10 was uploaded, but due to technical glitches, it was unsuccessful and since, there was heavy load server got hung and which resulted in CPC rejecting the accumulation of Rs.54 lakhs. And assessee had again re-filed/uploaded on 02.06.2023 and a copy of Form No.10 has been filed before us. However, we note that the Ld.CIT(A) has dismissed the appeal of the assessee albeit on a different reason that for claiming exemption u/s.11 of the Act, it is mandatory to file Form No.10B before the due date of filing of return or should have got condonation of delay for belated filing of Form No.10B from the CIT



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(Exemption). However, we find that this findings of fact recorded by the Ld.CIT(A) is erroneous for the simple fact that the assessee had filed the Form 10B (audit-report) before the due date u/s.139(1) of the Act i.e. on 07.09.2022 and the CPC has refused accumulation of income u/s.11(2) of the Act only on the reason that Form No.10 [*accumulation of income*] has not been filed. Thus, we find that the Ld.CIT(A) has misdirected himself on the erroneous assumption that assessee Trust didn't file Form No.10B [i.e. Audit Report] when the correct fact is that assessee Trust had filed the Audit Report in Form No.10B along with the RoI on 07.09.2022. Thus, impugned action of the Ld.CIT(A) cannot be countenanced and need to be interfered with.

8. As discussed, the Ld.CIT(A) erred in rejecting the appeal on the ground which was not raised/flagged by the CPC i.e. non-filing of Form 10 [accumulation of income of a Trust] whereas the Ld.CIT(A) has denied the accumulation of income only on the ground that the assessee Trust didn't file the Form No.10B [i.e. Audit Report]. We find that the assessee Trust has filed the RoI along with Audit Report before the due date u/s.139(1) of the Act and in the RoI as well as the Audit Report has clearly shown the accumulation of income u/s.11(2) of the Act to the tune of Rs.54 lakhs. In such a scenario, we are of the view that the Income Tax Authorities while processing the return for assessment/appellate order ought not to have rejected the accumulation of income on the aforesaid facts and



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circumstances of the case. In this regard, we refer to the decision of the Hon'ble jurisdictional High Court in the case of CIT v. SPIC Educational Foundation (TCA No.1593 of 2008 dated 12.12.2018), wherein the Hon'ble High Court has held that filing of Form 10 for accumulation of income u/s.11(2) of the Act which was filed beyond due date couldn't disentitle the trust from exemption claimed u/s.11 of the Act. The Hon'ble Court directed the AO to examine the benefit of admissibility rather than to foreclose the claim of assessee on technicalities. Therefore, respectfully taking note of the binding decision of the Hon'ble High Court (supra), we hold that the Ld.CIT(A) erred by misdirecting on an issue which wasn't raised by CPC; and since the TAR had been filed along with RoI filed within due date u/s.139(1) of the Act, and Form No.10 was again uploaded by the assessee on 02.06.2023, we are of the view that the First Appellate Authority erred in passing the impugned order, which we set aside and direct the CPC/AO to allow the accumulation of income claimed by the assessee u/s.11(2) of the Act to the tune of Rs.54 lakhs.

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

Order pronounced on the 23rd day of April, 2025, in Chennai.

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/JUDICIAL MEMBER



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चेन्नई/Chennai,
दिनांक/Dated: 23rd April, 2025.

TLN

आदेश की प्रतिलिपि अग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF