

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "A" Bench, Mumbai.

Before Smt. Kavitha Rajagopal (JM) & Shri Omkareshwar Chidara (AM)

ITA No. 3375/MUM/2025 (Assessment Year : 2023-24)

Archdiocese of Bombay Archbishops House, 21 Nathalal Parekh Marg Fort, Mumbai-400 001. PAN : AAATA0008J Appellant	Vs.	DCIT(E), Circle-1 Cumball Hill Telephone Exchange, Peddar Road, Mumbai-400 026. Respondent
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Assessee by	:	Ms. Vasanti Patel & Shri M.A. Gohel
Revenue by	:	Shri Surendra Mohan
Date of Hearing	:	25/08/2025
Date of pronouncement	:	29/08/2025

O R D E R

Per Omkareshwar Chidara (AM) :-

In the above cited appeal, Ld. CPC made an addition under section 115BBI of the Income Tax Act by making an adjustment under section 143(1) of the Act.

2. Aggrieved by the addition, the appellant filed an appeal before Ld. CIT(A), who confirmed the addition made by Ld. CPC.

3. Aggrieved by the addition made as above, the appellant filed an appeal before the ITAT with following grounds of appeal :-

The Appellant presents this appeal against the impugned order viz. the Appellate Order dated 30<sup>th</sup> March, 2025 passed by the Commissioner of Income-tax (Appeals), Additional/Joint Commissioner of Income Tax (Appeals) - 2, Noida, under section 250 of the Income Tax Act, 1961 (the Act) on the following amongst other grounds each of which are in the alternative and without prejudice to any others:

I. DENIAL OF DEUCTION FOR UTILISATION UNDER SECTION 11(3) OF THE ACT OF THE SURPLUS ACCUMULATED UNDER SECTION 11(2) OF THE ACT IN EARLIER YEARS - RS. 81,35,976/-  
On the facts and circumstances of the case and in law,

1.1. The learned Addl/Joint Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT (Appeals)] erred in confirming the denial of deduction under Section 11(3) of the Act claimed by the Appellant for utilization of surplus accumulated under Section 11 (2) of the Act in earlier years by the Central Processing Centre, Bengaluru (hereinafter referred to as the Assessing Officer) for a sum of Rs. 81,35,976/-.

1.2. The learned CIT (Appeals) erred in upholding the denial of deduction under Section 11(3) of the Act for a sum of Rs. 81,35,976/- being the amount applied/utilised on specified objects in the Financial Year ("FY") 2022-23 (Assessment Year ["AY"] 2023-24) out of accumulation of surplus under Section 11(2) of the Act during the FY 2016-17 (AY 2017-18).

1.3. The learned CIT (Appeals) and the learned Assessing Officer failed to appreciate the implications of the amendment made by the Finance Act, 2022 requiring utilization of the accumulated surplus in the 5<sup>th</sup> year from the year of accumulation. It is submitted that deduction for such utilization in the sixth year from the year of accumulation is permissible for AY 2023-24 and deduction claimed by the Appellant is valid and allowable under the law.

1.4. The learned Addl/Joint Commissioner of Income Tax (Appeals) ought to have considered that the Return of Income in Schedule I allowed the accumulation of FY 16-17 to be utilized in FY 22-23 and only the unutilized amount left thereafter, be taxed u/s 11(3) of the Act.

1.5. The learned CIT (Appeals) erred in upholding the taxation of the said amount under Section 115BBI of the Act.

1.6. The learned Assessing Officer and the learned CIT(Appeals) failed to appreciate and consider the submissions made and explanation offered by the Appellant in justification of its claim for deduction.

1.7. Without prejudice to the above, in case application of income of Rs. 81,35,976/- is not allowed against accumulation of income u/s. 11(2) of the Act for AY 2017-18, then the amount so applied be treated as allowed against current income and to that extent accumulation applied under section 11(2) for AY 2023-24 be reduced.

The Appellant prays that the learned assessing Officer may kindly be directed to allow the deduction for utilization made by the Appellant during the FY 2022-23 (AY 2023-24) of the surplus accumulated in AY 2016-17 as the denial thereof is unwarranted, unjustified and unsustainable.

## II. DENIAL OF DEDUCTION UNDER SECTION 143(1) OF THE ACT:

2.1. The learned CIT (Appeals) erred in upholding the denial of deduction resorted to by the learned Assessing Officer through an adjustment to the total income while processing the return of income under section 143(1) of the Act.

2.2. It is submitted that the issue involves a highly debatable question of law that cannot be settled by way of an adjustment under Section 143(1)(a) of the Act. Further, the said adjustment has been resorted to without calling for any information/explanation from the Appellant in this behalf.

It is submitted that the adjustment has been made in gross violation of principles of natural justice and also the provisions of Section 143 (1) of the Act which mandatorily require issue of a show cause notice and affording an opportunity of being heard to the Appellant.

4. From the above, it is observed that the appellant is a Religious and Charitable Trust registered with the office of the Charity Commissioner and this trust has been in existence since 1955 conducts various activities for promotion of religion, religious and secular education, health and other charitable purposes. The appellant filed its return of income on 20.11.2023 showing total income as NIL. The appellant has filed Form No. 10 on 30.10.2023 for accumulation under section 11(2) of the I.T. Act. In A.Y. 2017-18, accumulated amount of Rs. 93 lakh was added to the total income by the Ld. AO while passing assessment order under section 143(3) of the Act. As the Ld. CIT(A) confirmed the addition made by the Ld. AO, appellant filed this appeal with grounds of appeal mentioned above.

5. During the hearing before the ITAT, Ld. AR of the appellant has argued that the additions made by Ld. CPC are highly debatable and addition cannot be made under section 143(1) of the Act. Secondly, Ld. AR of the appellant argued that the amendment to section 11(3) brought by the Finance Act, 2022 should not apply retrospectively and utilisation in the 6<sup>th</sup> year was permissible under unamended provisions. It was further argued that the amendment made is applicable prospectively from financial year 2022-23 and hence retrospective effect cannot be made, specially when legislature has mentioned that the amended section is applicable from A.Y. 2023-24 onwards. Ld. AR of the appellant has further argued that the amount accumulated of Rs. 93 lakh for A.Y. 2017-18 under section 11(2) and out of this, they have applied Rs. 81,35,976/- in A.Y. 2023-24. The

main ground of appellant trust is that if accumulation of company is done after A.Y. 2023-24, then only the amended provisions will come into effect. Ld. AR has contended that the addition cannot be made by Ld. CPC in accordance with the amended provisions under section 11(3) r.w.s.143(1)(a) of the Act. For this proposition, Ld. AR relied on the decisions of the Coordinate Benches – ITO(E)-1(1), Mumbai Vs. Basilica of Our Lady of the Mount (ITA No. 2927/Mum/2025 dated 14.8.2025) and Shri Dadar Digamber Jain Mumukshu Mandal Vs. Ld. CIT(E) (ITA No. 2446/Mum/2025 dated 15.7.2025). In both these decisions, the Tribunal has taken a decision that the amended provisions will apply only prospectively w.e.f. A.Y. 2023-24, where accumulated income can be applied within five years from the year of accumulation. In view of the above, Ld. AR of the appellant trust requested the Bench to delete the addition made by Ld. CPC, which was confirmed by Ld. CIT(A).

6. Ld. DR relied on the orders of Ld. CPC and Ld. CIT(A).

7. Heard both sides. The issue relating to accumulation of funds and spending the same in sixth year is already covered by the decisions of the Coordinate Bench as mentioned above. It is observed that the Pune Bench “B” in Yashwantrao Chavan Maharashtra Open University Vs. Ld. CIT(E) (ITA No. 505/PUN/2025 dated 23.6.2025) also it was held that the amendment introduced by the Finance Act 2002 is not retrospective in nature in so far as it relates to utilisation of accumulation surplus under section 11(3) of the Act. Moreover, Hon'ble Supreme Court in the case of CIT v. Vatika Township (P.) Ltd. [2014] 49 taxmann.com 249 (SC) dated 15.9.2014, it was held that in the absence of explicit legislature intend to contrary in substantive amendment operations prospective only. In view of the above, addition made by Ld. CPC is deleted.

8. The appeal of appellant is allowed.

Order pronounced in the open Court on 29/08/2025.

Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER

Sd/-  
(OMKARESHWAR CHIDARA)  
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

//True Copy//

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BY ORDER,  
(Assistant Registrar)  
ITAT, Mumbai